Application No. 5310/71

IRELAND

against

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

REPORT OF THE COMMISSION
(adopted on 25 January 1976)

(Published version -
Rule 29 § 3 of the Rules of Court
of the European Court of Human Rights)

Note by the Registry: In addition to the matter referred to in footnote (1) on page 8 below, this published version of the Report incorporates certain changes made to the original text prepared by the Commission. These changes have been made under the control of the European Court of Human Rights and with the agreement of the applicant Government, the respondent Government and the Commission.

The sole purpose of these changes is to protect the identity of certain persons; there has been no other amendment, modification or abbreviation of the original text in any respect whatsoever. Furthermore, the original text remains as the authentic version of the Report which is before the Court.

Insofar as certain persons may be referred to by initials, the reader is advised that these initials do not necessarily correspond or bear any relation to that person's real initials.

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VR Adm = 25-29/9 1972 Strasbourg: admissibility

VR 1 = 2 - 5/10 1973 Strasbourg: merits, Arts. 5, 6, 14 & 15

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VR 6 = 12 - 15/6 1974 Sola: Art. 3 witnesses (resp. Govt.)

VR 7 = 22 - 25/7 1974 Strasbourg: Art. 14 witnesses (appl. Govt.)

VR 8 = 28 - 29/10 1974 Strasbourg: Art. 3 witnesses (appl. Govt.)

VR 9 = 30/10 1974 Strasbourg: Art. 14 witness (appl. Govt.)

VR 10 = 13 - 25/1 1975 Sola: Art. 3 witnesses, Art. 14 witnesses (resp. Govt.)

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VR 12 = 14 - 19/3 1975 Strasbourg: Submissions on Evidence.

SE = Summary of Evidence VR 3 - 11, I (Art. 14), II (Art. 3).

INTRODUCTION

A. Outline of the case

The following is an outline of the case as it has been submitted by the parties to the European Commission of Human Rights.

The lasting crisis in Northern Ireland gave rise to the present application. It will be described in considerable detail below, and it may therefore be sufficient here to recall the main events which caused the allegations of the applicant Government in this case.

The present emergency is not as such in dispute between the parties. It began in 1966 with the first use of violence for political ends in Northern Ireland in recent years. Troubles continued during 1967 and 1968 and developed into a very serious rioting in Londonderry, Belfast and elsewhere in mid-August 1969. As a result of these events the army was called in, in August 1969, in order to assist the civil authorities in their attempt to cope with the emergency.

However, in 1970 the situation worsened, and it continued to grow worse in 1971. In August 1971 the Northern Ireland Government decided, in consultation with the United Kingdom Government, to use again the powers of detention and internment available to it under the Civil Authorities (Special Powers) Act (Northern Ireland) 1922 (1), and the Regulations made thereunder.

This decision was put in effect when "Operation Demetrius" was mounted, being a large arrest operation with the aim of arresting several hundred persons who were suspected of being concerned with the terrorist activity of a prohibited organisation, the Irish Republican Army (IRA), and whose names were on a list prepared by the Royal Ulster Constabulary (RUC) in consultation with the army. In fact, 354 persons were arrested on that day, of whom 104 were released within 48 hours.

The arrests were carried out by the army in the early morning hours of Monday, 9 August 1971. The arrested persons were taken to one of the three Regional Holding Centres (Magilligan Weekend Training Centre in County Londonderry, Ballykinler Weekend Training Centre in County Down and Girdwood Park Territorial Army Centre in Belfast) which had been set up to receive the prisoners during 48 hours for interrogation. Those who were to be detained were then sent either on board the ship "Maidstone" in the harbour of Belfast or to Crumlin Road Prison. In these days of August

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(1) In this Report also referred to under the abridged title "Special Powers Act". ./.

1971 altogether 12 persons (and later in October that year a further 2 persons) were singled out and taken to an unknown centre for interrogation. There a combination of five particular techniques in aid of interrogation, namely hooding, wall-standing, subjection to noise, deprivation of food and water, and deprivation of sleep were used on those persons.

Arrests continued to be made during the rest of the year, partly of persons who had been on the original list, and partly of persons who became subject to suspicion thereafter. It appears that a total of 770 detention orders were made during the year, and 525 internment orders, although a considerably larger number of people were arrested. Thus it seems that some 980 people had been arrested by 10 November 1971.

The above Regional Holding Centres were closed down shortly after Operation Demetrius was completed in August 1971 and in September/October 1971 police holding centres were set up at Palace Barracks (Holywood), Girdwood Park (Belfast), Gough (County Armagh) and Ballykelly (County Londonderry) for the purpose of holding and interrogating prisoners arrested under the Special Powers Act. These holding centres were in operation until June 1972 and were replaced in July 1972 by police offices at Castlereagh Police Station in Belfast and at Ballykelly Military Barracks.

The introduction of internment produced an unexpectedly violent reaction from within the minority community in Northern Ireland. Furthermore, soon after the arrest operation on 9 August 1971, reports were published in Irish newspapers, and subsequently also in Northern Irish and English newspapers, about persons making allegations of ill-treatment by the security forces during their arrest, interrogation and otherwise. The first of these reports concerned allegations relating to Girdwood Park, and to the unknown interrogation centre where the five techniques in aid of interrogation had been practised. As a result of these allegations, the "Compton Committee" was established which investigated them and reported on them on 3 November 1971. A further report by Sir Edmund Compton of 14 November 1971 concerned three other cases of ill-treatment alleged to have occurred at Palace Barracks, Holywood.

In these reports it was concluded that questioning in depth by means of the five techniques constituted physical ill-treatment, that certain other actions taken in regard to prisoners constituted measures of ill-treatment or of unintended hardship, but that in no case had any of the grouped or individual complainants suffered physical brutality as the Committee understood the term.

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In this situation, on 16 December 1971, the Government of the Republic of Ireland submitted to the Commission an application against the Government of the United Kingdom of Great Britain and Northern Ireland. Its stated object was to ensure that the respondent Government would assure to everyone in Northern Ireland the rights and freedoms defined in section I of the Convention and in particular the rights and freedoms defined in Arts. 2, 3, 5, 6 and 14 of the Convention, to bring to the attention of the Commission breaches of the above Articles by the respondent Government in Northern Ireland, to determine the compatibility with the Convention of certain legislative measures and administrative practices of the respondent Government in Northern Ireland, and to ensure the observance of the legal engagement and obligations undertaken by the respondent Government in the Convention.

B. The substance of the application

In their original submissions the applicant Government outlined in what way they considered that breaches of Articles of the Convention had occurred. Referring to the provisions of the Civil Authorities (Special Powers) Act (Northern Ireland) of 1922 and to the Statutory Rules, Regulations and Orders made thereunder, they submitted that the provisions of the said Act, Rules, Regulations and Orders were of themselves a failure by the respondent Government to comply with the obligations imposed on it by Art. 1. Furthermore, the methods employed or permitted by the respondent Government in the implementation of the above Act, Rules, Regulations and Orders constituted an administrative practice in breach of that provision.

As to Art. 3 of the Convention, the applicant Government submitted that on 9 August 1971, and afterwards, a large number of persons were taken into custody by security forces of the respondent Government, in accordance with the provisions of the above Act, Rules, Regulations and Orders, and detained in varying numbers in different centres, namely Palace Barracks, Girdwood Park and Ballykinler and to a lesser extent in Magilligan and elsewhere. Some persons were released without any charge having been preferred against them but subsequently further persons were taken into custody and detained in Palace Barracks and elsewhere. Referring to affidavits and statements of a number of persons so detained, reports by medical doctors and other medical specialists, and to the report and supplemental report of the Committee of Inquiry appointed by the Home Secretary of the respondent Government (known as the Compton Report), the applicant Government submitted that these persons were subjected to treatment in breach of Art. 3 carried out by the security forces of the respondent Government. Furthermore, their

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treatment constituted, in breach of Art. 3, an administrative practice, and a continued series of executive acts exposing a section or sections of the entire population within the United Kingdom Government's jurisdiction in Northern Ireland to torture or inhuman and degrading treatment or punishment.

The original submissions of the applicant Government under Arts. 5 and 6 of the Convention relating to the powers under the Civil Authorities (Special Powers) Act (Northern Ireland) 1922 and the Statutory Rules, Regulations and Orders made thereunder were that, after 9 August 1971, a considerable number of persons in Northern Ireland, estimated at some 400 persons, were interned without trial by the respondent Government. It was submitted that the powers of detention and internment contained in the said Act and Rules, Regulations and Orders and the operation by the respondent Government of the said powers in Northern Ireland were in breach of Arts. 5 and 6 of the Convention. They further referred to three communications of the respondent Government, dated 27 June 1957, 25 September 1969 and 25 August 1971 and informing the Secretary General of the Council of Europe of measures taken by them derogating from their obligations under the Convention in accordance with Art. 15 of the Convention. The applicant Government submitted that the scope and form of the measures so taken were far greater and extensive than the measures which would be strictly required by the exigencies of the situation and were inconsistent with the respondent Government's obligations under international law.

The applicant Government further submitted that the exercise by the respondent Government, and by the security forces under their control, of their powers to detain and intern persons had been and was still being carried out with discrimination on the grounds of political opinion contrary to Art. 14 read in conjunction with Arts. 5 and 6 of the Convention.

They finally also claimed a violation of Art. 2 of the Convention in relation to the deaths of certain persons in Northern Ireland.

The applicant Government later made further submissions in support of their claim, in particular regarding the deaths in Londonderry on "Bloody Sunday", 30 January 1972, and also added allegations of breaches of Arts. 5 and 6 of the Convention in relation to powers conferred by legislation subsequently passed by the respondent Government, namely the Detention of Terrorists (Northern Ireland) Order 1972 (1) and the Northern Ireland (Emergency Provisions) Act 1973 (2). In this connection, reference was also made to the respondent Government's notices of derogation submitted to the Secretary General of the Council of Europe on 23 January and 27 August 1973. ./.

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(1) In this Report also referred to under the abridged title of "Detention of Terrorists Order".

(2) In this Report also referred to under the abridged title of "Emergency Provisions Act".

Further complaints and material relating to an issue under Art. 7 of the Convention were registered as a separate application, No. 5451/72.

C. Proceedings before the Commission (1)

On 1 October 1972, after having obtained written and oral observations from the parties, the Commission declared inadmissible the applicant Government's allegations under Art. 2 of the Convention in relation to the deaths of certain persons in Northern Ireland. After certain assurances had been given by the respondent Government, application No. 5451/72 was withdrawn and struck off the Commission's list of cases. On the other hand, the Commission declared admissible the allegations:

- that the treatment of persons in custody, in particular the methods of interrogation of such persons, constituted an administrative practice in breach of Art. 3 of the Convention;
- that internment without trial and detention under the Civil Authorities (Special Powers) Act (Northern Ireland) 1922 and the Regulations made thereunder constituted an administrative practice in breach of Arts. 5 and 6 of the Convention in connection with Art. 15;
- that the exercise by the respondent Government of their power to detain and intern persons was being carried out with discrimination on the ground of political opinions and thus constituted a breach of Art. 14 with respect to the rights and freedoms guaranteed in Arts. 5 and 6, in conjunction with Art. 15 of the Convention;
- that the administrative practices complained of also constituted a breach of Art. 1 of the Convention.

Written observations on the merits were submitted by the applicant Government on 29 November 1972 and by the respondent Government on 13 March 1973. Further written submissions on the substance of the case were made by the respondent Government on 13 June and 20 September 1973 and by the applicant Government on 6 September 1973.

At a hearing which had been fixed for July 1973 but was later adjourned to take place from 2 to 5 October 1973 the Commission heard the parties' oral submissions in relation to the allegations under Arts. 5, 6, 14 and 15 of the Convention. The hearing continued on 12 and 13 December 1973 in relation to the allegations under Art. 3 of the Convention.

In the meanwhile, implementing its basic decisions of 6 April 1973 relating to the taking of evidence in the case, the Commission decided, on 5 October, 13 and 19 December 1973, that it would proceed through delegates to hear witnesses ./.

(1) For a detailed table showing the course of the proceedings before the Commission, see Annex I.

proposed by the parties in relation to the allegations under Arts. 3 and 14. In accordance with the Commission's decision of 5 October 1973, three Delegates of the Commission began, from 26 November to 1 December 1973, to hear in Strasbourg the witnesses proposed by the applicant Government in relation to a number of "illustrative" cases under Art. 3 indicated by the Government. At a further hearing from 25 February to 1 March 1974, the examination of the applicant Government's witnesses under Art. 3 continued.

From 2 to 11 May 1974 and again from 12 to 15 June 1974 Delegates of the Commission then heard at Sola Air Base in Norway witnesses proposed by the respondent Government in relation to the allegations under Art. 3 of the Convention.

On 22 July 1974 Delegates of the Commission began the taking of oral evidence in regard to the allegations under Art. 14 of the Convention by hearing in Strasbourg witnesses proposed by the applicant Government. These hearings lasted until 25 July 1974 and continued on 28 to 30 October 1974 with the hearing in Strasbourg of further witnesses proposed by the applicant Government under both Art. 3 and Art. 14 of the Convention.

Further oral evidence proposed by the respondent Government under Arts. 3 and 14 of the Convention was heard by Delegates of the Commission at Sola Air Base in Norway from 13 to 25 January 1975. The hearings of witnesses were concluded on 20 February 1975 when Commission's Delegates heard in London the evidence of three more witnesses proposed by the respondent Government.

Finally from 14 to 20 March 1975 the Commission heard the parties' oral conclusions on the evidence taken and their final submissions on the issues under Arts. 3 and 14 of the Convention.

A full description of the course of the Commission's investigation into the facts of the case, and of the various procedural decisions taken in connection with its investigation, is given in the introductions to the relevant chapters of this Report.

D. The parties' representatives

The applicant Government has been represented before the Commission by Mr. F.M. Hayes as Agent. The oral proceedings on the merits were conducted by MM. D. Costello, Attorney-General, A.J. Hederman and R.J. O'Hanlon, S.C., who were assisted during the whole or part of the proceedings by MM. A. Browne, J. Murray, L. Lysaght, P.D. Quigley, M. Burke, T. Bolster, D. Walshe and others as Advisors.

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The respondent Government has been represented by Mr. P.R.N. Fifoot as Agent, assisted by Mr. I. Mathers as Assistant Agent. The oral proceedings on the merits were conducted by the Rt. Hon. Sir Peter Rawlinson, Attorney-General, and later by the Rt. Hon. S. Silkin, Attorney-General, as well as MM. J.G. Le Quesne, J.B.R. Hazan, J.B.E. Hutton and G. Slynn, Q.C., who were assisted during the whole or part of the proceedings by MM. N. Bratza, M.G. de Winton, W.J. Smith, B.B. Hall, J. Wilkinson, C. Leonard, F. O'Connell and others as Advisers.

E. The present Report

The present Report has been drawn up by the Commission in pursuance of Art. 31 of the Convention after deliberation in plenary session, the following members being present(1):

MM. G. SPERDUTI, Vice-President, Acting President
J.E.S. FAWCETT, President
C.A. NØRGAARD, Second Vice-President
F. ERMACORA
M. TRIANTAFYLLIDES
E. BUSUTTIL
L. KELLBERG
B. DAVER
T. OPSAHL
K. MANGAN
J. CUSTERS
C.H.F. POLAK
J.A. FROWEIN
G. JÖRUNDSSON

It was adopted on 25 January 1976 and is now transmitted to the Committee of Ministers in accordance with para. (2) of Art. 31.

A friendly settlement of the case has not been reached and the purpose of the Commission in the present Report, as provided in para. (1) of Art. 31, is accordingly:

(1) to establish the facts, and

(2) to state an opinion as to whether the facts found disclose a breach by the respondent Government of its obligations under the Convention.

The Commission has dealt with the issues in this case in three parts: Part One, "Detention without Trial", regarding the issues under Arts. 5, 6, 14 and 15, divided into two Chapters ("The Justification Issue" and "The Discrimination Issue"); Part Two, "Treatment of Detainees", regarding the issue under Art. 3; and Part Three, "Duty to Secure Human Rights", regarding the issue under Art. 1.

(1) Mr. Ermacora was not present when a final vote on Art.1 of the Convention was taken. The Commission decided on 25 January 1976, in accordance with Rule 52(3) of its Rules of Procedure, to permit him to express a separate opinion in the Commission's Report.

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Each of these parts and chapters include, in accordance with the Rules of Procedure, (I) a summary of the submissions of the parties as well as (II) a statement of the facts established by the Commission and its opinion as to whether or not the facts found disclose a breach of the Convention.

Altogether 119 witnesses were heard by Delegates of the Commission in these proceedings(1). 100 witnesses gave evidence in relation to the issues under Art. 3 of the Convention, and 19 witnesses gave evidence in relation to the issues under Art. 14 in conjunction with Art. 15 of the Convention. This evidence has been reproduced in 14 volumes of verbatim records comprising altogether over 4,500 pages; it has also been summarised in a further volume comprising some 580 pages. The full text of the parties' oral pleadings both on the admissibility and on the merits of the case has been reproduced in four further volumes of verbatim records comprising a total of 1001 pages; these pleadings have been summarised in the present Report.

Four appendices to this Report set out a table of the main events referred to in the Report (Appendix A), the relevant emergency legislation (Appendix B), certain statistics (Appendix C) and maps of Northern Ireland, Belfast and Londonderry (Appendix D).

Furthermore, a schedule setting out the history of the proceedings before the Commission and the Commission's decision on the admissibility of the application are attached as Annexes I and II. An account of the Commission's unsuccessful attempts to reach a friendly settlement has been produced as a separate document (Annex III).

The full text of the pleadings of the parties, as well as the documents handed in as exhibits are held in the archives of the Commission and are available, if required.

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(1) At the request of the parties reference in this Report to witnesses and other persons referred to in the evidence will be by code numbers or initials only, unless the name of the particular person concerned is a matter of public knowledge or record.

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PART ONE

D E T E N T I O N W I T H O U T T R I A L

(Issues under Articles 5, 6, 14 and 15 of the Convention).

Chapter 1: The Justification Issue

(Arts. 5 and 6 in conjunction with Art. 15 of the Convention)

INTRODUCTION

1. The substance of the application concerning Arts. 5, 6, and 15 of the Convention

In their original submissions of 16 December 1971 the applicant Government submitted that, after 9 August 1971, a considerable number of persons in Northern Ireland, estimated at some 400, were interned without trial by the respondent Government in application of the powers under the Civil Authorities (Special Powers) Act (Northern Ireland) 1922 and the Statutory Rules, Regulations and Orders made thereunder. It was submitted that the powers of detention and internment contained in the said Act and Rules, Regulations and Orders, and the operation by the respondent Government of the said powers in Northern Ireland, were in breach of Arts. 5 and 6 of the Convention.

The applicant Government further referred to three communications of the respondent Government dated 27 June 1957, 25 September 1969 and 25 August 1971 and informing the Secretary General of the Council of Europe of measures taken by them derogating from their obligations under the Convention in accordance with Art. 15 of the Convention. The applicant Government submitted that the scope and form of the measures so taken were far greater and more extensive than the measures which would be strictly required by the exigencies of the situation and were inconsistent with the respondent Government's obligations under international law.

The applicant Government later added allegations of breaches of Arts. 5 and 6 of the Convention in relation to powers conferred by legislation subsequently passed by the respondent Government, namely the Detention of Terrorists (Northern Ireland) Order 1972 and the Northern Ireland (Emergency Provisions) Act 1973. In this connection, they also made reference to the respondent Government's notices of derogation submitted to the Secretary General of the Council of Europe under Art. 15 of the Convention on 23 January and 27 August 1973.

2. The issues under Arts. 5, 6 and 15

In its decision on the admissibility of the application, dated 1 October 1972, the Commission considered the allegation that internment without trial and detention under the Special Powers Act constituted an administrative practice in breach of Arts. 5 and 6 of the Convention and declared it admissible in connection with Art. 15 of the Convention.

The subsequent allegations relating to the powers under the Detention of Terrorists Order 1972 and the Emergency Provisions Act 1973 were pleaded at the merits stage of the case. Although the respondent Government had initially argued in their written pleadings that this legislation, passed subsequent to the Commission's decision on admissibility, did not form part of the issues declared admissible, they subsequently did not pursue this argument at the oral hearing from 2 to 5 October 1973. However, they maintained that the previous legislation, namely the Special Powers Act and the Detention of Terrorists Order, had been revoked and the Commission should therefore refrain from adjudicating on it.

The general points at issue in the present case under Arts. 5, 6 and 15 of the Convention can thus be stated as follows:

a. whether or not the Commission has the competence and the duty to consider issues arising out of laws, regulations and practices which have been modified or replaced or have been introduced subsequent to the decision on admissibility;

b. whether or not the exercise of any or all of the powers of arrest, detention and internment under any or all of the emergency legislation in force in Northern Ireland was consistent with the provisions of Art. 5 (1) to (5) of the Convention;

c. whether or not the detention and internment procedures under any or all of the emergency legislation in force in Northern Ireland constituted the determination of "civil rights and obligations or of any criminal charge" within the meaning of Art. 6 of the Convention and, if so, whether or not there have in fact been breaches of Art. 6 (1), (2) and (3) (a), (b) and (d);

d. whether or not the measures taken by the respondent Government derogating from their obligations under the Convention by means of any or all of the emergency legislation in force in Northern Ireland were strictly required by the exigencies of the situation, and were not inconsistent with their other obligations under international law, within the meaning of Art. 15 of the Convention.

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3. The evidence before the Commission and the course of the Commission's proceedings

The Commission has received written evidence from both parties, including copies of the emergency legislation concerned and commentaries thereto, the report of the "Diplock Commission" court judgments, newspaper articles, statistics, and the text of the notices of derogation under Art. 15 of the Convention.

The Commission has not obtained oral evidence in relation to the issues concerned. It has invited the parties to make oral submissions on the merits of these issues and also to state whether they had proposals for the hearing of witnesses, or obtaining of other evidence, with regard to them. The oral submissions of the parties were heard by the Commission at the hearing in Strasbourg from 2 to 5 October 1973. Subsequently, both parties informed the Commission that they did not propose oral evidence on these matters. The respondent Government proposed instead that the matters be dealt with by a) the Attorney-General addressing the Commission and b) affidavits.

On 4 April 1974 the Commission decided that 15 June 1974 should be fixed as the time-limit for the submission of any further written material relating to the allegations made in the present case and reserved the right of the Commission to request further evidence or other material at any time if it found it necessary to do so. No further written material has been received with regard to the issues under Arts. 5, 6 and 15 of the Convention, and the Commission did not find it necessary itself to call for further evidence or written submissions in this respect or to hear any further oral submissions on them from the parties.

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I. SUMMARY OF THE SUBMISSIONS OF THE PARTIES

A. The Historical Background of the Case (As submitted by the respondent Government)

In their written and oral submissions on the admissibility of the application, as well as in their written submissions on the merits, the respondent Government gave certain explanations as to the constitutional background of Northern Ireland and the background of the emergency and relevant legislation.

The applicant Government considered that the respondent Government's submissions in this respect did not call for any comment on the issue of admissibility and, although they reserved the right to make such comment as may be deemed appropriate should the matter have become relevant at the merits stage, they did not do so.

It may therefore be assumed that the historical background of the case, as summarised below, is not in dispute between the parties.

1. The Constitutional Background of Northern Ireland

Prior to 1922 the whole of Ireland formed part of the United Kingdom. During the 19th century the movement for Home Rule in Ireland had gathered force, but attempts to pass Home Rule bills in 1886 and 1893 had remained unsuccessful. A Home Rule Act was finally passed in Parliament in 1914 but its application was delayed until after World War I. At that time, however, North-East Ireland was effectively controlled by a separatist movement which was committed to the establishment of an independent government should Home Rule become a reality. The population of that part of Ireland was predominatly descended from Protestants who had settled there in the 17th century, being a period during which an already existing political struggle became merged in conflict between Catholics and Protestants.

The opposition to Home Rule resulted eventually in partition. Under the Government of Ireland Act, 1920, provision was made for a Southern Irish Parliament and a Northern Irish Parliament. Both parts of Ireland were to be represented in a Council of Ireland and also at the Westminster Parliament.

However, that part of the Act which applied to the twenty-six counties of Southern Ireland never came into effect. On 6 December 1921, following a period of armed insurrection, a treaty was signed between Britain and representatives of the insurgents in Southern Ireland establishing the Irish Free State with self-governing dominion status within the British Commonwealth. In 1937 a new Constitution was introduced renaming the country Eire, and by statute it was described as the Republic of Ireland from 18 April 1948.

On the other hand, as regards the six counties in Northern Ireland, the Act of 1920 established a Parliament and Executive separate from the Parliament and Executive of the United Kingdom. The Parliament consisted of The Crown, the Senate and the House of Commons of Northern Ireland, the Senate being composed of 2 ex-officio members and 24 Senators elected by the House of Commons of Northern Ireland which in turn consisted of elected members representing single seat constituencies.

The Government for Northern Ireland was headed by a Governor who represented The Crown and who exercised the powers of the Crown in matters within the competence of the said Government on the advice of Ministers appointed by him and answerable to the Northern Ireland Parliament.

Although the Act of 1920 conferred extensive legislative powers on the Parliament of Northern Ireland, subject to certain limitations, the United Kingdom Parliament remained the supreme authority over all persons, matters and things in Northern Ireland which itself returned to the United Kingdom House of Commons one member from each of its twelve constituencies. Nevertheless, except where the United Kingdom Parliament exercised exclusive jurisdiction or where legislation was passed by it with concurrence of the Northern Ireland Government, the Parliament of Northern Ireland was, in practice, and subject to the provisions of the Act, the legislature for Northern Ireland.

This situation changed on 30 March 1972 when the United Kingdom Parliament passed the Northern Ireland (Temporary Provisions) Act 1972 which made temporary provision for the exercise of the executive and legislative powers of the Government and Parliament of Northern Ireland by authorities of the United Kingdom. The effect of this Act was that the Parliament of Northern Ireland was prorogued and the Queen empowered to make laws by Order in Council for any purpose for which that Parliament had power to make laws. As regards the executive of Northern Ireland, all powers vested in the Governor or in any minister of Northern Ireland were vested in the Secretary of State for Northern Ireland, a new office created for the purpose, the holder of which was a member of the United Kingdom Government and was answerable to the Parliament of the United Kingdom. He was assisted by the Northern Ireland Commission which was a body of persons resident in Northern Ireland and appointed by the Secretary of State for Northern Ireland to advise and assist him in the discharge of his duties. The legislation was originally enacted for a period of one year but it has in the meanwhile been extended.

In May 1973 the United Kingdom Parliament passed the Northern Ireland Assembly Act 1973 providing for elections to a new Assembly before the main constitutional legislation was enacted. Elections were, in fact, held on 30 June 1973 and, in July 1973, the Northern Ireland Constitution Act 1973 was passed. This Act; after re-affirming the status of Northern Ireland as part of the United

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Kingdom and permitting a poll for this purpose to be taken at a later date (Part I), gave the Northern Ireland Assembly power to legislate by Measure subject to approval by Her Majesty in Council and gave an enacted Measure the same force as an Act of Parliament (Part II). Provision was made for excepted and reserved matters on which the Assembly may not legislate without the consent of the Secretary of State and which are subject to parliamentary control. The Act further established in Part II a Northern Ireland Executive which was to include the chief executive member and persons appointed to be heads of Northern Ireland departments; it established in Part III a Standing Advisory Commission on Human Rights to advise the Secretary of State on the adequacy and effectiveness of the law, and the practice of certain persons and bodies, in preventing discrimination; and it abolished in Part V the Northern Ireland Parliament and the Office of Governor of Northern Ireland. However, the Act expressly contained a general saving clause for the existing law, preserved the effects of existing restrictions on the Northern Ireland Parliament in relation to Acts previously passed by it and prevented the powers conferred by the Northern Ireland (Temporary Provisions) Act 1972 from being affected by provisions in the Act.

Part I, and substantially also Parts IV and V of the Northern Ireland Constitution Act 1973 came into force at its passing. Part II, relating to legislative and executive powers, required the passing by each House of Parliament of a Devolution Order to be laid before Parliament by the Secretary of State for Northern Ireland if and when he was satisfied that certain requirements, relating to provisions for consultative committees and other procedural matters in the Northern Ireland Assembly and to the forming of the Executive, had been met. This Order was made on 19 December 1973 and the devolution became effective on 1 January 1974. It marked in fact for a certain time the end of direct rule in Northern Ireland and the coming into force of devolved government in Northern Ireland.

The Executive was established on 1 January 1974 and operated until 29 May 1974. On that day it came to an end by reason of certain political developments which will be described elsewhere. On the same day Her Majesty, acting under Section 27 of the Northern Ireland Constitution Act 1973, by Order in Council directed that the Northern Ireland Assembly should stand prorogued for four months.

On 17 July 1974 the Northern Ireland Act 1974 was passed which provided for the dissolution of the existing Northern Ireland Assembly and its prorogation until dissolution, to make temporary provision for the Government of Northern Ireland to the effect that the legislative functions of the Northern Ireland Assembly would be suspended and laws be made by Orders in Council, that no appointments to a Northern Ireland Administration would be made, and that the Northern Ireland Departments would discharge their functions subject to the direction and control of the Secretary of State for Northern Ireland (Schedule 1).

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The Act further provided for the election and holding of a Constitutional Convention in Northern Ireland and for other purposes connected with the above matters. (Schedule 2).

The Northern Ireland Constitutional Convention was elected in May 1975. It consists of a chairman appointed by Her Majesty and 78 persons elected in accordance with Schedule 2 of the Northern Ireland Act 1974. Its purpose is to consider "what provision for the Government of Northern Ireland is likely to command the most widespread acceptance throughout the community there" (Art. 2 (1) of the Northern Ireland Act 1974). The work of this Convention is not yet completed.

2. The Background of the Emergency Situation and Relevant Legislation

The Irish Republican Army (IRA) was formed during World War I. It is a clandestine organisation with quasimilitary dispositions, which accepts neither the structure of Government in the Republic of Ireland nor the existence of Northern Ireland as part of the United Kingdom and which seeks to change both by force. In 1969 it split into two wings: the "official" and the "provisional" IRA.

From time to time the IRA have in pursuit of their aims, mounted campaigns of violence including murder, arson, intimidation of juries and attacks on the police. Major campaigns by the IRA had previously been launched in 1939 to 1941 and again from 1956 to 1962. During these campaigns a considerable number of bomb explosions took place both in Northern Ireland and in Great Britain as well as in the Republic of Ireland.

In 1939, the Republic made an order declaring the IRA illegal. Such order had been made under the Offences Against State Act which the Government of Eire had introduced in June 1939 and amended in 1940. Under that Act activities prejudicial to the preservation of public peace and order, or to the security of the State, were defined and provisions were made relating to organisations whose activities come under the Act, to the repression of unlawful activities, and to the establishment of Special Criminal Courts.

Im Northern Ireland, legislation designed to deal with matters affecting law and order and the security of State was first enacted by the Northern Ireland Parliament in 1922, in the form of the Civil Authorities (Special Powers) Act (Northern Ireland). Under that Act the Minister for Home Affairs of Northern Ireland had power, in respect of persons, matters and things within the jurisdiction of the Government of Northern Ireland, to take all such steps and issue all such orders as might be necessary for preserving peace and maintaining order in accordance with the Act and the Regulations contained in the Schedule thereto, or any other regulations made in accordance with the Act. The Special Powers Act was renewed annually until 1928 and in that year it was renewed for a period of five years. In 1933 a further enactment provided that the Act should continue in force until Parliament otherwise decided.

The Act was an enabling Act whose substantive provisions had been contained in regulations made under the Act. By 1949 there remained seven out of a total of 50 regulations which had previously been made. One of them declared illegal certain associations, including the IRA. However, in 1950 and 1954, after certain raids carried out by the IRA in Great Britain and Northern Ireland, further regulations were made and a number of the powers conferred by the regulations, which had been revoked, were reintroduced in a new form. These regulations were mainly concerned with powers of entry and search. Further regulations were made in December 1956 after the launching of an IRA campaign which continued until 1962. These dealt with internment, detention, curfew, special trial procedures, and fire-arms control regulations. Regulations concerning movement restriction, arrest and control of explosives were made in 1957, and it was these regulations, made between 1954 and 1957, which formed the bulk of the schedule of the Special Powers Act as it existed prior to its repeal by the Northern Ireland (Emergency Provisions) Act 1973 which entered into force on 8 August 1973.

In the meanwhile, on 7 November 1972, the Detention of Terrorists (Northern Ireland) Order 1972 came into operation. This Order was made by the United Kingdom Government in exercise of the powers conferred by the Northern Ireland (Temporary Provisions) Act 1972 and allowed orders to be made in Northern Ireland for the detention of persons concerned in terrorist activities. It replaced and revoked the Special Powers Regulations relating to detention and internment and provided for the appointment of legally qualified commissioners to ascertain whether any person had been so concerned and whether his detention was necessary for the protection of the public. It also provided for the establishment of a Detention Appeal Tribunal to consider appeals against the making of detention orders by commissioners.

This Order was equally repealed by the said Northern Ireland (Emergency Provisions) Act 1973 but its provisions were substantially incorporated in Schedule 1 of the Act. Under the Act the emergency powers contained in the Act remained in force for a period of one year unless they were subsequently maintained by order of the Secretary of State with the approval of both Houses of the United Kingdom Parliament.

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By Orders of 17 July, 17 December 1974 and 27 June 1975 the provisions of the 1973 Act were continued in force for periods of six months each. However, on 7 August 1975, Parliament passed the Northern Ireland (Emergency Provisions) (Amendment) Act 1975 in which, acting on the recommendations of the Gardiner Committee appointed to consider, in the context of civil liberties and human rights, measures to deal with terrorism in Northern Ireland and presented to Parliament in January 1975, it made further provision with respect to criminal proceedings, the maintenance of order and the detection of crime in Northern Ireland. It also made new provisions for the detention of terrorists in Northern Ireland, but these provisions have not been the subject matter of the present case.

A full description of the relevant powers conferred by the above legislation and orders will be set out below.

B. Submissions under Arts. 5 and 6

In the course of the hearing of the merits with regard to Arts. 5 and 6 in October 1973, the applicant Government suggested that there were three distinct phases during which a different legal framework operated in Northern Ireland. The first phase began on 9 August 1971, the date on which internment under the Civil Authorities (Special Powers) Act (Northern Ireland) 1922 was introduced, and ended on 7 November 1972. On the latter date the Detention of Terrorists (Northern Ireland) Order 1972 came into operation. It was during this first phase, when the Special Powers Act and the Regulations made under it concerning detention and internment without trial were still in force, that the present application was lodged with the Commission.

The second phase began on 7 November 1972 and ended on 8 August 1973, the date on which the Detention of Terrorists Order 1972 was repealed. On the same day the Northern Ireland (Emergency Provisions) Act 1973 came into force. The third phase dates from 8 August 1973 and continues up to the present time.

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The respondent Government accepted that the three phases into which the applicant Government were dividing events in Northern Ireland were useful ones to select.

The submissions of each of the parties with regard to the situation which existed during phase I are accordingly considered first, followed by the submissions of the parties with regard to the situations existing during phases II and III.

1. PHASE I (9 August 1971 to 7 November 1972)

a) The applicant Government (VR 1, pp. 12-17, 38-40, 132-133).

Article 5

The applicant Government, at the outset of their submissions under Art. 5, stated that the provisions of the Special Powers Act, and the Regulations made under it, contained four procedures by virtue of which a person might lose his liberty without being charged with an offence or without judicial review of the decision depriving him of his liberty.

First, Regulation 10, which provided that:

> "Any Officer of the Royal Ulster Constabulary, for the preservation of the peace and maintenance of order, may authorise the arrest without warrant and detention for a period of not more than 48 hours, of any person for the purpose of interrogation".

The applicant Government submitted that the person arrested need not have committed any crime or even have been suspected of having committed a crime. It was sufficient that a police officer wished to have him arrested for interrogation. There was no judicial review or adjudication of the police officer's decision to arrest. Once his decision had been taken, the courts could not interfere, even if the police officer's opinion that the arrest was necessary "for the preservation of peace and maintenance of order" was unreasonable or arbitrary. The arrested person had no right of recourse to any court or any authority for bail or for provisional release. It was submitted that a person might be arrested for interrogation with regard to the activities of others; persons were arrested, for example, for interrogation with regard to activities of persons residing in their own street, of members of their own family or of persons with whom they were

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working. The maximum period for which a person might be detained under Regulation 10 was 48 hours on any one occasion.

Secondly, by virtue of Regulation 11 (1), any police constable, or any member of the respondent Government's forces on duty, might arrest without warrant any person whom he suspected of acting, or having acted or being about to act, in a manner prejudicial to the peace or maintenance of order, or any person who was suspected of having committed an offence. The full text of this Regulation reads as follows:

> "Any person authorised for the purpose by the Civil Authority, or any police constable, or member of any of Her Majesty's Forces on duty when the occasion for the arrest arises may arrest without warrant any person whom he suspects of acting or of having acted or of being about to act in a manner prejudicial to the preservation of the peace or maintenance of order, or upon whom may be found any article, book, letter, or other document, the possession of which gives ground for such a suspicion, or who is suspected of having committed an offence against these Regulations or of being in possession of any article or document which is being used or intended to be used for any purpose or in any way prejudicial to the preservation of the peace or maintenance of order, and anything found on any person so arrested which there is reason to suspect is being so used or intended to be used may be seized."

The applicant Government submitted that an arrest under this part of Regulation 11 was not for the purpose of charging a person and bringing him to trial but solely for the purpose of keeping the arrested person in custody without trial, for any period of time. A person might be arrested under this Regulation once the arresting person had a mere suspicion that he might do something illegal or had done something illegal. This power of arrest was totally unfettered and might, it was submitted, be exercised on any suspicion, however arbitrary or unreliable. It was only necessary that the person making the arrest genuinely suspected the arrested person of something, even though the suspicion was totally unfounded in reason. The person so arrested had no access to the courts or any other body in order to have reviewed the reasonableness of his detention without trial or of the suspicion upon which he was arrested. This was held to be the position in the case of "In the matter of James McElduff" (1971 Northern Ireland Reports.) The applicant Government referred in particular to the following passage in the judgment of that case, which appeared at page 8:

> "Regulation 10, allows an arrested person to be held in custody for a maximum of 48 hours. There is no apparent limitation on the time a man arrested under Regulation 11(1) may be held... The Regulation is completely silent on this point, and under it a man may be held as a person arrested on suspicion for hours, for days or weeks or months, and as I have already indicated, his only remedy under the Regulation is to apply to the Civil Authority for release on bail. The oourts have no jurisdiction in the case of such an arrested

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man unless an application for habeas corpus is brought, but even then as the Regulations stand the court is only concerned with the question of whether the powers conferred by the Regulations have been validly exercised. If the powers have been validly exercised and the arrest properly made, the courts cannot act as a court of appeal as to the ground of arrest, nor as to the time the arrested man can be held under this power of arrest."

Referring to the respondent Government's argument that the power to arrest under Regulation 11 (1) was only exercised for periods up to 72 hours, the applicant Government maintained that this was immaterial in view of their submission that the very existence of these powers of arrest and detention was a breach of Art. 1 (cf. part III of this Report).

Thirdly, under Regulation 11 (2), the Minister for Home Affairs, and subsequently the Secretary of State of Northern Ireland, had the power to serve a detention order on an arrested person and such a person might then be detained for an unlimited period of time. The full text of this Regulation reads:

"Any person so arrested may, on the order of the Civil Authority, be detained either in any of Her Majesty's prisons or elsewhere, as may be specified in the order, upon such conditions as the Civil Authority may direct, until he has been discharged by direction of the Attorney General or is brought before a Court of Summary Jurisdiction. Any person to be brought before a Court under this Regulation shall receive at least twenty four hours notice in writing of the nature of the charge preferred against him."

In the submission of the applicant Government, once a person had been detained pursuant to a detention order under this Regulation, he had no opportunity of obtaining a judicial review, or a review by any other body, of the reasonableness or fairness of the Minister's decision to detain him. Furthermore, there was no right of bail unless the Minister so permitted.

Fourthly, under Regulation 12 (1), the Minister for Home Affairs, and subsequently the Secretary of State, had the power, on the recommendation of a police officer or of the Advisory Committee under the Special Powers Act, to order that a person be interned if he was of the opinion that it was expedient in the interests of the preservation of peace and the maintenance of order.

The full text of Regulation 12 (1) reads:

"When it appears to the Minister of Home Affairs for Northern Ireland, on the recommendation of an officer of the Royal Ulster Constabulary not below the rank of a County Inspector or of an advisory committee that for securing the preservation of the peace and the maintenance of order in Northern Ireland it is expedient that a person who is

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suspected of acting or having acted or being about to act in a manner prejudicial to the preservation of the peace and the maintenance of order in Northern Ireland, shall be subjected to such obligations and restrictions as are hereinafter mentioned, the Minister of Home Affairs may by order require that person forthwith, or from time to time, either to remain in, or to proceed to and reside in, such place as may be specified in the order and to comply with such directions as to reporting to the police, restriction of movement and otherwise as may be specified in the order, or to be interned as may be directed in the order.

Provided that any order under this Regulation shall include express provision for the due consideration by an advisory committee of any representations which a person in respect of whom the order is made may make against the order."

The applicant Government submitted that a person could be imprisoned without trial under this Regulation for any period of time and without any judicial review as to the reasonableness or fairness of the decision to intern him. Unlike the procedures laid down for the detention order, the grounds for interning a person without trial could be reviewed by the Advisory Committee created by the Special Powers Act. This was the same Committee on whose advice the Minister could take a decision to intern a person in the first instance. The Advisory Committee, however, had no power to order the release of an internee. The internee had no right to appear before the Advisory Committee nor to have legal representation before the Committee. Furthermore, he had no opportunity to test by way of examination or otherwise the grounds upon which the decision to intern him was made. Nor did he have the right to examine witnesses who gave information or evidence against him or to call his own witnesses.

The applicant Government submitted that the operation of the 1922 Act and the Regulations made under it constituted breaches of Art. 5 of the Convention. None of the four Regulations was authorised by any of the sub-paragraphs set out in para.(1) of Art. 5. Each of these Regulations constituted a breach, in the submission of the applicant Government, of paras. (2) and (3) of Art. 5. The Regulations were in breach of (2) in that the arrested person did not have the right to be informed as to the reasons for his arrest or any charge against him. The arrested person need not be brought promptly before a judge, or other officer authorised by law to exercise judicial power, and was not entitled to trial within a reasonable time or to release pending trial; consequently, the Regulations were in breach of para.(3). Each of the Regulations was in breach of para.(4), which provides that any person who is deprived of his liberty by arrest and detention is to be entitled to take proceedings in which the lawfulness of his detention shall be decided speedily by a court. No right to take such proceedings

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was given by these Regulations. If an error was made in the implementation of the Regulation, then that error could be challenged in court, but, if the Regulations were properly carried out, no challenge was possible and the person so arrested was deprived of the rights given by para. (4). Furthermore, each of the Regulations was a breach of para. (5), which grants to the victim of arrest or detention in contravention of the provisions of Art. 5 an enforceable right to compensation. There had been, in the submission of the applicant Government, procedure for arrest and detention in breach of Art. 5 and no right had been given to any arrested person to compensation.

Developing their submission that a detainee or internee had no effective right to access to the courts, the applicant Government stated that there was no review by the courts of the grounds upon which the decision to arrest, imprison, detain or intern persons under the Special Powers Regulations was made. The writ of habeas corpus was not available to such persons except on the ground of a technical error on the part of the arresting authority amounting to a failure to comply with the Regulations in question. However, once the Regulations had been complied with, the Courts had no jurisdiction to consider the fairness or reasonableness of the decision to deprive the person concerned of his liberty.

The applicant Government continued that the only other possible basis on which the jurisdiction of the courts might be invoked was where it could be alleged that the decision was not made bona fide or that the alleged suspicion, upon which the person was arrested or imprisoned, did not exist or was formed in bad faith and not for the purpose of preserving peace or maintaining order. It was submitted that this was an illusory right and did not provide an effective safeguard for detained persons. Such a person would have had to prove the state of mind of the person who arrested or imprisoned him or suspected him and show that the mental decision to arrest or imprison, or the suspicion, was made or formed in bad faith and not for the purpose of preserving peace or maintaining order. It would have been impossible for an imprisoned or arrested person to obtain evidence to prove the state of mind of the person in question and such a case had never successfully been brought in the history of the operation of the Special Powers Act.

Article 6

It was accepted by the applicant Government that during phase I the exercise by the authorities in Northern Ireland of detention and internment was in fact a form of preventive detention and that the decision to detain or intern did not therefore amount to a determination of a criminal charge within the meaning of Art. 6(1) of the Convention.

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The applicant Government submitted however, that the internment procedures entailed the determination of a civil right. They alleged that the acts, which they claim to be a breach of Art. 5, also constituted a breach of Art. 6 in that detention and internment amounted to the determination of a civil right.

The applicant Government put forward the following argument in support of this submission. They maintained that the right to liberty was a civil right. Civil rights were the rights or freedoms of the individual as a member of the political community and it was therefore submitted that the term "civil rights" covered cases involving the authorities of the political community and was not confined to cases of disputes between individuals. The Travaux Préparatoires were relied on in support of this interpretation. The first draft of the Convention spoke simply of rights and obligations, without any reference to the word "civil" and this was a fairly close adoption of the United Nations Declaration (see Document A 833 dated 15 February 1950). The words "rights and obligations", without the adjective "civil", had been changed, however, in the second draft which referred to rights and obligations in a suit at law. It was submitted that this clearly narrowed down the scope of the article because it would, as so drafted, only refer to rights and obligations in a suit at law and not rights and obligations which might arise otherwise than in a suit at law (see Document A1452). The draft had undergone a further change and the Committee of Legal Experts, shortly before it had been adopted by the Committee of Ministers, had drafted it in its present form with the word "civil" inserted. Thus the effect of the wording of the article was to delete the limitation of suits at law, which had been previously inserted, and to bring within the scope of Art. 6 the determination of civil rights.

The applicant Government asked the Commission to find, as a matter of interpretation of the Convention, that the right to liberty was a civil right. It was submitted that, if the Commission made such a finding, then there was a determination of this civil right by the Minister for Home Affairs under the internment procedures From this it would follow that, during phase I, Art. 6 as well as Art. 5 applied and, in the submission of the applicant Government, the provisions of Art. 6 were clearly violated.

Referring to the respondent Government's argument that there was no determination of a civil right because of the principles laid down by the European Commission and Court of Human Rights in the Neumeister case (Yearbook 11, p 812), the applicant Government pointed out that the Neumeister case concerned a claim to provisional release on bail by a person accused of being a criminal. It was held in that case that the remedy relating to detention on remand was in the realm of criminal law and accordingly there was no determination of a civil right. The applicant Government fully accepted the correctness of that decision, but submitted that it was not relevant to the issues at present before the Commission.

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The applicant Government referred next to the respondent Government's submission that the act of detention or internment was an act of public administration and that the consequences flowing from such an act did not give rise to a civil right, reliance being placed on application No. 1931/63 X.v, Austria, (Yearbook 7 p. 212). This case related to a barrister who had claimed that the disciplinary commission had acted improperly and it was held that this was a dispute regarding the right to be admitted to the public service. The applicant Government commented that this was not a dispute bearing upon civil rights and obligations. Nor was it a dispute regarding the loss of the right to exercise the function of a barrister should such a dispute have a bearing on a civil right. It was submitted that the decision in this case did not provide any support for the principle that a dispute between an act of public administration and an individual could not give rise to a civil right.

Revocation of Measures and the Cyprus Case

The applicant Government referred to the respondent Government's argument that, because there had been a revocation of the Special Powers Act Regulations, the function of the Commission had been achieved by the action taken and the Commission should merely take note of the revocation without expressing an opinion on the measures in question.

The applicant Government pointed out that Art. 19 of the Convention provided for the establishment of the Commission and of the Court to "ensure the observance of the engagements undertaken by the High Contracting Parties in the present Convention." In the submission of the applicant Government, if the Commission were not to adjudicate on a measure which had been revoked, this would mean that the measure could be reintroduced the day after the Commission's hearing finished. The Commission would thus be powerless to carry out its functions to ensure the observance of the engagements undertaken by the Parties, as all that High Contracting Parties need do would be to revoke the measure, when it had been brought before the Commission, and reintroduce it after the Commission had decided to express no opinion on it.

Art. 31 was relied upon in support of this contention. The Commission was required by Art. 31 to "state its opinion as to whether the facts found disclose a breach by the State concerned of its obligations under the Convention". The applicant Government contended that this applied to all complaints. It applied to a complaint which an individual applicant or Government might have in respect of a situation which might have ceased. It applied to facts which might have ceased at the date of the hearing of the Convention. It applied to all complaints other than those which had been concluded by the friendly settlement procedures.

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Accordingly, in the submission of the applicant Government, for the Commission not to express an opinion on the Regulations which have been repealed would involve a breach of the Commission's duty under this article.

Art. 30 was also relied upon. This provided that:
"If the Commission succeeds in effecting a friendly settlement in accordance with Art. 28, it shall draw up a Report which shall be sent to the States concerned, to the Committee of Ministers and to the Secretary General of the Council of Europe for publication. This Report shall be confined to a brief statement of the facts and of the solution reached".

In the view of the applicant Government the terms of Art. 30 were perfectly clear. They emphasised that in this case the Regulations made under the 1922 Act were not revoked as the result of the procedures laid down in the Convention and a friendly settlement had not yet been reached. The applicant Government maintained that the mere fact that a respondent Government repealed a measure in the course of proceedings did not remove jurisdiction from the Commission to carry out its obligations under Art. 31. The Commission was asked to express an opinion on the revoked Regulations.

Referring to the first Cyprus case, which was relied upon by the respondent Government, the applicant Government maintained that what the Cyprus case decided was that measures which were revoked in the course, and in the context, of a friendly settlement need not be the subject of a Report from the Commission. They stated that the Commission in the Cyprus case first attempted to achieve a friendly settlement; that the Commission, as part of its intervention, invited the State concerned to revoke the measures, and that, as it was about to make this request, the measures were in fact revoked on this same day by the respondent Government in that case. It was submitted that the decision in the Cyprus case was support for the proposition that, if a friendly settlement was reached in the course of proceedings as a result of the intervention of the Commission on certain aspects of the matter in complaint, then no opinion was expressed. In that case the revocation took place in the context of the friendly settlement procedures and, in accordance with Art. 30, no opinion was given by the Commission in its Report to the Committee of Ministers. It was submitted that the facts of the present case were entirely different since the revocation took place after a hearing on admissibility and before any question of the friendly settlement procedures had been invoked.

Developing this line of argument further, the applicant Government submitted that a breach of the Convention claimed by a State in respect of an individual need not be a continuing breach. An applicant Government might claim that a breach of Convention occurred for a limited period only. A measure could be introduced for a limited time and then revoked, and proceedings

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to have the measure declared a breach of the Convention would be perfectly permissible.

The applicant Government did not accept the interpretation placed on the Cyprus case by the respondent Government, who argued that the case provided support for their view that the Commission should not express an opinion on measures which had been revoked. The applicant Government suggested, however, that if they were wrong in this submission, and the Cyprus case had decided as the respondent Government submitted it had, then the ruling given in that case was incorrect and the Commission should not follow it.

b) The respondent Government (VR 1, pp. 73-82, 99-102).

General Submissions on Internment and Detention

The respondent Government stated that on 9 August 1971 the Government of Northern Ireland, with the agreement of the United Kingdom Government, started to exercise the power of detention and internment under the Civil Authorities (Special Powers) Act 1922. The events leading up to the introduction of internment were described below in connection with the submissions under Art. 15.

During the period following 9 August 1971, when consideration was being given to the making of an internment order, an order for detention under Regulation 11 (2) of the Special Powers Regulations was commonly made. Each detention order was made on the personal authority of the Prime Minister of Northern Ireland in his capacity as Minister for Home Affairs and was made to enable the police to complete their enquiries. A detention order might thus be followed by an internment order in respect of the same person, or an individual in regard to whom a detention order was made might be held for a limited period and then released, without an internment order being made. Internment was ordered only in cases where, after careful examination of a recommendation of a senior police officer, the Minister of Home Affairs for Northern Ireland was satisfied that the person concerned was at the time an active member of the IRA or had been actively implicated in the campaign of terrorism.

The respondent Government continued that Regulation 12 of the Special Powers Regulations provided for the appointment of an Advisory Committee to hear any representations which any person, subject to an internment order, might make. During the relevant period, the Committee was chaired first by a Northern Ireland County Court Judge and later by a deputy judge of the Crown Court from Oxfordshire assisted by two lay members. The function of the

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Committeewas to consider any representation which an internee might make against the orderin his case and also the question whether an internee could safely be released. But, in addition to complying with the terms of Regulation 12, the Committee was requested to conduct a systematic review of the position of all persons interned, whether or not they had made representations. Between 9 August 1971 and 31 March 1972, 796 persons were from time to time interned for varying periods without trial, in exercise of the powers conferred by the Special Powers Regulations. By 31 March 1972 588 cases had been heard by the Committee (in spite of the refusal of 451 of the individuals concerned to appear before the Committee), of whom 69 were recommended for release. All the latter were released, except for six persons who refused to give the undertaking which the Committee had recommended should be sought from them on their release. Such undertaking was to the effect that they should not subsequently join or assist any illegal organisation nor engage in any violence nor encourage others so to do.

The respondent Government stated that they had always recognised that internment should only be resorted to in conditions of the direct emergency. Accordingly, when the United Kingdom Government assumed direct rule over Northern Ireland on 30 March 1972, a start was made in phasing out the existing policy of internment. On 7 April 1972, the Secretary of State for Northern Ireland announced the immediate release of 47 internees and 26 detainees. By the end of phase I, then when the Regulations governing detention and internment were revoked, the total of men released from detention was 334 and of men released from internment was 628. On that date, out of a total of 1,259 persons, who at one time or another had been subject to detention orders, and of 796 persons subject to internment orders (all of whom would have been included in the total of 1,259 as having also been subject to detention orders), 119 were detained under Regulation 11 and 167 were interned under Regulation 12. Following direct rule on 30 March 1972, no new internment orders were made, although it was considered necessary to make 107 detention orders under Regulation 11 (2).

Revocation of Measures and the Cyprus Case.

The respondent Government recalled that the phase under consideration lasted from 9 August 1971 to 7 November 1972. On the former date the Government of Northern Ireland started to exercise powers of detention and internment under the Special Powers Act. On the latter date the Regulations under the Special Powers Act governing internment and detention were revoked by the Detention of Terrorists (Northern Ireland) Order 1972, which itself made new provision for detention.

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It was submitted by the respondent Government that the circumstances are therefore such that, insofar as the Regulations under the Special Powers Act were concerned, the function of the Commission had been achieved by the action taken. It followed, in the Government's submission, that, in accordance with its decision in the first Cyprus case, the appropriate course for the Commission was to take note of the revocation without expressing an opinion on the legal issues in question. It was accordingly submitted that the Commission should follow that course in relation to the allegations under Arts. 5 and 6, so far as phase I was concerned. In the view of the respondent Government, as expressed in the course of the hearing before the Commission in October 1973, the Commission should restrict itself to considering the present day situation and should only examine whether the measures being applied at the present time were consistent with the Convention.

Referring to the applicant Government's reliance on Art. 19 in support of their submission that the Commission was obliged to adjudicate on measures even if they had been revoked, the respondent Government commented as follows: to see whether a State Party was observing the engagements undertaken in the Convention it was necessary to examine what the respondent State was doing at the present time. To adjudicate on legislation which had been voluntarily abandoned would do nothing to ensure the observance of the engagements undertaken by a State Party. With regard to the applicant Government's suggestion that there was otherwise a danger that repealed legislation might be reintroduced after the Commission's examination had taken place, the respondent Government commented that it was totally unrealistic to imagine that this could happen in the present case.

The respondent Government next considered the argument put forward by the applicant Government that Art. 31 required the Commission to adjudicate on measures even if revoked. In the submission of the respondent Government Art. 31 had to be interpreted in the light of previous decisions of the Commission and, in particular, in the light of the Commission's Report in the first Cyprus case. This case showed that, when a breach alleged was simply the existence of particular legislation, the fact that the legislation had been revoked by the respondent State and no longer existed made it unnecessary for the Commission to adjudicate upon it. It was therefore submitted that there was nothing in Art 31 which made it necessary for the Commission to consider repealed legislation.

The respondent Government also commented on the applicant Government's argument that the Cyprus case could be distinguished, since it only applied where legislation was repealed in the course of friendly settlement. In the respondent Government's submission, the decision of the Commission in that case, namely not to express an opinion on certain measures, was not taken on that ground. The respondent Government suggested that the applicant Government were confusing the context of the decision with its ratio.

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In support of their submission, the respondent Government referred to para. 96 of the Commission's Report in the first Cyprus case. This read as follows:

> "The Convention does not expressly provide how the Commission shall act if, as in the present case, some of the grounds of complaint are removed in the course of the proceedings, but others remain, and a friendly settlement covering all controversial points has not been secured.
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> In the absence of explicit provisions on this point, the question must be decided in the light of the general function attributed to the Commission by the Convention. As the Commission is not conceived as a judicial tribunal its function is not primarily to express opinions on abstract points of law to which a case before it may give rise, but rather to exercise a conciliatory function with a view to ensuring the observance of the Convention and the maximum enjoyment of the rights or freedoms guaranteed by it. If a Government, against whom complaint is made, modifies its position in the course of proceedings before the Commission and revokes measures which are alleged to be in violation of the Convention, the conciliatory function of the Commission seems to be most faithfully accomplished if the Commission takes official note of this revocation without expressing an opinion on the legal issues in question. Indeed, such an expression of opinion, if unfavourable to the Government, might be taken to involve an abstract condemnation of measures which the Government has found it right not to maintain, and in a general way it would hardly serve the main function of the Commission, namely to ensure the maximum enjoyment of the rights and freedoms guaranteed by the Convention, if a Government would expose itself to such a condemnation even having taken steps to remove causes of complaint."

It was submitted that the applicant Government's argument on this point must be wrong since, if it were right, it would lead to the following situation. If a State maintained its impugned legislation to the very last moment, that is right up to the time of friendly settlement, that legislation would not be the subject of adjudication. But, if a State voluntarily repealed legislation at an earlier stage, then the Commission would be obliged to adjudicate upon it. In the respondent Government's submission this could not be correct.

The respondent Government also referred to the applicant Government's submission that the Commission should not follow the decision in the first Cyprus case, if the interpretation placed on that decision by the applicant Government should be found to be incorrect. The respondent Government submitted that State Parties are entitled to rely on the decisions of the

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Commission and the Court and on the principles laid down by them. It was accordingly submitted that the suggestion that the Commission should reverse the Cyprus case and thus change the principles upon which State Parties should act was wholly wrong.

The Emergency

If the submissions set out above concerning the effect of revocation of measures were not accepted by the Commission, the respondent Government made the following alternative submission. They submitted that there was at all times material to this application in Northern Ireland a public emergency threatening the life of the nation within the meaning of Art. 15 (1) of the Convention, that the exercise of powers of detention and internment under the Civil Authorities (Special Powers) Act (Northern Ireland) 1922, and the Regulations made thereunder, were justified by the exigencies of the situation and were not inconsistent with their other obligations under international law. Accordingly, insofar as these measures might have constituted a breach of any Article of the Convention, the respondent Government contended that they were entitled to derogate from their obligations with respect thereto. In this connection the Government referred to the notice given on 20 August 1971 to the Secretary-General of the Council of Europe that, since 9 August 1971, the Government of Northern Ireland had found it necessary, for the protection of life and the security of property and to prevent outbreaks of public disorder, to exercise, to the extent strictly required by the exigencies of the situation, powers of detention and internment.

The respondent Government's further submissions under Art. 15 of the Convention are set out more fully below (cf. pp. 51 et seq. below).

Article 5

The respondent Government referred to their description (which appears on pp. 51-54 below) of the introduction of detention and internment in August 1971, including the purpose of that operation, the procedure by which persons were detained and the evidence on which the Prime Minister, Mr Faulkner (as Minister of Home Affairs), was required to be satisfied before he made an internment order. The Government emphasised that an internment order was only made in cases where, after careful examination of a recommendation of a senior police officer, the Prime Minister was satisfied that the person concerned was at the time an active member of the IRA or had been actively implicated in the campaign of terrorism. A detention order was also made only if personally authorised by the Prime Minister. But, at the same time, the ordinary processes of the criminal

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law were available and used. Whenever it was possible to provide evidence sufficient to secure a criminal conviction, those responsible were charged under the criminal law. Between 9 August 1971 and 31 March 1972, over 1600 people had been dealt with in this way.

The respondent Government referred again to the Advisory Committee, mentioned on page 26 above. The Government submitted that the Advisory Committee took special care, within the limits imposed on them by the situation, to ensure that they were satisfied that an internee had been involved in the activities of the IRA. The internee was always interviewed, if he wished, and asked if he had anything to say about the allegation that he had connections with the IRA. The Committee would also see a member of the security forces to examine the evidence on which the case against the internee rested. The Committee always required the security forces to produce the information which was in their possession, including copies of any statements implicating the internee in terrorist activities. Such statements did not, of course, reveal the name or personal details of the maker of the statement. The Committee usually required a statement to be corroborated before they could be satisfied that the case against the internee had been proved. The Committee required the security authorities to discharge the onus of showing, first, that the man should have been interned and, secondly, if this was so, whether or not it was, by the time of the interview, safe to release him. Where an internee wished to substantiate his case by calling witnesses, every effort was made to trace the persons concerned.

The respondent Government next commented on a number of the detailed criticisms of the detention and internment procedures under Special Powers Act which were made by the applicant Government The first criticism considered was the alleged lack of parliamentary control over the power in Section 1 of the Special Powers Act to make Regulations, it being under this power that the Special Powers Regulations relating to detention and internment had been made. The respondent Government recalled that, in particular, the applicant Government stated that no right to reject or annul any of the Regulations was retained by the legislature in Northern Ireland. However, Section 1 (4) of the Special Powers Act provided that all Regulations made under the Act were to be laid before both Houses of Parliament as soon as they were made and that, if an address was presented to the Governor by either House within the next 14 days after the Regulation was laid praying that the Regulation might be annulled, the Governor might annul the Regulation and thenceforth it would be void.

It appeared to the respondent Government that the applicant Government were saying that the Governor had a discretion whether or not to annul Regulations which were prayed against by either House of the Northern Ireland Parliament. According to the

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respondent Government, such an argument completely ignored settled constitutional practice in the United Kingdom; it was therefore submitted that there was in this respect no difference in substance between the position under the Special Powers Act in Northern Ireland and that under Section 7 of the Offences Against the State (Amendment) Act 1940, which was the corresponding Act in the Republic of Ireland conferring emergency powers on the Government of the Republic, and which was the subject of consideration in the Lawless case.

The second criticism considered was that all the powers conferred on the Minister of Home Affairs under the Special Powers Act might be delegated to any police officer. The respondent Government replied that, whatever might have been the position in theory, in fact no internment or detention order was made unless it was personally considered and signed, or authorised, by the Prime Minister of Northern Ireland. After direct rule was instituted on 30 March 1972, no detention order was made unless it was personally considered and signed by the Secretary of State, or by the Minister of State or Parliamentary Under Secretary of State in the Northern Ireland Office, who were Ministers of the Crown to whom this power was delegated by the Secretary of State. Insofar as the applicant Government suggested that powers of internment or detention were exercised at a low level and without due consideration of the factors involved, the respondent Government maintained that this suggestion was totally without foundation. They accepted that powers of arrest under Regulations 10 and 11 enabled a police officer (in the case of Regulation 10), and a police officer or soldier (under Regulation 11), to arrest persons in the circumstances set out in those Regulations. But these were powers of interrogation for a temporary period only. Under Regulation 10 the maximum period, for which a person might be held, was 48 hours; under Regulation 11 (1) the maximum period, for which any person was in fact held, was 72 hours. It was submitted that powers of arrest for interrogation, and on the ground specified in Regulation 11 (1), were, on any view, essential in a situation where it might be necessary at a moment's notice to interrogate a person suspected of being involved in terrorist activities.

Thirdly, the respondent Government referred to the criticism of the powers of arrest, detention and internment in the Special Powers Act on the grounds that they depended on the opinion or the suspicion of the person (including the Minister) by whom the powers were exercised, and that the courts had no jurisdiction to question the validity of these powers. The respondent Government accepted that, if these powers were exercised honestly and not in an arbitrary way, they could not, as a general rule, be questioned in the courts. However, the courts always retained the power to ensure that a person who exercised the powers should

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genuinely have satisfied himself that the condition precedent to the exercise of the power existed. Where the proper procedures for making, for example, an internment order had not been complied with, the Government submitted that it was clear from the case of Kelly v Faulkner, which was a decision of the High Court of Justice in Northern Ireland, Queen's Bench Division, on 11 January 1973, that the courts would reserve the right to hold the exercise of the power to be invalid. But it was in the nature of such procedure providing for detention by the executive, that it was not susceptible, provided that it was exercised properly, to review by the courts. The respondent Government pointed out that a similar position arose under the emergency legislation of the applicant Government, namely the Offences Against the State (Amendment) Act 1940 which, in section 4, conferred special powers of arrest and detention "whenever a Minister of State is of opinion that any particular person is engaged in activities which, in his opinion, are prejudicial to the preservation of public peace and order or to the security of the State." The Government submitted that it was recognised in the Lawless case that section 4 effectively excluded the Minister's power of detention from control by the ordinary courts.

The fourth criticism considered was that an internee did not have the right to know the evidence on which he was interned. The respondent Government submitted that it was essential that persons giving evidence should remain anonymous, as otherwise they were likely to be the victims of retaliation from IRA.

Article 6

The respondent Government referred to the applicant Government's allegation that the exercise of the powers of detention and internment under the Special Powers Regulation constituted the determination of civil rights and obligations within the meaning of Art. 6 (1) of the Convention.

The respondent Government submitted that, even assuming that Art. 6 accorded a right of access to the courts, (which they disputed), the detention or internment of persons pursuant to the Special Powers Regulations did not constitute a determination of their civil rights and obligations for the purposes of Art. 6 (1). It was submitted that these powers involved an executive or administrative act which, of its nature, was not within the scope of Art. 6. Insofar as the detention or internment of persons by executive act and without trial gave rise to issues under the Convention, it was submitted that these issues arose under Art. 5 and not under Art. 6. In this connection, the United Kingdom Government referred to the decision of the Court in the Neumeister case, where the Court dealt with the applicant's argument that proceedings taken by

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him to detemine the validity of his detention pending trial constituted the determination of civil rights and obligations and were therefore subject to the requirements of Art. 6 (1) In this connection the Court stated, in paras 23 and 24 of THE LAW:

> "Certain members of the Commission have found in favour of the opposing view, expressing the opinion that such requests relate to "civil rights and obligations" and that any case relating to those rights must under Article 6 (1) be given a fair hearing.
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> This argument does not seem to be well founded. Quite apart from the excessively wide scope it gives to the concept of "civil rights", the limits of which the Commission has sought to fix on a number of occasions, it must be observed that remedies relating to detention on remand undoubtedly belong to the realm of criminal law and that the text of the provision invoked expressly limits the requirement of a fair hearing to the determination ... of any criminal charge, toiwhich notion the remedies in question are obviously related.
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> Besides, Article 6 (1) does not merely require that the hearing should be fair; but also that it should be public. It is therefore impossible to maintain that the first requirement is applicable to the examination of requests for release without admitting the same to be true of the second. Publicity in such matters is not however in the interest of accused persons as it is generally understood.
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> Nor is it possible to justify application of the principle of "equality of arms" to proceedings against detention on remand by invoking Article 5 (4) which, while requiring that such proceedings shall be allowed, stipulates that they should be taken before a "court". This term implies only that the authority called upon to decide thereon must possess a judicial character, that is to say be independant both of the executive and of the parties to the case; it in no way relates to the procedure to be followed....."

It was submitted that this principle applied equally to exclude from the ambit of Art. 6 the detention and internment of persons under the Special Powers Regulations. Moreover, the act of detention or internment was an act of public administration and the consequences flowing from such an act did not give rise to a "civil right" within the meaning of Art. 6 (1). In support of this submission the respondent Government referred to application No. 1931/63, (Yearbook 7, p. 212).

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2. PHASES II (7 November 1972 to 8 August 1973) and III (8 August 1973 onwards)

a) The applicant Government (VR 1, pp. 17-30, 40-42)

Phase II: Article 5

The applicant Government stated that on 7 November 1972 the respondent Government brought into operation the Detention of Terrorists (Northern Ireland) Order 1972 which provided for new procedures for the detention of persons without trial in Northern Ireland. This Order revoked and replaced the forms of detention under Regulation 11 (2) and of internment under Regulation 12 of the Special Powers Act 1922.

The applicant Government stated further that the 1972 Order did not in any way interfere with the power of arrest as contained under Regulation 10 of the 1922 Act. The Government accordingly submitted that, during phase II, i.e. from 7 November 1972 until 8 August 1973, persons within the jurisdiction of the respondent Government in Northern Ireland might be arrested and interrogated over a period of 48 hours, even though they were free from guilt or from any kind of suspicion in respect of illegal activities.

Furthermore, the 1972 Order did not repeal or replace the total power of arrest and imprisonment without trial which the respondent Government exercised under Regulation 11 (1) of the Special Powers Act 1922. The previous sole limited right to apply for bail was specifically revoked by the Order.

The applicant Government continued that what the Order did was to define the offence of "terrorism" and to proceed to give certain powers. The first power was given in Article 4, which provided that, where it appeared to the Secretary of State for Northern Ireland that a person was supected of having been concerned in the commission of an act of terrorism or the organisation of persons for the purpose of terrorism, the Secretary of State might make an order for the temporary detention of that person. Such a person might be kept in detention, without trial, for a period of 28 days unless his case was referred by the Chief Constable to a commissioner, who will determine whether or not the person should be further detained for an unlimited period of time without trial, or set free.

The full text of Article 4 of the 1972 Order read as follows:

"(1) Where it appears to the Secretary of State that a person is suspected of having been concerned in the commission or attempted commission of any act of terrorism or in the direction, organisation or training of persons for the purpose of terrorism the Secretary of State may make an order (hereafter in this Order referred to as an "interim custody order") for the temporary detention of that person.

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(2) An interim custody order of the Secretary of State shall be signed by a Secretary of State, Minister of State or Under Secretary of State.

(3) A person shall not be detained under an interim custody order for a period of more than twenty-eight days from the date of the order unless his case is referred by the Chief Constable to a commissioner for determination, and where a case is so referred the person concerned may be detained under the order only until his case is so determined.

(4). A reference to a commissioner shall be by notice in writing, of which a copy shall be sent to the Secretary of State and to the person to whom it relates".

The applicant Government submitted that a person might be detained on the Order of the Secretary of State even though the Secretary of State might have no suspicions regarding such person. The Secretary of State ordered the deprivation of liberty of persons on suspicion of some other un-named person. The suspicion of the un-named person, on faith of which the detention Order was made, need not, like the suspicion under Regulation 11 (1) of the 1922 Act, be a reasonable suspicion but may be entirely arbitrary. Accordingly, a totally innocent person might be detained under Article 4 of the Order for a period of 28 days on the suspicion of a person unknown to him, even though such a suspicion might be totally unfounded in reason or fact.

If the case of a person who had been arrested under Article 4 of the Order is referred to one of the Commissioners appointed under the Order by the Chief Constable for Northern Ireland before the period of 28 days detention had expired, the detention of such a person continued until the Commissioner enquired into the case. The Commissioner had two functions. First, he carried out an enquiry and he had to decide whether he was satisfied, as a result of that enquiry, that the person had been concerned in the commission, or attempted commission, of an act of terrorism; secondly, the Commissioner had to decide whether his detention was necessary for the protection of the public. Having completed his enquiry, the Commissioner might make a detention order for the detention of the person in question for an unlimited period of time or, alternatively, might direct that he be discharged.

The Commissioner's powers stemmed from Article 5 of the 1972 Order, the full text of which read as follows:

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"(1) Where the case of a person detained under an interim custody order is referred to a commissioner, the commissioner shall inquire into the case for the purpose of deciding whether or not he is satisfied that -

(a) that person has been concerned in the commission or attempted commission of any act of terrorism or the direction, organisation or training of persons for the purpose of terrorism; and

(b) his detention is necessary for the protection of the public.

(2) Where a commissioner decides that he is satisfied as aforesaid he shall make an order (hereafter in this Order referred to as a "detention order") for the detention of the person in question, and otherwise shall direct his discharge.

(3) A detention order shall be signed by the commissioner and shall contain a statement of the grounds upon which it is made.

A copy of a detention order shall be sent to the person to whom it relates and to the Secretary of State.

(4) A commissioner shall keep or cause to be kept a record of the proceedings before him.

(5) The provisions of Part III of the Schedule shall have effect in relation to the proceedings of a commissioner under this Article."

Commenting on the procedure to be followed on the enquiry conducted by the commissioner, the applicant Government stated that the proceedings took place in private, except that the arrested person (the "respondent") might be represented by counsel and might be present himself. Although the commissioner might require the respondent to answer any questions put to him, there was no provision whereby the respondent or his Counsel might as of right, examine or have examined witnesses against him. Further, the commissioner might, if he thinks fit in the interest of public security or safety of witnesses, conduct any part of the proceedings in total secrecy in the absence of the respondent and of his representative. Although the commissioner might subsequently inform the respondent and his representative of the substance of the matters dealt with in secret, the respondent had no opportunity of examining or testing the evidence given in his absence.

In addition, the commissioner might receive oral, documentary, or other evidence, however obtained, notwithstanding that such evidence would be inadmissible in a court of law. In this connection the applicant Government submitted that the commissioner could receive statements purporting to be evidence against the respondent, which could have been obtained from the respondent, or any other person, as a result of the infliction of torture, inhuman or degrading treatment or punishment on the

respondent or such other person. The applicant Government maintained that the Advisory Committee, which existed under the Special Powers Act 1922, relied on alleged statements obtained in such circumstances when determining whether, in their opinion, a person before them should be recommended for further detention, or release.

The applicant Government submitted that, by reason of the procedure provided for at an enquiry by a commissioner under the 1972 Order, and by reason of the type of evidence which the commissioner might take into consideration, the enquiry was not impartial or fair and there was an imbalance in favour of the person or persons seeking to establish that the respondent should be detained indefinitely. The applicant Government further submitted that there was no presumption of innocence in favour of the respondent.

The applicant Government observed, however, that, with the introduction of these new measures in phase II, a tribunal had been given a power which did not exist before, namely to order the discharge of an appellant. It was recognized that this was a significant change compared with the procedures which existed in phase I. The Government also pointed out that under the 1972 Order an enquiry was now instituted as to whether or not the person against whom the charges were made had been concerned with, or engaged in, terrorism.

The applicant Government then referred to the provisions in the 1972 Order for an appeal against the decision of a Commissioner to an Appeal Tribunal. The relevant provision concerning the notice of appeal was Article 6, which read as follows:

"(1) Where a detention order has been made in the case of any person, he may within twenty-one days of the making of the order appeal by notice in writing to the Tribunal.

The Tribunal shall cause a copy of the notice of appeal to be sent to the Chief Constable and to the Secretary of State.

(2) A notice of appeal shall indicate the grounds of appeal and, where appropriate, the nature of any fresh evidence which the appellant wishes to tender on the hearing of the appeal.

(3) Where notice of appeal has been given there shall be transmitted to the Tribunal a copy of the detention order and a copy of the record of the proceedings before the commissioner, which shall be in such a form as to indicate any part of the proceedings which took place in the absence of the appellant.

(4) An appellant shall be entitled to receive a copy of the record of the proceedings before the commissioner excluding any part of the proceedings which under paragraph 15 of the Schedule took place in the absence of the appellant".

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Article 7 of the Order concerned proceedings on appeal. It provided that:

"(1) On the hearing of an appeal the Tribunal shall consider the record of the proceedings before the commissioner together with any fresh evidence which may be tendered with the consent of the Tribunal.
(2) On an appeal, the Tribunal shall, if they are of the opinion that the commissioner's decision should be set aside, allow the appeal and direct the discharge of the appellant; and otherwise they shall dismiss the appeal.
(3) The provisions of Part IV of the Schedule shall have effect in relation to the proceedings of the Tribunal."

The applicant Government commented that the Tribunal only received fresh evidence in exceptional circumstances. It normally relied on the evidence on which the commissioner acted, which may have been evidence heard in secret or obtained by means of torture or inhuman or degrading treatment or punishment. Although the appellant might be represented by counsel or a solicitor at the appeal, neither his counsel or solicitor was entitled, as of right, to make representations to the Tribunal, whether orally or in writing, and at best might do so only with the permission of the Tribunal. In addition the appellant had no right under the Order to be present at the appeal save where fresh evidence was tendered to the Tribunal with its consent.

In the submission of the applicant Government the existence during phase II of Regulations 10 and 11 (1), made under the Special Powers Act and the new detention procedures enacted by the 1972 Order, were contrary to Art. 5 of the Convention. It was submitted that the operation of these Regulations and of the 1972 Order constituted breaches of Art. 5 (1) in that they were not effected for any of the purposes indicated in the sub-paras. of Art. 5 (1). Itwas further submitted that their operation amounted to breaches of Art. 5 paras(2), (3), (4) and (5) for the same reasons as those given above with regard to phase I.

Phase II: Article 6

The applicant Government submitted that the procedures, by which the case of a person detained under Article 4 of the 1972 Order was referred to a commissioner coupled with the nature of the enquiry carried out by the commissioner under Article 5 (1) of the Order, constituted a charge against the person in question of the criminal offence of "terrorism" as defined in Article 2 (2) of the Order. Article 2 (2) provided that:

"terrorism means the use of violence for political ends and includes any use of violence for the purpose of putting the public or any section of the public in fear."

The Government pointed out that, once the commissioner was satisfied that a person was guilty of such an offence, he then

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ordered the person in question to be detained, and such detention might continue for an unlimited period of time. If a person came before the Appeal Tribunal set up under the Order, the Tribunal had similarly to consider whether he was guilty of the crime of terrorism.

In the submission of the applicant Government, the 1972 Order therefore came within the ambit of Art. 6 of the Convention and amounted to a breach of the various provisions in Art. 6 containing safeguards for an accused person. They submitted in particular that the procedure provided for under Article 4 of the Order constituted breaches of Art. 6 paras (2) and (3) (a), (b) and (d) of the Convention.

Replying to the respondent Government's reliance on the Vagrancy case in support of their denial that the procedure before the commissioner amounted to the determination of a criminal charge, the applicant Government commented as follows. The Commission had held in that case that a vagrant was not an accused person and that, being placed at the disposal of the Government, was not a penalty. The case therefore did not fall within the criminal law. The applicant Government accepted that that was clear from the legislation which the Commission was then considering but, in the legislation at present being considered, there was the clearest possible indication that the person against whom the legislation was directed was a criminal in fact. The applicant Government maintained that support for this view could be found in the Report of the Diplock Commission, paras 28 to 30.

If the Commission did not accept that there was a determination of a criminal charge by the commissioner, the applicant Government made the following alternative submission. They argued that Art. 6 nevertheless applied because, if the commissioner was not determining a criminal charge, his action, in determining whether or not a detention order should be made, was a determination of a civil right. They submitted that the powers of detention under Articles 4 and 5 of the 1972 Order constituted a breach of Art. 6 (1) of the Convention since neither the commissioner's enquiry nor the appeal to the Tribunal was fair or impartial or in public.

Revocation of Measures and Issues Declared Admissible

The applicant Government submitted that, notwithstanding the revocation of the 1972 Order on 8 August 1973, the Commission must consider the Order and express an opinion on whether the measures for which it provided were in breach of the Convention. Their arguments in support of this submission were identical to those which appeared in pages 24 to 25 above concerning phase I.

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During the first part of the hearing in October 1973 the applicant Government made submissions in reply to the contention of the respondent Government, put forward in their counter-memorial, that the 1972 Detention of Terrorists Order did not form part of the issues declared admissible. After the respondent Government's oral submission during the hearing that no opinion should be expressed on the 1972 Order because of its revocation, and that the only measures requiring examination by the Commission were the present day ones contained in the Northern Ireland (Emergency Provisions) Act 1973, the applicant Government commented as follows. They pointed out that the respondent Government's argument was now quite different to what was argued in their counter-memorial. The applicant Government suggested that, if the respondent Government's present argument was correct, then in their written submissions they should have pleaded that the only relevant legislation was the 1972 Order, because at the time of the counter-memorial that was the legislation in existence.

The applicant Government regarded the discrepancy between the written and oral pleadings as significant. It was significant, they stated, because the interpretation, which the respondent Government were putting on the Convention in their counter-memorial, led to an obvious absurdity and, in the submission of the applicant Government the present interpretation, which they put on the Convention, leads to absurdity also, in that the Commission would be powerless to carry out its functions if that interpretation were correct.

Phase III: Article 5

Turning to the situation which had existed since 8 August 1973, the date on which the Northern Ireland (Emergency Provisions) Act 1973 came into operation, the applicant Government made the following submissions. Up to the passing of the 1973 Act, the Regulations made under the Special Powers Act and the 1972 Order were permanent legislation: part of the domestic law of Northern Ireland. However, by Section 30 of the 1973 Act it was provided that the Act was to remain in operation for a year and thereafter could be brought into operation again by order of the Minister. Regulations 10 and 11 (1), which still existed during phase II, were repealed by the Act.

The applicant Government stated that the 1973 Act made certain changes of minor significance in the procedures set out in the 1972 Order. The provisions in the Act, to which the Government attached importance, were contained in the first part of the Act, which was concerned not with extra-judicial detention but with the trial and punishment of certain offences by courts. They referred to section 6, which provided, in sub-section (1) that:

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"In any criminal proceedings for a scheduled offence a statement made by the accused may be given in evidence by the prosecution insofar as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of sub-section (2) below".

Sub-section (2) contained a safeguard. It provided that:

"If, in any such proceedings where the prosecution proposes to give in evidence a statement made by the accused, prima facie evidence is adduced that the accused was subjected to torture or inhuman or degrading treatment in order to induce him to make the statement, the court shall, unless the prosecution satisfies them that the statement was not so obtained, exclude the statement or, if it has been received in evidence, shall either continue the trial disregarding the statement or direct that the trial shall be restarted before a differently constituted court (before whom the statement in question shall be inadmissible)."

In the submission of the applicant Government the object of sub-section (2) was perfectly clear. In respect of proceedings before a court, a statement procured in breach of Art. 3 of the Convention was not evidence. It was pointed out that no such provision existed in the next part of the Act which dealt with powers of detention. The applicant Government stated that, having legislated for a situation where admissions might have been made by the accused and where an accused person before a court wished to ask that the statement be excluded on the grounds that it was obtained by torture or ill-treatment, the legislation which now existed in Northern Ireland did not contain this safeguard when it dealt with the procedures in relation to detention. Furthermore, there was nothing in any part of this legislation to prohibit the use against a detainee of a statement obtained from other people by torture or ill-treatment.

The applicant Government submitted that, just as the 1972 Order constituted a breach of Art. 5 of the Convention, so also did Part II of the 1973 Act. In support of this submission the Government relied on the reasons they have given above with regard to phases I and II, and alleged violations of the same provisions of Art. 5 as those to which they have already referred.

Phase III: Article 6

The applicant Government put forward identical arguments under Art. 6 with regard to the situation existing during phase III to those already made with regard to phase II (see above). Their primary submission was accordingly that the procedure for detention of terrorists under Part II of the 1973 Act amounted to the determination of a criminal charge and was in breach of Arts.6 (2) and (3) (a) (b) and (d) of the Convention. Alternatively, the procedure amounted to the determination of a civil right and was in breach of Art. 6 (1).

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The applicant Government emphasised again their concern that the procedure before a commissioner, whether under the previous 1972 Order or under the present 1973 Act, allowed statements obtained under torture from third parties to be used as evidence. They suggested that what must have happened in some instances was that the commissioner had been told by a representative of the security forces that a particular person had informed him that the accused was a member of the IRA. In those cases information had been obtained as a result of breaches of Art. 3 of the Convention.

Replying to the respondent Government's submission that the commissioners were experienced judges and would only act if it was safe to do so, the applicant Government commented that this did not justify the defects which they had pointed out. They also asked how a commissioner would know whether a statement had been obtained under torture or not, since he was not told how the statement had been obtained. In the submission of the applicant Government the safeguards in the present procedure were entirely inadequate.

Referring to the possibility of cross-examination of witnesses before the commissioner, the applicant Government stressed that no right to such cross-examination existed although they accepted that in fact cross-examination of witnesses was permitted. In the applicant Government's submission this benefit was of very doubtful value.

b) The respondent Government (VR 1, pp. 102-108)

General Submissions on the New Procedures for Detention

The respondent Government stated that they had made it clear, on assuming direct responsibility for the government of Northern Ireland in March 1972, that it was their objective to bring internment under the Special Powers Act to an end as soon as the security situation permitted, and to consider how far the powers conferred under that Act could be dispensed with. Accordingly numbers of persons were released from time to time. But the effectiveness of the normal processes of law to counter terrorism continued to be impeded by a number of factors: for example, the intimidation of witnesses and the difficulties of bringing to trial many of those who, although responsible for organising and directing terrorism, took care to avoid as far as possible engaging themselves in terrorist operations. In the circumstances, the system of internment could not have been ended without putting something in its place.

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On 21 September 1972 the United Kingdom Government announced that a commission of experienced lawyers and laymen would be set up to advise on the measures required to deal with terrorist organisations and to bring to book individuals involved in terrorist activities. Without waiting for the report of the commission (which subsequently came to be known as the Diplock Commission), arrangements were made to substitute for the existing system of internment and detention a new system of detention for persons suspected of participation in terrorist activities which would include further safeguards for the protection of the individual. The new system was established by the Detention of Terrorists (Northern Ireland) Order 1972, being an Order made under the Northern Ireland (Temporary Provisions) Act 1972, which came into operation on 7 November 1972. This Order repealed the Regulations under the Special Powers Act which made provision for internment and detention. On 8 August 1973 the Order was itself repealed and replaced by the Northern Ireland (Emergency Provisions) Act 1973. In substance, the procedures laid down in the 1972 Order for the detention of terrorists were retained by the 1973 Act. The relevant provisions appear in Section 10 (5) and in the first Schedule to the Act.

The respondent Government submitted further that, under the 1973 Act, the Secretary of State for Northern Ireland was empowered to make an interim custody order, providing for the detention, for up to 28 days, of a person suspected of being concerned with terrorism. If within that period the Chief Constable did not refer the person concerned to the commissioners appointed under the Act to enquire into and decide upon such cases, he must be released. Where a commissioner was satisfied on the evidence put before him that the person concerned had been involved in terrorism and that he should be detained for the protection of the public, he made a detention order in respect of that person; otherwise he was required to order his release. It was provided that, not less than seven days before he was to appear before a commission (3 days under the 1972 Order), a detained person must be served with a statement in writing as to the nature of the terrorist activities which were to be the subject of the enquiry. At the subsequent hearing he had to be present in person unless the commissioner directed his removal for part of the proceedings on grounds of security or of his disorderly conduct; in hearing a case the commissioner was entitled to hear evidence in the absence of the accused if this was necessary in the interests of security but in such cases the accused person must be told of the substance of that evidence. A detained person might be legally represented, if he wished, and legal aid was available.

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The respondent Government pointed out that the 1973 Act also provided an appeal procedure, as did the 1972 Order before it. Within 21 days of the commissioner's decision, the individual concerned might appeal to a Tribunal which might either confirm or overrule the commissioner's decision. The detained person might be legally represented. Any internment or detention orders still in existence at the date when the 1972 Order came into force were automatically converted into interim custody orders. The effect of this was that the cases of all former internees and detainees had either to be referred to the commissioners for a decision, or they had to be released. In the event they were all referred. Since detention by order of a commissioner was not for any specific period, provision was also made for the Secretary of State to refer a case to a commissioner at any time for review. Furthermore the Secretary of State might himself, at any time direct the release of a detainee with or without conditions.

The respondent Government stated that the commissioners appointed under the Act had all had extensive judicial experience. They were:

- Judge Leonard, a circuit judge since 1965 and a former Chairman of the Advisory Committee set up under Regulation 12 (1) under the Special Powers Act;
- Judge Sir Ian Lewis, formerly a Justice of the Supreme Court of Nigeria;
- Sheriff John Dick, a Scottish judge;
- Sheriff Douglas Grant, also a Scottish judge;
- Mr William Palmer, a former judge for the Persian Gulf; and
- Judge John Dacahouna, a circuit judge.

The Appeal Tribunal provided for in the 1973 Act is presided over by Sir Gordan Willmer, a former Lord Justice of Appeal. He is assisted by Mr Hamden Inskip, Q.C., a Recorder of Bournemouth, Mr Leonard Caplan, Q.C., and Mr Kenneth Jupp, Q.C.

The respondent Government had supplied figures of those affected by the 1972 Order and the 1973 Act up to 5 September 1973. By that date the commissioners had reviewed 579 cases of individuals held in custody. Of these, 165 were former internees, 118 were former detainees and 296 were subject to the new interim custody order. In 126 cases out of the total 579 the release of the individual had been ordered by the commissioners. In 453 cases detention orders had been made. By 3 October 1973 44 appeals had been lodged and 34 appeals had been heard. In 25 of the cases which had been heard the Appeal Tribunal ordered the appellant's release.

Revocation of the 1972 Order

It was recalled that phase II lasted from 7 November 1972, when the Detention of Terrorists (Northern Ireland) Order 1972 came into effect, to 8 August 1973, when the Order was repealed and the Northern Ireland (Emergency Provisions) Act 1973 came into force.

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In the submission of the respondent Government the Commission should take note of the revocation without expressing an opinion on whether any of the measures provided for in the 1972 Order was in breach of the Convention. The Government's arguments in support of their view that the Commission should restrict itself to considering the present day situation appeared in pages 27 to 30 above.

In their counter-memorial the respondent Government argued that allegations relating to the 1972 Order did not, strictly, form part of the issues declared admissible. The Commission was therefore invited to proceed no further with this aspect of the case. However during the oral hearing before the Commission in October 1973 this particular submission was not pursued.

The Emergency

If the respondent Government's above submission concerning the effect of revocation of measures was not accepted by the Commission, the Government made the following alternative submissions. They maintained that throughout phase II there was in Northern Ireland a public emergency threatening the life of the nation within the meaning of Art. 15 of the Convention. In their submission the exercise of the powers of arrest and detention under the relevant provisions of the Detention of Terrorists (Northern Ireland) Order 1972 was justified by the exigencies of the situation and was not inconsistent with their other obligations under international law. Accordingly, insofar as these measures might have constituted a breach of any Article of the Convention, the respondent Government submitted that they were entitled to derogate with respect thereto. In this connection the Government referred to the notice dated 23 January 1973 given to the Secretary General of the Council of Europe by the United Kingdom Permanent Representative in which he informed the Secretary General of the making of the 1972 Order and of the revocation by that Order of certain of the Regulations made under the 1922 Act.

Similarly, the respondent Government maintained that there had been an emergency in Northern Ireland within the meaning of Art. 15 since the beginning of phase III and that, to the extent that the measures providing for detention without trial during this period, to be found in the Northern Ireland (Emergency Provisions) Act 1973, were in breach of any of the Articles of the Convention they were justified by the exigencies of the situation. Reference was made to the notice of derogation dated 27 August 1973 sent to the Secretary General of the Council of Europe by the United Kingdom Permanent Representative in which he informed the Secretary General of the passing of the 1973 Act and of the revocation by that Act of the 1972 Order.

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The respondent Government's further submissions under Art. 15 of the Convention were set out more fully below.

Article 5

The respondent Government submitted that the procedure laid down in the 1972 Order and in Part II of the 1973 Act for the detention without trial of terrorists contained all reasonable safeguards for an extra judicial process. In particular the respondent Government drew attention to the following aspects of that procedure:

A person might not be detained for more than 28 days (under an Order which must be signed by the Secretary of State, the Minister of State or Under Secretary of State) unless his case was referred for determination to a commissioner. A commissioner was a legally qualified person who had either held judicial office in the United Kingdom or was a barrister, advocate or solicitor of at least 10 years' standing. A person whose case was referred to a commissioner could only continue to be detained if the commissioner was satisfied first that he had been concerned in the commission, or attempted commission, of any act of terrorism or the direction, organisation or training of persons for the purpose of terrorism; and secondly, that in any case his detention was necessary for the protection of the public. A person against whom a detention order was made by the commissioner had a right of appeal to the Tribunal set up under the Act within 21 days of the making of the order. A member of the Tribunal must have similar legal qualifications to those required of a commissioner. There was provision for the Secretary of State to refer to a commissioner the case of any person who was detained under a detention order for a decision whether he should be discharged. Any decision of a commissioner or of the Tribunal to release a detained person was binding on the Secretary of State and the person must be released forthwith. The number of persons so released appeared from the figures given in page 45 above.

The respondent Government further pointed out certain safeguards contained in the provisions of the first Schedule to the 1973 Act, which set out the procedure to be followed by a commissioner or by the Tribunal. These provisions were previously contained in Parts III and IV of the Schedule to the 1972 Order.

In particular, under paragraph 13 of the Schedule to the 1973 Act, the respondent must, not less than seven days before the hearing by the commissioner, be served with a statement

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in writing as to the nature of the terrorist activities which are the subject of the commissioner's enquiry. Thus he knew the case to be brought against him. Under paragraph 14 he was entitled as of right to appear before a commissioner, unless his removal was directed on the grounds of disorderly conduct... The one exception was when it appeared to the commissioner that it would be contrary to the interests of public security, or might endanger the safety of any person for that part of the proceedings to take place in the presence of the respondent. Even in this exceptional case a safeguard was provided by paragraph 18: the commissioner must, insofar as the needs of public security and safety permitted, inform the respondent and his representatives of the substance of the matters dealt with in his absence.

The respondent Government added that the detainee might make representations to the commissioner, whether orally or in writing, that he was entitled to give and produce evidence. He was also entitled to representation by counsel or a solicitor. It was stressed that cross-examination of witnesses took place in the proceedings before the commissioner. Furthermore there was provision in paragraph 21 for legal aid to be granted by the commissioner in respect of both the respondent's costs and the costs of any legal representation. Similar provisions applied to the procedure before the Tribunal.

The respondent Government accepted that a commissioner or the Tribunal might receive evidence which would not be admissible in a court of law in the United Kingdom and might also, as mentioned above, exclude the presence of the respondent in certain circumstances. In this connection, the respondent Government emphasised again their view that, in an emergency situation, the disclosure of sources of information to a detainee suspected of involvement in terrorist activities might apart from imperilling the sources of information available to the security forces, put in jeopardy the lives of persons who had given information.

Referring to the emergency legislation of the applicant Government, the respondent Government suggested that some of the normal safeguards contained in the criminal procedure of common law countries, affecting for example the rules of evidence, were similarly lacking in that legislation. In the respondent Government's submission it was therefore not for the applicant Government to criticise the measures at present under consideration.

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Article 6

The respondent Government referred to the applicant Government's submission that the procedure under Article 5 of the 1972 Order, and under the first Schedule to the 1973 Act, constituted a charge against the person concerned of a criminal offence of "terrorism", or, alternatively, constituted the determination of the civil right of liberty. It was recalled that, in either event, the applicant Government alleged the violation of Art. 6 of the Convention. In the respondent Government's submission the procedure did not come within the scope of Art. 6 at all.

In support of this submission the respondent Government pointed out that the procedure under the 1972 Order and 1973 Act did not result in a criminal conviction. The commissioner was not determining a criminal charge, but was only deciding whether the statutory conditions for detaining the man under the Act were fulfilled. The detainee, if ordered to be detained, was not sentenced in the normal sense of that term; he was merely placed at the disposal of the Secretary of State, who might release him at any time. In this connection the Government referrred to the decision of the European Commission of Human Rights in applications Nos 2832, 2835 and 2899/66 (The Vagrancy Cases), where the Commission said (at para 181);

> "Again, the Commission finds that a vagrant is not an accused person and that vagrancy in the form involved in the present cases does not fall under the criminal law and that being placed at the disposal of the Government is not a penalty. It follows that the proceedings in question do not fall under the criminal law. For these reasons the Commission is of the opinion that paragraph (1) of Art. 6 does not apply to these cases".

The respondent Government also submitted that the provisions of Art. 6, relating to the determination of civil rights and obligations, equally had no application to proceedings under the 1973 Act. The Government repeated here, in respect of the procedure provided for by the 1972 Order and the 1973 Act, the observations on pages 33 and 34 above in relation to the exercise of powers under the Special Powers Regulations. They also referrred to a further passage in para 181 of the Commission's report in the Vagrancy Cases where the Commission said:

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"The Commission has examined this question in the light of the Court's judgment in the 'Neumeister' case and considers that the proceedings specified in paragraph (4) of Art. 5 do not relate to "civil rights" within the meaning of paragraph (1) of Art. 6."

It was denied that there was any determination by the commissioner of the civil right of liberty and the respondent Government suggested here that the applicant Government were confusing the determination of civil rights with the deprivation of civil rights. The respondent Government stated that determination of civil rights meant deciding what a man's civil rights were. The civil right in Northern Ireland was the right to be at liberty, subject to the provisions of the 1973 Act, and the question of determination arose if the detainee said that this right had been infringed, that is to say, if he had been deprived of his liberty otherwise than in accordance with the Act. The commissioner did not decide that. He might deprive the man of his civil right by misapplying the Act but the decision whether he had done that, namely the determination of the man's civil right, was a question which, if raised, could only be decided by the courts, where it was determined exactly in accordance with Art. 6.

The respondent Government submitted that, if the applicant Government's arguments on this point, were correct, the result would be paradoxical. It would mean that, if a Government were merely to use preventive detention, which allows a man to be detained without the necessity of anyone being satisfied of any specific set of facts, that might be justifiable under Art. 5 and Art. 15 of the Convention; but, if further safeguards were introduced, such as the one allowed in the procedure under consideration, then that procedure would come within the Convention. In the respondent Government's submission such paradox was not acceptable.

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C. Submissions under Art. 15

The respondent Government have invoked Art. 15 of the Convention in relation to the alleged breaches of Arts. 5, 6 and 14. They have maintained that, in relation to the exercise of powers of internment and detention without trial under the Special Powers Act 1922 and the regulations made thereunder between 9 August 1971 and 7 November 1972, and in relation to the exercise of the powers of arrest and detention under the Detention of Terrorists Order 1972 between 7 November 1972 and 8 August 1973, as well as in relation to the exercise of the powers of detention under the Northern Ireland (Emergency Provisions) Act 1973 since 8 August 1973, there was at all times material to this application in Northern Ireland a public emergency threatening the life of the nation within the meaning of Art. 15, and that the exercise of such powers was justified by the exigencies of the situation.

The applicant Government have agreed that there existed a public emergency threatening the life of the nation during the periods with which this application was concerned. However, they have contested the allegation that the measures taken by the respondent Government in relation to such emergency situation were strictly required by the exigencies of the situation within the meaning of Art. 15 of the Convention.

Both parties have also submitted that the burden of proof in this connection lay on the respondent Government who have invoked the power of derogating from the provisions of the Convention.

The following pages (pp. 51-64) summarise the parties' submissions in this respect, beginning with the respondent Government's arguments.

1. The respondent Government (VR 1, pp. 82-99, 103-108, 152-158)

a) Events leading up to the exercise of the powers of internment and detention without trial

In the respondent Government's submissions the emergency situation arose as a result of the increase in violence and terrorist acts on the part of the IRA. Since its establishment during World War I there had been a number of campaigns in which people had lost their lives. Such major campaigns had been launched in 1939 to 1941 and again from 1956 to 1962. It had always been the aim of the IRA, in the words of Cristoir O'Neill, then Vice-President of Sinn Fein "to drive the invader from the soil of Ireland and to restore the sovereign independent republic proclaimed in 1916. To that end the policy is to prosecute a successful military campaign against the British Forces of occupation in the six counties".

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From 1967 to 1969 there had been no major campaigns of violence but at Easter 1969 the IRA had reactivated their forces, placing all volunteers on full alert and sending a number of fully-equipped units to Northern Ireland. Indeed, during 1968 and 1969 there had been a series of demonstrations and marches organised by organisations claiming to support civil rights. Such activities had aroused hostility in certain quarters of the Protestant Community who had matched the civil rights marches and demonstrations by Protestant marches provoking the minority Catholic community. Inter-communal hostility had become intense and there had been outbreaks of violence, e.g. in Londonderry in October 1968, by each against the other.

In August 1969 a traditional Protestant anniversary parade had led to large-scale sectarian rioting in Londonderry and Belfast. During the week 12 - 16 August, petrol bombing had become frequent, attacks with firearms had been made on the police in various parts of Northern Ireland, and CS gas had to be used for the first time to quell rioters. The resources of the police, the Royal Ulster Constabulary, had become increasingly less able to preserve peace and order. Thus, from 15 August 1969, after ten civilians had been killed and 145 civilians and 4 policemen had been wounded, units of the British Army had been deployed in Londonderry and Belfast in aid of the civil power. Nevertheless, sporadic violence had continued and there had been thefts of arms, ammunition and detonators.

During the period 1969/70 the IRA had split into two wings. For some time there had been dissension in the movement between those who had hoped to bring about a form of socialist people's republic for all Ireland and those who had considered that such involvement deflected the IRA from its traditional aims. The traditionalists had formed themselves into the Provisional IRA while the followers of the new political doctrines had become the Official IRA. Both wings of the IRA had remained organised on military lines and both had been involved in Northern Ireland until, in 1972, the Officials had declared that it was their intention to abandon violence except for "defensive" purposes on a temporary basis.

Following its division into two wings, the violence of the IRA's campaign in Northern Ireland had been pursued to an unprecedented extent. The respondent Government submitted a diary, beginning on 3 August 1969, which described the everyday occurances of acts of violence and lawlessness. They further submitted tables showing periodic totals of bomb explosions, shooting incidents, deaths and injuries, and photographs of individual incidents as examples of violence and its consequences.

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In the respondent Government's submission it emerged from these documents that widespread and serious rioting had continued during 1970. There had been incidents when explosives were connected to vehicles so as to ignite when the doors were opened or the ignition switched on; there had been incidents of fire raising and the use of petrol bombs, shooting and intimidation.

The violence had become more intense in the first half of 1971. During that period there had been some 245 bomb explosions; eight civilians, ten soldiers and two members of the RUC had been killed; 454 civilians, 110 soldiers and 71 policemen had been injured.

In July 1971 alone there had been 86 bomb explosions, two soldiers had been shot dead and 21 persons injured. On 5 August, a policeman and 2 civilians had been injured in rioting. Soldiers had been fired on repeatedly and an explosion had wrecked the home of the Resident Magistrate in Omagh.

It was against this background that, on 9 August 1971, the Northern Ireland Government with the agreement of the United Kingdom Government had introduced internment. The respondent Government referred to a statement made by Mr. Faulkner, then Prime Minister of Northern Ireland, on 9 August 1971 in which he explained the purpose of these measures in the following way:

> "If Northern Ireland is to survive and prosper, two things are essential. We must sustain a continuing programme of economic and social development, and we must find the means to create a more united society here - one in which all men of goodwill, however divergent their legitimate political views, may participate to the full. These things are, and will continue to be, the aims of our policy.
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> Neither will be possible in a climate of terrorism and violence. The outrages to which we have been subjected now threaten our economic life and create every day deeper divisions and antagonism within our community. These, indeed, are the clear objects of those who carry them out.
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> Every means has been tried to make terrorists amenable to the law. Nor have such methods been without success, because a substantial number of the most prominent leaders of the IRA are now serving ordinary prison sentences. But the terrorist campaign continues at an unacceptable level, and I have had to conclude that the ordinary law cannot deal comprehensively or quickly enough with such ruthless viciousness.

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I have therefore decided, after weighing all the relevant considerations, including the views of the security authorities and after consultation with Her Majesty's Government in the United Kingdom last Thursday, to exercise where necessary the powers of detention and internment vested in me as Minister of Home Affairs.

Accordingly, a number of men have been arrested by the security forces at various places in Northern Ireland this morning. I will be making internment orders in respect of any of these men who constitute a serious and continuing threat to public order and safety. This will be done only after a careful scrutiny of information furnished to me in respect of each such person, sufficient to convince me that the individual in question is a threat to the preservation of peace and the maintenance of order. Any such person will then have the right to have his case considered by an advisory committee, which will hear his representations and make recommendations to me.

I have taken this serious step solely for the protection of life and the security of property. At all times I have consistently emphasised that it was not a step towards which I would be moved by any political clamour. Equally, I cannot now allow the prospect of any misrepresentation to deflect me from my duty to act.

This is not action taken against any responsible and law abiding section of the community. Nor is it in any way punitive or indiscriminate. Its benefits should be felt not least in those areas where violent men have exercised a certain sway by threat and intimidation over decent and responsible men and women".

b) The exigencies of the situation during Phase I (9 August 1971 to 7 November 1972)

During Phase I the authorities in Northern Ireland operated altogether four extra judicial powers: (1) the power of arrest for interrogation purposes during 48 hours under Regulation 10 of the Special Powers Regulations; (2) the power of arrest and remand in custody under Regulation 11(1) of the Special Powers Regulations; (3) the power of detention of an arrested person under Regulation 11(2) of the Special Powers Regulations; and (4) the power of internment under Regulation 12(1) of the Special Powers Regulations.

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The respondent Government submitted that it had been necessary in the circumstances and for the reasons described above, to exercise these extra judicial powers. Moreover, the exigencies of the situation in Northern Ireland had required the operation of all four of these powers, and there had been safeguards provided in the Special Powers Regulations which were designed to prevent abuse of the application of these powers.

The figures set out in the "Diary" of events indicated the extent of the emergency situation. Thus, from August 1971 to 30 March 1972, being the date on which the United Kingdom assumed direct rule over Northern Ireland there had been in Northern Ireland 1,130 bomb explosions and over 2,000 shooting incidents. 158 civilians, 58 soldiers and 17 policemen had been killed, and 2,505 civilians, 306 soldiers and 107 RUC members had been injured. Furthermore, between April and December 1972 there had been altogether 1062 explosions and 9536 shooting incidents. 264 civilians, 108 soldiers and 9 policemen had lost their lives; and 2634 civilians, 535 soldiers and 195 policemen had been injured.

In these circumstances, it had been necessary to deploy large numbers of soldiers and police officers whose functions included combating terrorism, preventing disturbances and maintaining or re-establishing law and order. In the course of their functions the security forces had been required to search for weapons and explosives which might be used in terrorist attacks and to detain for interrogation and to interrogate those who were suspected of provoking or assisting terrorism, of concealing arms or explosives, or of other acts of illegal violence which have occurred and continued to occur in Northern Ireland.

Furthermore, it was an object of the IRA to cause antagonism between the security forces and the local community. To the extent that the IRA was successful, the area of possible suspects had been increased and it had become more difficult to distinguish between those who were merely obstructive or unco-operative and those who were in fact involved in unlawful activities. In consequence, the need to arrest for the purposes of interrogation had increased. The making of an arrest for the purpose of questioning might also be necessary following an explosion or shooting incident when there was reason to fear that delays caused by lack of co-operation to questioning in the streets gave a gunman an opportunity to take accurate aim at a member of the security forces.

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As regards detention and internment the respondent Government referred to the reasons stated by Mr. Faulkner on 9 August 1971 (see pp. 53-54 above). They submitted that they had always recognised that internment, involving as it did a restriction on the liberty of the subject and restrictions on the ordinary processes of law, should only be resorted to in conditions of gravest emergency. Consequently, during the period following Mr. Faulkner's statement, when consideration had been given to the making of an internment order, an order for detention under Regulation 11(2) of the Special Powers Regulations had commonly been made. Each detention order had been made on the personal authority of the Prime Minister of Northern Ireland in his capacity as Minister for Home Affairs and had been made to enable the police to complete their enquiries. A detention order might thus have been followed by an internment order in respect of the same person, or an individual in respect of whom a detention order had been made might have been held for a limited period and then released, without an internment order being made. Internment had been ordered only in cases when, after careful examination of a recommendation of a senior police officer, the Minister of Home Affairs for Northern Ireland was satisfied that the person concerned was at the time an active member of the IRA or had been actively implicated in the campaign of terrorism.

In the respondent Government's submission, the main reasons for exercising the extra judicial powers of arrest, detention and internment were to be found in the existence of three factors: the inability of the ordinary criminal courts to restore peace and order, the widespread intimidation of the population, and the difficulties for control presented by the ease to escape across a territorial border.

In support of these contentions the respondent Government referred to the report of the Diplock Commission which was presented in Parliament in December 1972. This Commission, composed of four members under the chairmanship of Lord Diplock, had been appointed to consider "what arrangements for the administration of justice in Northern Ireland could be made in order to deal more effectively with terrorist organisations by bringing to book, otherwise than by internment by the Executive, individuals involved in terrorist activities, particularly those who plan and direct, but do not necessarily take part in terrorist acts; and to made recommendations".

Analysing the basic problem the Diplock Commission had considered the minimum requirements of a judicial process, the effects of intimidation, possible changes in the rules of evidence and the need for detention. In regard to the proceedings before the ordinary courts of law the Diplock Commission had considered that the minimum requirements of a judicial process laid down by Art. 6 of the Convention should be observed, but had continued in relation to the situation in Northern Ireland:

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"The minimum requirements are based upon the assumption that witnesses to a crime will be able to give evidence in a court of law without risk of their lives, their families or their property. Unless the State can ensure their safety, then it would be unreasonable to expect them to testify voluntarily and morally wrong to try to compel them to do so.

This assumption, basic to the very functioning of courts of law, cannot be made today in Northern Ireland as respects most of those who would be able, if they dared, to give evidence in court on the trial of offences committed by members of terrorist organisations". (Diplock Report, paras. 15 & 16 at p. 9).

The Diplock Commission had then described the effects of intimidation in the following way:

"In Belfast and in Londonderry the IRA terrorist groups operate from those areas which are Republican strongholds. For a long time these were 'No-Go' areas into which neither the police nor the army entered. Since July 1972, the army have been able, at the cost of casualties, to maintain armed patrols in the streets, and to launch sporadic raids on premises to make arrests and to seize arms, explosives and other incriminating material. But they are not in a position to ensure the personal safety of individual citizens who reside in these areas or who have to pass regularly through them or near by. In the nature of things, it is the people who live in these areas who are most likely to have first-hand knowledge of who committed terrorist acts or planned and directed them. Yet these are the people who would put their lives, their families, their homes at greatest risk if it were suspected by members of the terrorist organisation that they had given information to the security authorities. The fear of revenge upon 'informers' is omnipresent. It is not limited to urban areas. It extends to those who live in relative isolation in the country exposed to terrorist raids launched from across the border. It extends to all classes of society. It is not an idle or irrational fear. It is justified in fact by many well authenticated instances of intimidation, and not least by the example, familiar to all other potential witnesses, of a witness who was shot dead in his home in front of his infant child the day before he was due to give evidence on the prosecution of terrorists. Even where a terrorist crime is committed outside the more dangerous areas and in the presence of less vulnerable eye-witnesses the pervading atmosphere of fear leads them to profess their inability to identify the culprits or to give any other evidence in court which would inculpate them. No-one wants to take the risk of being 'involved'. In

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the result, with increasingly rare exceptions, the only kind of case in which a conviction of a terrorist can be obtained by the ordinary process of criminal law is one in which there is sufficient evidence against the accused from one or more of three sources: (1) oral evidence by soldiers or policemen whose protection can be more readily ensured; (2) physical evidence, such as finger-prints, and (3) an admissible confession by the accused.

Inability to prosecute in other cases does not mean that there is not a continuing flow of information to the security authorities about terrorist organisations and terrorist crimes - much of it anonymous, but much too from known sources living within the Republican strongholds or even members of the IRA themselves. But this information is given only upon the understanding that the source will never be disclosed in any circumstances in which it could come to the ear of any member of the IRA. If there were any weakening of the implicit trust that this understanding would never be broken by the security authorities, these sources of information would dry up. The intelligence which they provide is operationally essential to the army's role in protecting life and property from terrorist crimes, and in enabling them to arrest terrorists red-handed or in other circumstances in which a conviction can be obtained without calling oral evidence from witnesses who are not in the army or the police.

Although what we have so far described has been confined to the effects of Republican terrorism upon the ability of the prosecution to induce witnesses to terrorist crimes to give evidence in a court of law, we repeat that this is not intended to convey that there have been no terrorist activities in Northern Ireland by extremists on the Loyalist side nor that there is not risk of similar intimidation of potential witnesses from this source too. If Loyalist terrorism were to increase, this would extend the area of the problem, it would not change its character. Mutatis mutandis what we have said is likely to be equally true of terrorism by extremist groups operating from areas which are comparable strongholds of Loyalist opinion". (Diplock Report, paras. 17 to 19, at pp. 9/10).

The Diplock Commission had continued to consider whether amendments could be made to the administration of criminal law in Northern Ireland which would enable terrorists to be brought to trial with a reasonable chance of conviction. It had found that this end could not be achieved by any changes in the rules of evidence and, in relation to the need for detention, had concluded as follows:

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"We are thus driven inescapably to the conclusion that until the current terrorism by the extremist organisations of both factions in Northern Ireland can be eradicated, there will continue to be some dangerous terrorists against whom it will not be possible to obtain convictions by any form of criminal trial which we regard as appropriate to a court of law; and these will include many of those who plan and organise terrorist acts by other members of the organisation in which they take no first-hand part themselves. We are also driven inescapably to the conclusion that so long as these remain at liberty to operate in Northern Ireland, it will not be possible to find witnesses prepared to testify against them in the criminal courts, except those serving in the army or the police, for whom effective protection can be provided. The dilemma is complete. The only hope of restoring the efficiency of criminal courts of law in Northern Ireland to deal with terrorist crimes is by using an extra judicial process to deprive of their ability to operate in Northern Ireland those terrorists whose activities result in the intimidation of witnesses. With an easily penetrable border to the south and west, the only way of doing this is to put them in detention by an executive act and to keep them confined, until they can be released without danger to the public's safety and to the administration of criminal justice.

Deprivation of libery as a result of an extra judicial process we call 'detention', following the nomenclature of the Detention of Terrorists (Northern Ireland) Order 1972. It does not mean imprisonment at the arbitrary Diktat of the Executive Government, which to many people is a common connotation of the term 'internment'. We use it to describe depriving a man of his liberty as a result of an investigation of the facts which inculpate the detainee by an impartial person or tribunal by making use of a procedure which, however fair to him, is inappropriate to a court of law because it does not comply with Article 6 of the European Convention. Lawyers, particularly English and Irish lawyers, tend to assume that the only safe evidence on which to convict a man upon a criminal charge is that which is admitted and elicited in accordance with the technical rules of procedure which are at present used in English and Northern Irish criminal courts and are stricter in favour of the accused than those followed in the Courts of other countries of Europe. But in fact there may be material available to the security authorities which would carry complete conviction as to the guilt of the accused to any impartial arbiter of common sense, although it is based on statements by witnesses who cannot be subjected to questioning by lawyers on behalf of the accused or even produced for examination by the arbiter himself.

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> If there is any process by which members of terrorist organisations can be identified with certainty their detention in custody does not involve the punishment of an innocent man, or even one who is guilty of what could properly be called only a 'political crime'. It means depriving of his liberty albeit by an extra judicial process, a criminal who has committed an offence which has been punishable by the common law of England and Northern Ireland for upwards of two centuries before the current emergency arose". (Diplock Report, paras. 27 to 29 at pp. 14/15).

The respondent Government invited the Commission to consider the exercise of powers of internment without trial and detention by the authorities in Northern Ireland in the light of the above considerations. They submitted that detention by the executive whether by means of detention or of internment orders, had been clearly within the margin of appreciation open to States as having been not only justified by the exigencies of the situation but necessary if those responsible for directing and planning terrorist acts were to be apprehended. In this connection the respondent Government also referred to the judgment of the European Court of Human Rights in the Lawless case where (in para. 36 of the Law) the Court gave reasons for holding that administrative detention under the Offences Against the State (Amendment) Act 1940 had been justified by the exigencies of the situation in the Republic of Ireland in 1957 which, in the respondent Government's submission, had been considerably less dangerous than the situation presently obtaining in Northern Ireland.

The respondent Government further submitted that not only the powers of detention and internment exercised after 9 August 1971 were justified by the exigencies of the situation, but that the manner in which, and the extent to which, those powers had been exercised were also justified by the exigencies of the situation then obtaining and were within the margin of appreciation which was accorded to States. In this respect they maintained that the margin of appreciation as to the means adopted in giving effect to a particular measure provided an even greater degree of discretion than that accorded to the choice of the measure itself, and they drew attention to the opinions of MM. Waldock and Sørensen in the Lawless case to that effect, quoting from para. 107 of the Commission's Report in the Lawless case (see Publications of the European Court of Human Rights, Series B, 1960-61, p.130).

The respondent Government furthermore dealt with the applicant Government's allegations that the Special Powers Regulations exceeded the exigencies of the situation during Phase I, and thus the margin of appreciation granted to States in assessing that emergency situation in that no, or only insufficient, safeguards had been provided for in order to avoid abuses of the procedures contemplated in these regulations. In this respect the respondent Government first referred to the existence of the Advisory Committee whose appointment and functions have already been described above (see page 26). They further rejected the applicant

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Government's detailed criticisms of the detention and internment procedures under the Special Powers Act and their comments in this respect have already been set out on pages 31 to 33 above.

The respondent Government recalled that the policy of internment had not been administered in an inflexible manner and that they had always recognised that internment should only be resorted to in conditions of the gravest emergency. Thus, following the enactment of the Northern Ireland (Temporary Provision) Act 1972 on 30 March 1972, when the United Kingdom Government assumed direct rule over Northern Ireland, the Prime Minister had set in process a policy of phasing out the policy of internment, as the security situation permitted. In making such decisions the Government had had to balance carefully the conflicting considerations of law and order on the one hand and the liberty of the subject on the other. In the event, the United Kingdom Government had decided that the policy of phasing out internment was desirable, if the attachment, fostered by intimidation, of the minority community to the terrorists was to be broken and a political climate encouraged in which the two communities could come together to work out a more permanent solution to the problems of Northern Ireland. But there had been risks involved and it was submitted that the extent of such risks was to be encompassed in the margin of appreciation accorded to States.

Still, by 7 November 1972, when the regulation governing detention and internment had been revoked, a total of 334 persons had been released from detention and 628 persons had been released from internment, leaving 119 persons detained under Regulation 11 and 167 persons interned under Regulation 12. Following direct rule on 30 March 1972, no new internment orders had been made, although it had been necessary to make 107 detention orders under Regulation 11(2).

c) The exigencies of the situation during Phases II and III (from 8 November 1972 onwards)

The respondent Government recalled that, in pursuit of their objective to bring internment to an end, as soon as the security situation permitted, and to consider how far the powers conferred under the Special Powers Act could be dispensed with, the Diplock Commission had been set up which had been asked to examine the situation and make proposals to meet the above objective.

However, before the Diplock Commission submitted their report in December 1972, the respondent Government had substituted, in November 1972, the existing system of internment and detention by a new system of detention for persons suspected of participation in terrorist activities which should include further safeguards for the protection of the individual. The new system had been established by the

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Detention of Terrorists (Northern Ireland) Order 1972 which had come into operation on 7 November 1972 and had repealed the regulations under the Special Powers Act providing for internment and detention (Regulations 11(2) and 12(1)) while maintaining those which provided for arrest and custody (Regulations 10 and 11(1)).

The proposals and recommendations of the Diplock Commission had finally formed the basis for the Northern Ireland (Emergency Provisions) Act 1973, which had entered into force on 8 August 1973. By the 1973 Act, the 1972 Order had been repealed but in the Schedule to the Act the provisions for interim custody during 28 days and detention had been maintained. The significant feature of the 1973 Act had been that the Secretary of State was now under an obligation to refer a detained person's case to the commissioner for review, when that person had been detained during one year since the making of the order, or six months since the last review of his case. Furthermore, under the 1973 Act, the emergency powers remained in force for the period of one year unless continued in force thereafter, by order of the Secretary of State, for a period not exceeding a year and such an order required the approval of both Houses of the United Kingdom Parliament. Both these features of the 1973 Act had been expressly mentioned in the notice of derogation of 27 August 1973 by the respondent Government to the Secretary General of the Council of Europe.

The respondent Government submitted that the safeguards provided in the 1972 Order and the 1973 Act were substantial (1). They repeated that it was because of the intimidation of the population by terrorist organisations, which had often made it impossible to obtain evidence to substantiate criminal charges against known terrorists, that the respondent Government had considered it necessary to retain some form of legal procedure outside the ordinary legal process for the detention of persons suspected of terrorist activities. Given that situation it was submitted that it had been inevitable that such a procedure necessarily involved provisions for keeping the identity of witnesses and sources of information secret. The most that could be done was for the procedure to be operated by independent persons of integrity and judicial experience who might satisfy themselves on the best evidence available that a person was involved in terrorist activities. In this respect the respondent Government referred again to the Diplock Commission's report as evidence for the justification of the procedure under the 1972 Order.

In particular, the respondent Government rejected four criticisms which the applicant Government had made on the new procedures in order to show that they exceeded the

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(1) See above pp. 47-48

exigencies of the situation during Phases II and III. These criticisms related to the obtaining of evidence by the commissioner in the detention procedures and contained the allegations that the commissioner might receive evidence inadmissible at common law and evidence obtained by torture, that there was no right to cross-examination, and that evidence might be received in the absence of the person detained (1). With regard to the first two criticisms concerning the obtaining of inadmissible evidence the respondent Government referred to the qualifications and calibre of the commissioner, and to the recommendations of the Diplock Commission and suggested that it could, in fact, be excluded that such qualified lawyers would act on evidence of the kind referred to by the applicant Government. As regards cross-examination it was true that no right to cross-examination existed but that, in fact, they did cross-examine. As regards the presence of the detainee, he was only excluded where it turned upon the safety of any person or the interests of public security, and subject to that a person in custody had the right to be present unless, of course, he misbehaved or engaged in disorderly conduct.

In conclusion the respondent Government pointed out that Art. 15 gave special powers to a State in a public emergency threatening the life of the nation. It was accepted by the applicant Government that this public emergency existed in Northern Ireland. The question was whether these powers should be exercised, whether they were needed. What those powers should be required decision by a Government which based that decision on its knowledge of local circumstances, on its experience in governing that part of its domain, and it made that decision in the light of its intelligence and security reports. Any Government had to have a margin of appreciation in dealing with its own emergency situation.

In the present case, the respondent Government in explaining what they had done, had submitted the report of the Diplock Commission. The Commission of Human Rights was certainly not bound to accept the conclusions reached by the Diplock Commission but, in the respondent Government's submission, it was cogent evidence of the extent of the emergency situation existing in Northern Ireland since August 1971.

On a final point, relating to the applicant Government's allegation that the letters of derogation did not contain any reference to Art. 14 of the Convention and that therefore Art. 15 could not be relied upon in connection with the allegations concerning discrimination, the respondent Government referred to their letter of 25 August 1971 in

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(1) See also page 48 above.

which no particular Article of the Convention had been mentioned but in which it had been made clear that Art. 15 was invoked to justify breaches of any Article arising from the exercise of the powers to detain or intern.

The respondent Government concluded that, in their submission, there had at all times material to this application in Northern Ireland a public emergency threatening the life of the nation within the meaning of Art. 15, and that the exercise of the powers of arrest detention and internment had been justified by the exigencies of the situation; accordingly, insofar as these measures might have constituted a breach of any Article of the Convention, the United Kingdom Government had been entitled to derogate from their obligations with regard thereto.

2. The applicant Government (VR 1, pp. 30-38, 67, 118-132, 136-140)

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As has been pointed out above (page 51) the applicant Government accepted that there were certain areas of agreement. The first was the onus of proof and that it was for the United Kingdom Government to justify that the measures adopted were required by the exigencies of the situation. The second area of agreement was that the applicant Government did not contest that there had been during the relevant period a public emergency in Northern Ireland within the meaning of Art. 15 of the Convention.

The issue under Art. 15 which the Commission therefore was called upon to decide was whether the exigencies of the situation required the measures taken with regard to arrest, detention and internment during the three different phases. The reasons given by the respondent Government for the use of extra judicial measures had in essence been three fold: It was claimed (1) that there had been widespread intimidation of witnesses, (2) that extra judicial remedies had been necessary to apprehend those responsible for directing and planning terrorist acts and (3) that there had been difficulties for control presented by the ease of escape across a territorial border.

With regard to the third claim the applicant Government submitted that the fact, even if it were established, that alleged terrorists could escape across the border between Northern Ireland and the Republic of Ireland did not in itself constitute a reason or a justification for interfering with a trial or for making a detention order, or for the procedures under the Special Powers Act.

With regard to the remaining claims, there were three matters which the Commission had to ascertain in the process of its investigation under Art. 28 of the Convention: first, whether the reasons given by the United Kingdom Government for the extra judicial powers were justified; secondly, if

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they were justified, whether all the extra judicial powers operated by the respondent Government were required by the exigencies of the situation; and thirdly, if extra judicial powers were required, whether adequate safeguards were included in these powers.

The applicant Government finally submitted generally that, where the parties were not in agreement, the Commission had itself to ascertain the facts, especially in respect of the allegation of intimidation, and could not in this instance rely on the report of the Diplock Commission as suggested by the respondent Government. For the Diplock Commission had obtained evidence mainly from members of the security forces in Northern Ireland, and the Commission of Human Rights might consider that its enquiry should go further and include, for instance, the evidence from lawyers and community leaders in order to ascertain whether or not there had been the level of intimidation which, in the respondent Government's submission, justified the extra judicial powers which it had obtained and used.

a) The situation during Phase I

(9 August 1971 to 7 November 1972)

The applicant Government maintained first, that there existed in Northern Ireland at the present time a far more serious situation than existed on 9 August 1971 and during the whole of the first phase. This was borne out by the figures which the respondent Government themselves had given. Thus, the present situation had begun to climax in August 1968 when terrible rioting had taken place and civil disturbances had begun. From August 1969 to 9 August 1971, when internment had been brought in, there had been 17 military and 33 civilian deaths, and comparable results were shown from the figures for bombing and injuries. Then, between 10 August 1971 and 7 November 1972, a 14 months' period, there had been 168 military and 264 civilian deaths; and finally, from 8 November 1972 to 31 August 1973, there had been 65 military and 97 civilian deaths. These totalled in the first two years, to August 1971, 50 people having died in Northern Ireland; between August 1971 and November 1972, 432; and between 8 November 1972 and 31 August 1973, 162. Figures for bombing and injuries again were comparable.

Notwithstanding this fact, in the interval which elapsed between August 1971 and November 1972, some of the measures then existant had been revoked, some of them had been changed, and now, in a much more serious situation, the authorities in Northern Ireland had much less extensive powers of detention and internment than before. It must follow, in the applicant Government's submission, that the exigencies of the earlier situation did not require that the authorities in Northern Ireland should have operated all the Regulations which had then been in existence.

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Secondly, even if it were accepted that there had been, at that time, intimidation on such a scale as to justify internment and detention without trial or the necessity to apprehend alleged terrorists against whom evidence in an ordinary court would be ineffective, the respondent Government and the authorities in Northern Ireland did not require all four extra judicial remedies: the 48-hour interrogation under Regulation 10, the unlimited power of arrest under Regulation 11(1), the detention order procedure under Regulation 11(2) without the advisory committee, and the internment order procedure under Regulation 12 of the Special Powers Regulations.

The third submission related to Regulation 10 which authorised the deprivation of liberty of a person whom the security forces wished to interrogate either in respect of his own acts or in respect of the acts of others. Thus, Regulation 10 did not restrict the arresting authorities to arrest persons for interrogation irrespective of whether or not they were suspect. It had been, to that extent, an excessive power.

The final submissions concerned the safeguards which existed during this phase, and the applicant Government first referred to the European Court's judgment of 1 July 1961 in the Lawless case where the Court had found that the legislation considered in that case, namely the Offences against the State (Amendment) Act of 1940, had been "subject to a number of safeguards designed to prevent abuses in the operation of the system of administrative detention" (see "Lawless" case (Merits). Judgment of 1 July 1961, para. 31 of THE LAW, at p. 58). In the applicant Government's submissions these safeguards had been entirely lacking in the first phase. There had been no constant supervision by Parliament of the operation of the legislation. There had been no detention commission with power to order the release of a detainee, since the advisory committee which had been established in relation to the internment procedure had no such power; furthermore, it had no function when a detention order was made or in relation to Regulations 10 and 11(1) of the Special Powers Regulations. Such controls were, however, necessary as innocent people had been interned wrongly under the above procedures. In this respect, the applicant Government submitted that, although the Commission should not accept the conclusions of the Diplock Commission in relation to the level of intimidation, it should accept the finding of that Commission at p. 15, para. 32, of their report which reads as follows:

> "It is now recognised by those responsible for collecting and collating this kind of information that when internment was reintroduced in August, 1971, the scale of the operation led to the arrest and detention of a number of persons against whom suspicion was founded on inadequate and inaccurate information".

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This was borne out by the fact that, in the subsequent phases when the respondent Government did bring in some procedures, 135 cases had resulted in people being let out by the appeal machinery. It followed that there must have been many people also in internment in the first phase who would have been released if there had been a proper machinery.

b) The situation during Phase II and III

(from 8 November 1972 onwards)

The applicant Government submitted that the measures adopted by the respondent Government during the second phase under the Detention of Terrorists Order 1972 had equally been in excess of those required by the exigencies of the situation. Indeed, these did not require the three extra judicial remedies which were then in existence, namely Regulation 10, Regulation 11(1) and the new detention procedures. Furthermore, Regulation 10 still existed during that phase and was operated to the effect that non-suspects could be interrogated for 48 hours notwithstanding the fact that this machinery was apparently only required to interrogate suspects. Finally, the new safeguards, if they could be so described, were inadequate.

With regard to the last allegation the applicant Government maintained that, although the Appeal Tribunal had obtained the power to order the release of the detainee, it could hear and receive inadmissible evidence, including such evidence which would have been obtained by means which might be considered as amounting to torture and ill-treatment. In this connection, the applicant Government drew attention to the report of the Parker Committee, presented to Parliament in March 1972, which had investigated the so-called "five techniques". It was stated there that as a result of interrogation in depth the names of 700 members of the IRA had been obtained. Thus the information obtained as a result of those techniques, which in the applicant Government's submission involved a breach of Art. 3 of the Convention, must have been used to obtain the internment of suspected terrorists.

The same criticism applied to the situation prevailing during the third phase under the Northern Ireland (Emergency Provisions) Act 1973. It was true that an amelioration had occurred in that Regulation 10 was now revoked and so was Regulation 11(1). Otherwise, however, the extra judicial powers existing under the 1973 Act were more or less the same as those existing in the second phase.

As regards the safeguards during that third phase it was significant that the 1973 Act, under Part I dealing with the trial and punishment of certain scheduled offences expressly declared inadmissible evidence obtained under torture or inhuman or degrading treatment (Section 6(2) of

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the 1973 Act), while no mention thereof was made in Part II of the Act dealing with detention. Thus, notwithstanding the fact that the judges who heard cases under Part I of the Act were, like the commissioners hearing detention cases, experienced judges, the legislature thought fit to make absolutely certain that in proceedings in criminal cases before ordinary courts statements obtained under torture would not be admissible. It was highly significant that such safeguard was not put in Part II of the Act dealing with detention. In any event, even Section 6(2) of the Act only made inadmissible statements obtained under torture by the accused, but not such statements obtained by third parties. Therefore, the suggestion by the respondent Government that the commissioners dealing with detention cases were experienced judges and would act only if it was safe to do so, did not remove the objections which the applicant Government had made in this respect. In any event, it was difficult to see how the commissioner would know whether or not a statement had been obtained under torture.

Furthermore, in both phases there was no right to cross-examination and evidence could be obtained in the absence of the appellant. It was accepted that, in fact, cross-examination of witnesses was permitted, but no right to cross-examine was given in the procedures complained of. In this connection, the applicant Government referred to a passage in the transcript of the hearing before Commissioner Lewis in the case of T. 58 (p. 141) where the commissioner was having a discussion with the detainee's counsel. It emerged from this that, on the basis of two documents which gave the date to the commissioner but not to the accused, about a particular incident, the details of which could not be given to the accused, the accused was found guilty.

The applicant Government concluded that the new safeguards were therefore inadequate and that, even if a power of extra judicial detention had been warranted, the exigencies of the situation did not require legislation which contained such inadequate safeguards.

As regards the margin of appreciation, the applicant Government submitted that it was necessary for the Commission to examine whether or not the level of intimidation which the respondent Government invoked, existed and whether or not the powers were necessary in the exigencies of the situation. In that connection, it was not sufficient for the Commission to rely on the report of the Diplock Commission and find that there was intimidation of witnesses, that the ordinary courts could not work, and that therefore internment without trial or some form of extra judicial remedies were required. The European Commission should itself ascertain the facts in this respect and, if it found that much weight should be given to the

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Diplock Report, then it should indicate what witnesses of the applicant Government it would like to hear. It was true that States had a certain margin of appreciation in assessing the extent of an emergency situation and the measures that were required to cope with that emergency, but this margin of appreciation was not a generous one as had been suggested by the respondent Government.

In summarising their position the applicant Government submitted that, whatever margin of appreciation the respondent Government might have had in the situation existing in August 1971, the exigencies of the situation could never have justified the measures taken in the first phase. In the second and third phases, the exigencies of the situation did not require the sort of detention procedures which, even if extra judicial remedies were necessary, had been operated without adequate safeguards.

On a final point, the applicant Government submitted that, in respect of the alleged breach of Art. 14 of the Convention, the respondent Government had failed, in any of its notices of derogation under Art. 15(3) of the Convention, to satisfy the conditions under that provision. In all their notices, dated 20August 1971, 29 January 1973 and 27 August 1973, the respondent Government had informed the Secretary General of the Council of Europe that it was exercising extra judicial powers of arrest, detention and internment and had drawn attention to the relevant legislation. They did not, however, inform the Secretary General that they had carried out, or would in fact be forced to carry out, these measures in a discriminatory way in breach of Art. 14 and that they were therefore having to derogate under that provision.

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II. ESTABLISHMENT OF THE FACTS AND OPINION OF THE COMMISSION

A. INTRODUCTION

1. The legal framework operated in Northern Ireland in relation to powers of arrest, detention and internment

a) From 9 August 1971 to 7 November 1972 extra judicial powers of arrest, detention and internment were operated in Northern Ireland (first by the Northern Ireland Government for which the respondent Government was internationally responsible and after 30 March 1972 by the respondent Government directly) under the Civil Authorities (Special Powers) Act 1922 and the Regulations and Orders made thereunder. This legislation contained four powers by which a person could be deprived of his liberty. These were (1) arrest for interrogation during 48 hours (Regulation 10); (2) unlimited arrest (Regulation 11 (1)); (3) detention (Regulation 11 (2)); and (4) internment (Regulation 12 (1)).

b) On 7 November 1972 the Detention of Terrorists (Northern Ireland) Order came into operation. This Order, made under the Northern Ireland (Temporary Provisions) Act 1972, provided two new procedures for detention and internment. Apart from the powers under Regulations 10 and 11 (1) of the Special Powers Act, the respondent Government now operated the powers of (1) interim custody during 28 days (Art. 4); and (2) detention (Art. 5).

c) The Special Powers Act and the Detention of Terrorists Order were both repealed on 8 August 1973 by the Northern Ireland (Emergency Provisions) Act 1973. Extra judicial powers of arrest and detention have from then onwards been operated under that Act. These powers are (1) arrest and detention of terrorists for 72 hours (Section 10); (2) interim custody for 28 days (Schedule 1, para. 11); and (3) detention (Schedule 1, para. 12).

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2. The character of the submissions under Arts. 5, 6 and 15 of the Convention

With regard to the legislation in force in Northern Ireland, the applicant Government have divided the period under consideration in the present case into three phases corresponding to the time of operation of the Special Powers Act, the Detention of Terrorists Order and the Emergency Provisions Act. The respondent Government accepted this division as useful. The Commission heard the arguments accordingly. (However, with regard to establishing the other relevant facts the Commission considers that it would be unrealistic to examine the situation in such phases since it was a single complex, although the situation was not the same at all times. There were furthermore several different periods of Government control; the original Northern Ireland authorities, Direct Rule from 1972, and the changes following that measure.)

a) Under Art. 5:

i) Phase I. The applicant Government have alleged that in the period which began on 9 August 1971 and ended on 7 November 1972 the four powers contained in the Special Powers Act were not in conformity with Art. 5 (1) of the Convention. Furthermore, the exercise of these powers did not satisfy the guarantees laid down in Art. 5 (2) to (4) in that (a) persons arrested were not informed promptly of the reasons for their arrest or of any charges against them as guaranteed under Art. 5 (2); (b) arrested or detained persons were not brought promptly before a judge or other officer authorised by law to exercise judicial power and were not tried within a reasonable time or released pending trial within the meaning of Art. 5 (3) read in conjunction with Art. 5 (1)(c); (c) detainees were not entitled to take proceedings by which the lawfulness of their detention was decided speedily by a court and their release ordered if the detention was not lawful. Finally, the detainees had no enforceable right to compensation in accordance with Art. 5 (5) of the Convention.

ii) Phase II. The applicant Government further submitted that during the time that the Detention of Terrorists Order was in force (from 7 November 1972 to 8 August 1973) the existence of Regulations 10 and 11 (1) under the Special Powers Act as well as the new detention procedures were contrary to Art. 5. In addition the operation of these regulations and the 1972 Order were breaches of Art. 5 (1) to (5) for the reasons already given.

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iii) Phase III. Referring to the reasons given with regard to their allegations in respect of the Special Powers Act and the Detention of Terrorists Order, the applicant Government submitted that the powers operated from 8 August 1973 onwards under the Emergency Provisions Act also were in breach of Art. 5. They stated that the 1973 Act provided only for insignificant changes in the procedure laid down in the 1972 Order.

iv) The applicant Government submitted that the Commission was required under Art. 19 of the Convention, to ensure the observance of the engagements undertaken by the High Contracting Parties in the present Convention, and under Art. 31 to state its opinion whether the facts found disclose a breach by the State concerned, of its obligations under the Convention. This applied to complaints by an applicant party or Government even in respect of a situation which may have ceased, unless the complaints had been concluded by friendly settlement procedures, and this argument was supported by the First Cyprus Case.

As regards the issue whether legislation passed subsequent to the decision on admissibility formed part of the issues declared admissible, the applicant Government submitted that the Commission should hold itself competent to examine facts which occurred during the proceedings and constituted a mere extension of the facts complained of at the outset.

v) The respondent Government did not, at the oral hearing from 2 to 5 October 1973, pursue their argument made in their written pleadings that the legislation passed subsequent to the Commission's decision on admissibility did not form part of the issues declared admissible and should therefore be ignored.

vi) However, the respondent Government maintained that the legislation existing up to 8 August 1973 had been revoked and the Commission should therefore refrain from adjudicating on it. There was nothing in Arts. 19 or 31 or in the First Cyprus Case suggesting that the Commission should nevertheless have to adjudicate on this revoked legislation. Furthermore, there was no support for the argument that only legislation which had been repealed as a result of friendly settlement negotiations should be exempt from the Commission's further examination, as it would delay and impede observance of the rights guaranteed by the Convention in the case where a Contracting Party was prepared and willing of its own accord to repeal such legislation.

vii) As to the subsequent legislation and insofar as the application was seen to concern a continuing situation of detention without trial, the respondent Government relied upon

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the circumstances of the emergency and the powers given under Art. 15 of the Convention for a government, in such circumstances, to resort to extrajudicial measures (see p. 5 below).

viii) Phase I. The respondent Government neither admitted nor explicitly denied that the exercise of the said powers of arrest, detention and internment was inconsistent with the provisions of Art. 5. In particular, they stated that these powers were only exercised against persons who were suspected of having committed or having been involved in acts of terrorism. Moreover, these did not replace the procedures available under ordinary criminal law but supplemented them, the ordinary processes of the criminal law having been available and used at the same time. Consequently, whenever it had been possible to provide evidence sufficient to secure a criminal conviction, those responsible had been charged under the criminal law.

ix) Phase II. The respondent Government's submission must again be understood to the effect that the exercise of the said powers was not in breach of any of the provisions of Art. 5. With regard to Regulations 10 and 11 (1) of the Special Powers Regulations they referred to their submissions concerning the previous period. As to the new detention procedures they submitted that a person under an interim custody order had to be released after 28 days, at the latest, unless the Chief Constable referred the case to a commissioner for determination. The commissioner could issue a detention order after a hearing of the case but such an order was subject to appeal to the Detention Appeal Tribunal.

x) Phase III. The respondent Government submitted that the safeguards contained in the 1973 Act had been further increased so that the exercise of the above powers clearly did not constitute a breach of Art. 5. They pointed out that the procedures before the Commissioners and the Detention Appeal Tribunal were identical with those under the Detention of Terrorists Order but that there was now an ex officio review by the commissioner of detention cases where the detention had lasted for one year since the making of the order or six months since the last review.

b) Under Art. 6:

i) Phase I. The applicant Government submitted that Art. 6 (1) has been violated by reason of the absence of any adequate detention procedures during the operation of the Special Powers Act. They accepted that during that phase the exercise of detention and internment was in fact a form of preventive detention and that the decision to detain and intern under the Special Powers Act was not a determination of a criminal charge within the meaning of Art. 6 (1). It did, however, involve the determination of a civil right, namely the right to liberty.

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ii) Phases II and III. The applicant Government also submitted that the procedures under the Detention of Terrorists Order 1972 and the Northern Ireland (Emergency Provisions) Act 1973 before a commissioner and the Detention Appeal Tribunal amounted, in the first place, to the determination of a criminal charge within the meaning of Art. 6 of the Convention, namely the crime of "terrorism" and were in breach of Arts. 6 (2) and (3)(a), (b) and (d).

In the alternative, they amounted to a determination of the detainee's civil rights and were inconsistent with Art. 6 (1).

iii) Phase I. The respondent Government submitted that the powers concerned involved an executive or administrative act which might give rise to issues under Art. 5, but not under Art. 6, as they fell outside the scope of that provision. Moreover, Art. 6 did not accord a right of access to courts.

iv) Phases II and III. The respondent Government submitted again that the procedures complained of fell outside the scope of Art. 6, in that they did not result in a criminal conviction nor did they relate to the detained person's civil rights and obligations.

c) Under Art. 15 in conjunction with Arts. 5 and 6:

Both parties agree on the existence of an emergency situation within the meaning of Art. 15 during the period material to the application. However, the applicant Government, referring to the respondent Government's notices of derogation dated 20 August 1971, 23 January 1973 and 27 August 1973, claimed that the exigencies of the situation did not require the particular measures taken by the respondent in derogation of their obligations under the Convention.

Both parties further agreed that the burden of proving the extent of the emergency and the exigencies of the situation lay on the respondent Government.

i) The respondent Government submitted that, at all times material to the application, it had been necessary to exercise extrajudicial powers of detention and internment by reason of the existence of mainly three factors: the inability of ordinary criminal courts to restore peace and order, the widespread intimidation of the population, and the difficulties for control presented by the ease of escape across a territorial border. This was borne out by the findings in

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the Diplock Report. Furthermore, the legislation concerned had been endowed with adequate safeguards so as to avoid abuses of the procedures contemplated thereby. Finally, the Commission had always left a margin of appreciation to States in assessing the emergency situation and in deciding on the measures required to cope with that situation. In the respondent Government's submission, they had not at any stage exceeded that margin of appreciation.

ii) The applicant Government suggested that the Commission should examine itself, whether or not during each of the three phases, the reasons given by the respondent Government for the extrajudicial powers were justified at all, whether or not all the extrajudicial powers operated by them were required by the exigencies of the situation, and, finally, whether or not adequate safeguards were included in these powers.

They further submitted that, during the time from 9 August 1971 to 7 November 1972 (Phase I), the operation of the powers had not been necessary in the circumstances of the situation then prevailing which had been far less serious than the present situation where the powers of detention and internment were less extensive than they were before. Moreover, it had not been necessary to operate all four powers of arrest, detention and internment; finally, the safeguards existing during Phase I had been wholly inadequate.

The same submissions were made in respect of the subsequent time (Phases II and III) where the exigencies of the situation did not require the sort of detention procedures which, even if extrajudicial remedies were necessary, had been operated without adequate safeguards.

3. The competence and duty of the Commission to consider issues arising out of laws, regulations and practices which have been modified or replaced or have been introduced subsequent to the decision on admissibility

a) Revocation of measures

The Commission will recall in greater detail, in relation to the allegations under Art. 3 of the Convention, how it views its functions under Arts. 19 and 31 and how these have been expressed in the First Cyprus Case. In the present context it is sufficient to observe that the powers of detention and internment under the Special Powers Act were repealed and replaced by similar procedures laid down in the Detention of Terrorists Order 1972 and that the powers of arrest in the Special Powers Act and the procedures in the 1972 Order were repealed and replaced by the Emergency Provisions Act on 8 August 1973. However, the substance of

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the procedures laid down in the 1972 Order were retained by the 1973 Act. It can therefore not be said that the revocation of the measures concerned has terminated the practice of detention without trial, although the Commission recognises, of course, that with the new legislative measures, efforts were made by the respondent Government to improve the safeguards for the protection of the individual. It will therefore remain to be examined to what extent the requirements of Art. 5 were met at the relevant stages. In reaching this view of its competence and obligations under the Convention, the Commission has had particular regard to the fact that the interests of many individuals are involved and the applicant Government has a legal interest and, under the Convention, a right to bring the alleged breach of the rights of these individuals before the Commission with a view to obtaining its opinion. A breach of the rights of individuals is normally not redressed merely by the revocation of the measures. Such a revocation does not do away with breaches already performed. Moreover, the main ground for complaint under Art. 5 - deprivation of liberty for reasons not recognised in the Convention (if that were found to be the case) - would remain in essence the same throughout all phases, and would not be affected by replacing, partly or wholly, one set of provisions for extra judicial measures by another set.

The Commission also observes that it is not in dispute between the parties that effective access to the ordinary courts of law, as a general rule, was not available to the individuals concerned for challenging the reasons for their deprivation of liberty.

b) Effect of decision on admissibility

It is true that in its decision on admissibility the Commission declared admissible, inter alia, the allegation that internment without trial and detention under the Special Powers Act 1972 and the Regulations made thereunder constitute an administrative practice in breach of Arts. 5 and 6 of the Convention in connection with Art. 15. The Detention of Terrorists Order 1972 came into existence some weeks after the hearing on admissibility and the Emergency Provisions Act 1973, which replaced the previous emergency legislation, entered into force about two months prior to the hearing on the merits of the application.

However, the Commission is investigating, at the request of the applicant Government, the extrajudicial powers of internment and detention. It would frustrate the role of the Commission under Art. 19 if it could not examine legislation which was essentially similar to impugned legislation replaced in the course of its proceedings. The Commission has, under Art. 28, to ascertain the facts after it has accepted a

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petition. One of the facts in this case which it has to ascertain is, of course, whether any new legislation bearing on the matters declared admissible has been enacted, and if it finds that this has been so, it must state its opinion on this fact. This interpretation of the Convention is clear from its wording and gets support from the judgment of the European Court of Human Rights in the Matznetter Case (Judgment of 10 November 1969, p. 31), which concerned subsequent facts rather than laws. In that case the Court recalled that it had in the cases of Lawless and of Neumeister taken account of facts which were subsequent to the application but which were directly related to the facts covered by it. The Court then found, moreover, that it was in accordance with national and international practice that a court should hold itself competent to examine facts which occurred during the proceedings and constitute a mere extension of the facts complained of at the outset. This reasoning applies by analogy where subsequent legislation replaces that in force at the time of the facts covered by the original complaint.

B. ESTABLISHMENT OF THE FACTS

1. Preliminary observations

The Commission will first seek to establish how the powers in question were exercised, the purpose being to express in its opinion whether or not, or to what extent, the requirements of Art. 5 have been met. The applicability of Art. 6 and the defence of the respondent Government under Art. 15 will be dealt with separately.

The Commission observes that many of the arguments submitted by the parties on the extrajudicial powers and their application concern their reasonableness and their necessity in the situation having prevailed at the relevant times. This includes the manner in which the powers have been practised, what they meant in fact and how they compared with the normal procedures of the law. Consequently, the differences between the parties in this part of the case do not relate so much to facts as to their evaluation, in particular concerning the justification for the use of extrajudicial powers during the emergency prevailing in Northern Ireland at all material times.

The purpose in the following is to set out the facts retained by the Commission as being relevant for its opinion on the issues under Arts. 5 and 6 in conjunction with Art. 15 of the Convention. Some repetition or overlapping with other parts is unavoidable. It is in the first place necessary to describe the extrajudicial measures themselves ("special powers" and equivalent expressions) as well as an account of how and to what extent they were practised during the different phases. For this purpose the laws and regulations as such are the basic facts to consider, but not the only facts. It is in their application that the question of violation of the Convention normally arises and has arisen in this case.

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Accordingly, the Commission will in its presentation of the facts first deal with these matters. Next, it will also deal briefly with the security problem in Northern Ireland causing the authorities to resort to the measures described. A further description and analysis of the scope and nature of this emergency is given in Chapter 2, dealing with the issue of discrimination, where the facts are established in more detail relevant to that issue and on the basis of the taking of a considerable amount of direct evidence by the Delegates, whereas the following sections are mainly based on material submitted by the Parties during the pleadings before the whole Commission.

2. The extrajudicial measures ("special powers") and their application during the different phases

a) The Northern Ireland (Special Powers) Act 1922, and regulations made thereunder, were put into operation on 9 August 1971. These regulations, when made, had been laid before the Houses of Parliament of Northern Ireland who then had the opportunity of requesting the Governor of Northern Ireland to annul them.

By virtue of Regulation 10 under the Act, a person could be arrested and held in custody for 48 hours for the purpose of interrogation, and under Regulation 11 (1) for the same purpose without any apparent limitation of the time. It is clear, however, that in fact the maximum period for which any person was held under Regulation 11 (1) was 72 hours. The Commission sees no reason to doubt the explanation given by the respondent Government in this respect (and it is also to an extent supported in the evidence obtained in relation to the allegations under Art. 3 of the Convention). Moreover, it seems (from the evidence obtained in the cases under Art. 3) that the same person could first be arrested by troops under Regulation 10, and subsequently held by the police by virtue of a new decision under Regulation 11 (1). It would be possible to hold him for five days and nights altogether for interrogation. However, no arguments have been made on this point. Arrest under Regulation 10 did not in itself require any suspicion on the part of the arresting officer that the individual concerned had committed an offence, whereas under Regulation 11 (1) he would have to be suspected of being involved in terrorist activities.

The Commission recognises that totally innocent persons could be arrested under these provisions. First, a person could be arrested for interrogation with regard to activities of others and second, the latter persons could be arrested on information obtained from the former.

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Depending on the information obtained during such interrogation a person could then be detained on suspicion (Regulation 11 (2)) in order to enable the police to complete their inquiries. G.3 when speaking from memory said that the length of this period as a matter of practice was 28 days (VR 11, p. 142).

When consideration was being given for the making of an internment order, orders for detention under Regulation 11 (2) were commonly made. During the period in consideration a total of 1,252 persons were at one time or another subject to detention orders. Originally each detention order was made on the personal authority of the Prime Minister for Northern Ireland in his capacity as Minister for Home Affairs. Following Direct Rule on 30 March 1972 the detention orders were made by the Minister of State or by the Under-Secretary of State in the Northern Ireland Office.

In the event that the police could produce evidence which was sufficient for securing a criminal conviction in a court of law, charges were brought and the detainees were entitled to receive at least 24 hours' notice in writing of the nature of the charge preferred against them.

It appears that the Special Powers Act Regulations gave no right to apply for release on bail unless the Minister so permitted.

If the detainee was not released or charged his internment was ordered under Regulation 12 (1) by the Minister on the recommendation of a superior police officer. G 3 said that the police felt that they should have information from at least two different sources before the recommendation was made. The Minister was, during the time of operation of these powers, satisfied that in 796 cases the person concerned was at the time an active member of the IRA or had been actively implicated in the campaign of terrorism.

Regulation 12 under the Special Powers Act also provided for the appointment of an Advisory Committee to hear any representations which any person subject to an internment order might make against the order in his case and also to consider whether an internee could be safely released. It was also requested to conduct a systematic review of the problem of all persons interned whether or not they had made representations. During the relevant period the Committee was chaired first by a Northern Ireland County Court Judge and later by a Deputy Judge of the Crown Court from Oxfordshire, assisted by two lay members.

The internee had no right to appear or have legal representation before the Committee. However, the

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internee was always in fact allowed to appear and be interviewed if he wished and asked if he had anything to say about the allegation that he had connections with the IRA. Furthermore, he had no opportunity to test by way of examination or otherwise the grounds upon which the decision to intern him was made; nor did he have the right to examine witnesses who gave information or evidence against him or to call his own witnesses.

On the other hand, the Committee required the security forces to produce the information which was in their possession including copies of any statement implicating the internee in terrorist activities. Statements of evidence against the internee did not reveal the name or the personal details of the maker of the statement. It may be inferred that the Committee relied on statements which were not admissible in a court of law (see Part Two of this Report) when determining whether a person should be recommended for further internment. It does not appear to be in dispute that "every effort" was in fact made to trace witnesses proposed by the internee, although in law he could not require it.

The Advisory Committee had no power to order the release of the internee. Such decision would be taken by the Minister.

If the powers of arrest, detention and internment were exercised in good faith and not arbitrarily they could not as a general rule be questioned in the courts. Where proper procedures for making an internment order, for example, had not been complied with, the courts would reserve the right to hold the exercise of the power to be invalid. The only other possible basis on which the jurisdiction of the courts might be invoked was where it could be proved that the decision to detain or intern was not made bona fide or that the alleged suspicion upon which the person was arrested or imprisoned did not exist or was formed in bad faith and not for the purpose of preserving peace or maintaining order.

On assuming direct responsibility for the Government of Northern Ireland in March 1972, it was the announced objective of the respondent Government to bring internment under the Special Powers Act to an end as soon as the security situation permitted and to consider how far the powers conferred under that Act could be dispensed with. On 7 April 1972 the immediate release of 26 detainees and 47 internees was announced, and by the end of the period under consideration the total number of men released from detention was 334 and of men released from internment 628. However, the respondent Government claimed that the effectiveness of the normal processes of law to counter terrorism continued to be impeded and could

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not have ended the system of internment without putting something in its place. Arrangements were then made for a new system which would include further safeguards for the protection of the individual. The Diplock Commission had been set up to advise on measures required to deal with terrorism.

b) Without waiting for the report of the Diplock Commission however, the respondent Government put into operation on 7 November 1972 the Detention of Terrorists (Northern Ireland) Order 1972. This order, which was of a temporary nature, revoked and replaced the forms of detention under Regulation 11 (2) and of internment under Regulation 12 of the Special Powers Act. It did not interfere with the power of arrest as contained under Regulation 10 and did not repeal or replace the total power of arrest and custody under 11 (1). The right to apply for bail with permission of the Minister was revoked.

The order defined terrorism as "the use of violence for political ends" and included "any use of violence for the purpose of putting the public or any section of the public in fear", and proceeded to give certain powers. The first power was given in Art. 4 which provided that where it appeared to the Secretary of State that a person was suspected of having been concerned in the commission or attempted commission of an act of terrorism or in the direction, organisation or training of persons for the purpose of terrorism, he might make an interim custody order. It has not been contested that an innocent person might be so detained on the suspicion, which did not need to be a reasonable suspicion, of a person unknown to him. The person concerned could not be detained under such order for a period of more than 28 days unless his case was referred by the Chief Constable to a commissioner for determination and his detention under the order then continued until the commissioner enquired into the case. The Secretary of State could at any time release a person held under an interim custody order. The existing internment or detention orders were automatically converted into interim custody orders. In effect all cases were referred to the commissioners. The commissioners appointed under the Act all had at least ten years' judicial experience. A commissioner had to carry out an enquiry into the case; he had to decide first whether or not he was satisfied that the person had been concerned in the activity for which he had been detained by the Secretary of State and second whether his detention was necessary for the protection of the public. Having completed his enquiry the commissioner might make a detention order for the detention of the person in question or otherwise direct his discharge. Any decision of a commissioner to release a detained person was binding on the Secretary of State. It was provided that not less than three days before a detained person was to appear before a commissioner the detainee must be served with a statement in writing as to the nature of the terrorist activities which were to be the subject of the enquiry.

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Proceedings before the commissioner took place in private. Legal aid for costs could be granted by the commissioner and the arrested person (the respondent) might be legally represented. He had to be present in person unless the commissioner directed his removal on grounds of security or his disorderly conduct. Although the commissioner might require the respondent to answer any questions put to him there was no provision whereby the respondent or his counsel might as of right examine or have examined witnesses against him. However, according to the respondent Government, cross-examination of witnesses took place. In the event that the commissioner, in the interests of security, heard evidence in the absence of the respondent and his representative, they had to be informed, insofar as the need of public security and safety of persons permitted, of the substance of the matters dealt with during that part of the proceedings. The order did not provide any opportunity for the respondent of examining or testing the evidence given in his absence. Further the commissioner might receive oral, documentary or other evidence notwithstanding that such evidence would be inadmissible in a court of law. In the applicant Government's submission in this connection such statements purporting to be evidence against the respondent could have been obtained from the respondent or any other person as a result of inhuman treatment.

Provision was also made for the Secretary of State to refer a case at any time for review by the commissioner and also at any time to direct the release of a detainee with or without conditions.

With the introduction of these new procedures a Detention Appeal Tribunal had also been set up. A person against whom a detention order was made had a right of appeal within 21 days to the tribunal. A member of the tribunal had similar legal qualifications to those required of a commissioner. The tribunal should, if they were of the opinion that the commissioner's decision should be set aside, allow the appeal and direct the discharge of the appellant; otherwise they should dismiss the appeal. A notice of appeal should indicate the grounds of appeal and, where appropriate, the nature of any fresh evidence which the appellant wished to tender at the hearing of the appeal. The appellant was entitled to receive a copy of the record of the proceedings before the commissioner excluding any part of the proceedings which in the interests of security took place in the absence of the appellant. The hearing of the appeal took place in private and the appellant might receive legal aid for costs and might be represented legally, and subject to the interests of security he was entitled himself to be present at any time when fresh evidence was tendered

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with the consent of the tribunal. It has not been contested that the tribunal only received fresh evidence in exceptional circumstances. Finally it appears that the tribunal might receive evidence which would not be admissible in a court of law.

c) On 8 August 1973 the Northern Ireland (Emergency Provisions)Act 1973 came into operation. It would remain in force one year unless continued in force thereafter by the Secretary of State and his order is required to be approved by Parliament.

The Special Powers Act, and Regulations made thereunder, and the Detention of Terrorists Order were repealed and replaced. This in particular meant that Regulations 10 and 11 (1) were repealed. In Part II of the 1973 Act it is provided that any constable might arrest without warrant any person whom he suspected of being a terrorist. The person arrested should not be detained for more than 72 hours after his arrest.

The other procedures laid down in the 1972 Order were retained in substance. One change in the procedure before the commissioner was that the respondent should be served with a written statement as to the nature of the terrorist activities which were to be the subject matter of the enquiry not less than seven days (instead of three days) before the hearing. Further provision was also made that the Secretary of State should refer to the commissioner the case of any person who had been detained for one year since the making of a detention order or for six months from the determination of the most recent review by the commissioner.

The 1973 Act was also in Part I concerned with the trial and punishment by courts of certain offences. Its Sec. 6 (1) permits a statement made by the accused to be given in evidence by the prosecution, but puts an onus on the prosecution to show that the accused was not subjected to torture or to inhuman or degrading treatment in order to induce him to make the statement. Part II does not contain any corresponding safeguard in respect of the procedures for detention.

The Act was extended by (Continuance) Orders of 17 July 1974, 17 December 1974, and 27 June 1975, and has now been amended by the Northern Ireland (Emergency Provisions) (Amendment) Act 1975 which was enacted on 7 August 1975 and came into operation on 21 August 1975 (2).

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(1) See the respondent Government's counter memorial, p. 77

(2) Letter giving notice of further derogation under Art. 15(3), 19 19 September 1975 from the Permanent Representative of the United Kingdom to the Secretary General of the Council of Europe.

By 5 September 1973 the commissioners had reviewed 579 cases. They ordered the release of 126 persons. By 3 October 1973, 34 appeals (out of 44 lodged) had been heard and the Tribunal had ordered the release of 25 appellants. 1,600 persons were charged with terrorist type offences between 9 August 1971 and 31 March 1972 (1). There were 531 such cases between 31 July and 31 December 1972. In 1973 and 1974 there were 1,418 and 1,379 respectively (2). The numbers of persons held without trial are established in relation to the issues under Art. 14 (3).

3. The emergency

a) General observations

At various times the United Kingdom has given notice to the Council of Europe that it had taken measures in Northern Ireland derogating from its obligations under the Convention in accordance with Art. 15. This happened in 1957, 1969 and again in 1971. Later notices have informed of changes in the measures, e.g. those given on 23 January and 27 August 1973 about the 1972 Order and the 1973 Act described above, as well as that given on 19 September 1975.

The existence of the emergency invoked in justification of these measures is common ground. It is described in detail elsewhere. In particular, the Commission refers to its comprehensive account in the following Chapter 2, The Discrimination Issue, (cf. pp. 162-202), setting out the background to the present emergency, its development up to 1969 when the civil disturbances caused the moving in of the army in aid of the civilian power, the situation from 1970 until the introduction of internment in 1971, its application in the following period and the reaction to it, the introduction of direct rule in 1972 and the action by the authorities at later stages, with particular regard to the security situation at any time. Briefly the picture is as follows.

It is well established that at all material times in the present case there has been a very serious security problem in Northern Ireland as illustrated by the figures given elsewhere for deaths, explosions, injury to persons and property. This is not the place to enter into the causes of this violence, which found its expression in part in the civil disturbances, in part in organised violence for political ends (terrorism).

Although the United Kingdom used regular troops from 1969 onwards, the situation grew worse. When in 1971 detention and internment without trial and other measures under consideration here were put into effect, the emergency had reached unprecedented proportions.

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(1) See the respondent Government's counter memorial, p. 77.
(2) Statistics submitted by the respondent Government (cf. pp. 528-532 of this Report).
(3) See below Chapter 2, p. 201.

The measures adopted to cope with the situation were not limited to the security area. The political development as a whole falls outside the scope of this enquiry, but the Commission observes that the internal political difficulties in Northern Ireland have been intimately connected with the violence resorted to by extremists, and that the emergency cannot be properly understood without taking into account the underlying political conflicts.

Internment did not end violence; on the contrary, the situation again grew much worse. Both the security problems, as measured in figures suggesting nearly war-like conditions, and the political difficulties increased dramatically from August 1971 onwards. Direct Rule was introduced. To some extent that changed the nature of the emergency. Besides the IRA campaign against which the extrajudicial measures were applied, Protestant violence became an important factor. Attempts at phasing out internment were made, but the special measures were still applied, with amendments as described above, and examined in detail in Chapter 2.

b) The effect of the emergency on the normal processes of law

The emergency as such is not disputed. The particular facts relevant to the present issues (under Arts. 5 and 6 in conjunction with Art. 15) are therefore rather those throwing light on the needs for special powers of the kind and applied to the extent described above (pp.79-85).

It appears that the measures were taken with a twofold objective: first, with a view to obtaining more information through interrogation (as described in the Compton Report, and further examined below in Part Two of the present Report in connection with the allegations of ill-treatment) and second, by detaining - for preventive purposes - a number of persons who could not successfully be dealt with by the ordinary means of law.

The reasons why the normal powers of the police, assisted by the army, and the jurisdiction of the courts - were considered as insufficient were given in detail by the Diplock Commission's Report of December 1972 (cf. above

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pp. 56 et seq.) and later again by the Gardiner Committee's Report of January 1975, both of which examined the possibilities and concluded that the extrajudicial powers were needed during the emergency.

C. OPINION OF THE COMMISSION

Introductory considerations

As described above, extrajudicial powers of arrest and detention were operated in Northern Ireland from 9 August 1971 and onwards. The common features of this practice were that persons could be arrested and subsequently held for a limited time; it was then for the administrative authority to take an interim decision for keeping the suspected terrorists continuously in custody. A further order on unlimited internment, later called detention, could thereafter follow.

In the initial stage - the time of the operation of the Special Powers Act - even the further decisions were taken by the administrative authority, and during that same stage no independent body reviewed either the interim decision or the further order. The initial arrest, limited in time, was never subject to independent review.

With the introduction of the Detention of Terrorists Order provision was made for such review of the interim decision and also for an appeal against a detention order.

The Commission will examine the issues under Arts. 5, 6 and 15 of the Convention in that order. The main problem relates to Art. 15. However, in accordance with its practice in similar cases (e.g. the Lawless Case and the First Greek Case) the Commission will first examine the measures concerned in relation to Arts. 5 and 6 in order to clarify what requirements of the Convention are at stake and how the laws and practices complained of measure up to those standards. On the basis of its findings and opinion in this respect it will next proceed to discuss Art. 15 and the effect of the emergency on the application of the Convention to the present case.

1. As to the issues under Art. 5 of the Convention

It is the right to liberty of person as guaranteed by Art. 5 which is restricted or infringed by arrest and detention without trial. Its provisions are of two kinds: those giving

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the recognised grounds on which a person may be deprived of his liberty on certain conditions (Art. 5 (1)) and those laying down guarantees applicable to deprivations of liberty, irrespective of whether or not those grounds and conditions are present (Art. 5 (2) to (5)).

a) The grounds of arrest and detention (Art. 5(1) of the Convention).

The deprivation of liberty by the army and the police in accordance with Regulations 10 and 11 (1) under the Special Powers Act and subsequently under Sections 10 and 12 of the Emergency Provisions Act are in essence a form of initial arrest for the purpose of interrogation in the context of preservation of the peace and maintenance of order, i.e. combatting terrorism. The continued detention upon the order of a Minister of the Crown under Regulation 11 (2) under the Special Powers Act and the interim custody under Article 4 of the Detention of Terrorists Order and later under Part II, Para. 11, of Schedule 1 to the Emergency Provisions Act were in essence forms of detention allowing further investigation. Finally internment upon the order of a Minister under Regulation 12 (1) under the Special Powers Act and detention ordered by a commissioner under Article 5 of the Detention of Terrorists Order and later under the provisions of Part II of Schedule 1 to the Emergency Provisions Act were in essence forms of preventive detention.

It has not been contested that deprivation of liberty in accordance with these provisions does not fall within any of the categories of cases listed in Art. 5 (1) of the Convention as cases in which it is permitted to deprive a person of his liberty.

Under paragraph (1) deprivation of liberty is authorised in six separate categories of cases. Four of those categories, namely sub-paragraphs (a), (d), (e) and (f), have no possible application to arrest and detention under the above emergency legislation. It was confirmed by the European Court of Human Rights in the Lawless Case ("Lawless" Case (Merits): Judgment of 1st July 1961, pp. 47 and 52) that the grounds for arrest in sub-paragraph (b) could not be properly extended to arrest or detention for the prevention of offences against public order or State security.

Sub-paragraph (c) recognises that arrest or detention of a person may take place if, apart from being lawful, it is effected for the specific purpose of bringing the person before the competent legal authority. Further, the grounds for the arrest or detention must be either that there prevails "reasonable suspicion that the person has committed an offence" or that "it is reasonably considered necessary to prevent him committing an offence or fleeing after having done so". Many, if not most of the detentions made under the extrajudicial measures would have met this description if it were not for the connection between Art. 5 (1)(c) and Art. 5 (3).

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The Court has also established in the same case that paragraph (1)(c) of Art. 5 can be construed only if read in conjunction with paragraph (3) of the same Article, with which it forms a whole. This means that once a person is arrested he shall be brought before a judge and "shall be entitled to trial within a reasonable time".("Lawless"Case(Merits),p.5

Arrest under Regulations 10 and 11 (1) of the Special Powers Act and under Para. 12 of Schedule 1 of the Emergency Provisions Act were in fact effected for the purpose of interrogation. Under Regulation 10 not even a suspicion against the person arrested for interrogation was required, and it was also applied accordingly. To this extent these powers of arrest were not in conformity with the requirements of Art. 5 (1)(c).

During the time of operation of the Special Powers Act detention under Regulation 11 (2) made under that Act was effected - if the person was not released - for the purpose of bringing him before a court of summary jurisdiction, but this purpose was pursued only in the event that there was sufficient evidence to secure a conviction. Art. 5 (1)(c) assumes that a detained person always shall be brought before a competent legal authority. From Art. 5 (1)(c) read in conjunction with Art. 5 (3) it is clear that what is to be determined in the first place by a judicial officer is the lawfulness and the merits of the deprivation of the person's liberty. Detention under Regulation 11 (2) instead served the purpose of enabling the police to complete their enquiries (and if sufficient evidence for a conviction was not obtained, the Chief Constable could recommend that the person be interned).

Neither did a subsequent decision under Regulation 12 (1) to intern the person satisfy the said requirement of Art. 5 (1) (c). It is true that the Advisory Committee reviewed the decision to intern the person but it was not "the competent legal authority" within the meaning of Art. 5 (1)(c) since that authority, according to Art. 5 (3), must be competent to release the person if it is satisfied that his continued detention is no longer justified on grounds as they are given in Art. 5 (1)(c).

The interim custody orders made under Section 4 of the Detention of Terrorists Order and later under Section 11 of Schedule 1 to the Emergency Provisions Act had the same purpose as the detention orders under Regulation 11 (2) of the Special Powers Act, i.e. normally to enable the police to complete their enquiries.

b) <u>The guarantees</u> (Art. 5(2)-(4) of the Convention).

As recalled above Art. 5 also lays down certain guarantees for persons deprived of their liberty.

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Art. 5 (2) requires that a person arrested shall be informed promptly of the reasons for his arrest and of any charge against him. The Commission observes that arrested persons were normally not informed at once of the reasons for their arrest, unless they were to be charged and brought to trial. Instead, they were merely told that the arrest was made under the applicable emergency legislation. This practice, based on the instructions issued in May 1970 to all members of the military police, did not, however, meet the requirements of Art. 5 (2).

Art. 5 (3) provides that everyone "arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial".

The guarantee in Art. 5 (3) does not directly apply since the deprivations of liberty concerned are not as such authorised by Art. 5 (1) (c), but they are so closely related to cases under Art. 5 (1) (c) that the application of Art. 5 (3) might nevertheless be considered because it is an expression of a general principle applicable where persons have been arrested because of acts they have committed or are suspected of having committed. However, an arrested person was not brought promptly before a judge or other judicial authority as required by Art. 5 (3). At those stages when arrest or detention was ordered under the relevant Special Powers Act Regulations he was not even, as indicated above, brought before the authority issuing the order, or any reviewing authority. When an arrested person at the later stages was subject to an interim custody order and this was referred to a commissioner who might be regarded as a judicial authority, the position was different. But the commissioner was not brought in "promptly" although he did review the lawfulness of the deprivation of liberty in the sense indicated above and the reasonableness of the person's continued detention, and he was independent of the administrative authority in that he had the power to direct the person's discharge.

The detainee was, of course, not generally entitled to trial at which he would be convicted or acquitted, the exception in fact being only those cases where charges were brought later on the assumption that there was sufficient evidence to secure his conviction. Whether or not in such cases a trial took place within a reasonable time, or whether or not persons were in fact released pending trial, are secondary issues of little importance for the present opinion. During the time of operation of Regulation 11 (2) made under the Special Powers Act detainees were entitled to apply for release on bail. However, decisions to permit such applications were taken by the administrative authority and the matter of bail was therefore not entirely left to the judicial authority as envisaged by Art. 5 (3). The importance of this opportunity to apply for bail was rather that it would force the Minister to decide on the arrestee's continued detention before the lapse of the 28 days' period. Under the Detention of Terrorists Order and the Emergency Provisions Act, the person charged could apparently apply for release on bail in the normal way.

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Turning then to Art. 5 (4) of the Convention, this provision states that "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

The Commission first observes that, in accordance with the European Court's finding in the "Vagrancy" cases, Art. 5 (4) is a separate provision under which "everyone who is deprived of his liberty lawfully or not, is entitled to a supervision of the lawfulness by a court; a violation can therefore result either from detention incompatible with paragraph (1) or from the absence of any proceedings satisfying paragraph (4) or even from both at the same time" (see European Court of Human Rights, De Wilde, Ooms and Versyp Cases ("Vagrancy" Cases), judgment of 18 June 1971, pp. 39-40, para. 75).

During the operation of the Special Powers Act it is clear that, apart from habeas corpus proceedings, no procedure was available to a person in custody (Regulations 10 and 11(1) of the Special Powers Regulations) or detained (Regulation 11 (2)) or interned (Regulation 12 (1)) by which the lawfulness of his "detention" could be challenged before a court. It is true that Regulation 12 (1) provided for an Advisory Committee to review the grounds of internment. However, the Committee had no power to order the release of an internee and, apart from any other consideration, this procedure did not therefore satisfy Art. 5 (4).

With the entry into force of the Detention of Terrorists Order in November 1972 two new procedures were introduced which affected the continued detention of a person detained either under an interim custody order (Art. 4 of the Order) or under a detention order (Art. 5 of the Order). One was the adjudication by a commissioner and the other was the appeal to a Detention Appeal Tribunal. These procedures continued in force under the Emergency Provisions Act 1973; they have been described above (pp.82-85).

As regards the procedures before both bodies the Commission considers that neither one satisfied the requirements under Art. 5(4) of the Convention. In the first place there are strong doubts as to whether these bodies could be regarded as a "court" within the meaning of that provision, having regard to the procedure before them if considered in the light of the case-law of the Commission and the Court of Human Rights in the "Vagrancy Cases" (cf. Eur. Court H.R. "Vagrancy" cases, judgment of 18 June 1971, p. 41) and the cases of the Five Soldiers against the Netherlands (cf. Report of the Commission of 19 July 1974, Five Soldiers against the Netherlands, pp. 52-53). Such doubts have also been stated by the Gardiner Committee in its description and assessment of the detention procedures concerned (cf. Gardiner Report of January 1975, paras. 128, 138 and 150-157). However, the Commission is not required to express any further opinion on this matter as it is clear, for other reasons, that Art. 5(4) has not been complied with in these procedures

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For, as regards the proceedings before the commissioner, a person detained under an interim custody order was not himself entitled to take his case before a commissioner for adjudication. He could be detained under such an order for a period of 28 days within which period the Chief Constable could refer the case to a commissioner for determination. Although the detainee had to be released at the end of the 28 days' period, he had no means to challenge the lawfulness of his detention during that period;

It is true that in fact all detention cases were referred to the commissioner for determination. However, there were substantial delays (up to six months) before persons suspected of terrorism had an adjudication by a commissioner (cf. Gardiner Report, para. 155) and during this time the interim custody order remained in effect even after the expiration of the 28 days' period. Thus, even if the procedures before the commissioner and subsequently the Detention Appeal Tribunal might themselves have satisfied Art. 5 (4) of the Convention the way in which they were made available and actually applied did not.

c) Result

It follows from the above that the powers as they were exercised under the emergency legislation during each phase concerned were not in conformity with Art. 5 (1)-(4) of the Convention. However, the finding of a breach and thus the applicability of Art. 5 (5)(1) also depends on whether or not derogation from Art. 5 was justified under Art. 15 to the same extent.

2. As to the issues under Art. 6 of the Convention

Art. 6 of the Convention secures to everyone certain procedural rights in the "determination of his civil rights and obligations or of any criminal charge against him". (Art. 6 (1) of the Convention). The question which therefore arises in the first place is whether this provision is at all applicable to the detention and internment procedures under the emergency legislation in Northern Ireland. The answer depends on whether or not "civil rights" or "criminal charges" were in fact determined.

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(1) Art. 5 (5) provides: "Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

As regards the determination of civil rights it has been argued that the right to liberty is a civil right and that consequently the provisions of Art. 6 (1) are applicable to proceedings in which decisions to detain or intern are taken. However, the Commission considers that, even assuming that the right to liberty could be seen as a civil right (which is "at any rate open to argument", cf. Eur. Court H.R., Golder Case, judgment of 21 February 1975, Series A, Vol. 18, p. 16, para. 33 with further references), Art. 5 (4) of the Convention is clearly the special provision governing court proceedings in cases concerning deprivation of liberty by arrest or detention. Art. 5 (4) has never been interpreted so as to give the same procedural rights or to imply the same requirements as Art. 6 (1). The more special provision must prevail (cf. "Neumeister"Case, judgment of 27 June 1968, pp. 43 seq.). It follows that Art. 6 (1) is not applicable in this respect.

As regards the determination of criminal charges it is clear that, during the operation of the Special Powers Act and the Regulations made thereunder, detention and internment were in fact measures of preventive detention and the decisions by the executive to detain and intern an individual did not involve the determination of criminal charges within the meaning of the Convention (cf. Eur. Court H.R., Lawless Case (Merits), judgment of 1 July 1961, p. 51 para. 12).

Indeed, it seems evident that in the procedure for the administration of criminal justice as it appears from Art. 5 read in comparison with Art. 6, it is in the "trial" mentioned in Art. 5 (3) that the adjudication on the merits of the accusations should take place and, in the general sense, lead to conviction or acquittal. Art. 6 (1) lays down guarantees for the proper administration of justice when it comes to determining those criminal charges. It is a fact that no trial of the kind envisaged by the Convention took place. Persons were detained without trial. What happened in the proceedings concerned was that the grounds of the deprivation of liberty were considered, and hence the "right to liberty" was determined, but this, as already explained above, comes within Art. 5 (4) and not Art. 6 (1).

It remains to be examined, however, whether under the new procedures established by the Detention of Terrorists Order 1972, and continued under the Emergency Provisions Act 1973, the commissioner determined a "criminal charge" against the detainee. This question arises as under the relevant legislation (Art. 5 of the Detention of Terrorists Order; para. 12 of Schedule 1 of the Emergency Provisions Act) the commissioner shall enquire into the case referred to him for the purpose of deciding whether or not he is satisfied that -

(a) the respondent has been concerned in the commission or attempted commission of any act of terrorism or the direction, organisation or training of persons for the purpose of terrorism; and

(b) his detention is necessary for the protection of the public.

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The Commission observes that the commissioner's decision to be satisfied, on the facts found by him, of the respondent's concern in the commission or attempted commission of an act of terrorism comes very close to "determination" of a "criminal charge" against the detainee. These expressions refer to autonomous concepts of the Convention, and acts of terrorism, as defined in the relevant national law are certainly, besides their political motive, in substance "criminal" within the meaning of the Convention. Moreover, the reference to the commissioner for deciding whether he is satisfied of the facts on this point requires from him a finding on the merits of what is in substance a "charge" relating to this offence. However, this finding - or "adjudication" - was not a "determination" in the sense of Art. 5 (1). Here it is also necessary to look to the purpose and the effect of the decision by the commissioner. The purpose of such a decision is not to convict anybody or to bring him to trial but to decide whether or not he should be further detained. The effect of a decision ordering his detention is not that he has a conviction on his criminal record with the consequence that the decision concerning the offence has the force of res judicata but that he is deprived of his liberty for reasons of State security. Under the law the commissioner must be "satisfied" that the person has been involved in terrorism which shows that there must be more than a mere suspicion, but less than a judicial establishment, of the criminal acts.

When drawing these distinctions the Commission is well aware that the systematic use under certain regimes of long periods of extrajudicial detention has been commonly regarded as serious violations of human rights. Holding Art. 6 inapplicable does not mean, however, that the Convention accepts detention without trial as a sanction against political acts including crimes such as terrorism, only that the measures concerned have to be examined under Art. 5 rather than Art. 6, despite the elements which bring them so close to the latter. The introduction of quasi-judicial features in the detention proceedings in order to protect the interests of the individual, demonstrates the need for certain safeguards in the application of such measures, but does not alter the nature of these proceedings considered under the Convention.

Result

It follows that Art. 6 of the Convention does not apply to the extrajudicial procedures concerned and no further question arises in this respect.

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3. As to the issues under Art. 15 of the Convention

a) The existence of an emergency

Art. 15 of the Convention provides:

> "1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
>
> 2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.
>
> 3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary-General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary-General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed."

The Commission is satisfied that there existed in Northern Ireland at all times material for the present case a public emergency threatening the life of the nation within the meaning of Art. 15. The degree of violence, with bombing, shooting and rioting was on a scale far beyond what could be called minor civil disorder. It is clear that the violence used was in many instances planned in advance, by factions of the community organised and acting on para-military lines. To a great extent the violence was directed against the security forces which were severely hampered in their function to keep or restore the public peace. The existence of an emergency within the meaning of Art. 15 is not in dispute between the parties.

The Commission finds therefore that the factual conditions for applying Art. 15 are fulfilled. The question which needs determination is whether or not the measures taken derogating from the Convention satisfy the further conditions of that provision.

b) Declarations under Art. 15 (3)

The letters of 20 August 1971, 23 January and 27 August 1973 were valid and sufficient notices of derogation under Art. 15 (3).

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As stated in the Greek Case (Yearbook 12, p. 41) the European Court of Human Rights had in the Lawless Case confirmed the competence of the Commission to examine the conformity with Art. 15 (3) of a notice of derogation, and supporting information communicated to the Secretary General by a Contracting State. The Court had further found that the communication of legislative texts with an explanation of their purpose within 12 days of their introduction gave the Secretary General sufficient information of the measures taken and the reasons therefore. The Court had also held that communication without delay was an element in the sufficiency of information although this is not expressly stated in Art. 15 (3).

In the Greek Case the Commission had these principles in mind when it concluded that the respondent Government had not fully met the requirements of Art. 15 (3).

In the present case, it is not in dispute between the parties and the Commission also finds that the respondent Government has satisfied the above conditions. It is however argued that the respondent Government's notices of derogation did not include any reference to Art. 14 of the Convention and that therefore they had not properly derogated with respect to that provision.

It is true that the Commission took into consideration in the Greek Case (Yearbook 12, p. 42) that Art. 15 (3) does not oblige the Government concerned to indicate expressly the Articles of the Convention from which it is derogating and that in the Greek Case, the Articles of the Convention affected by the derogation were indirectly indicated by the respondent Government when it communicated the full texts of the suspended Articles of the Greek Constitution of 1952.

In the present case no mention was made of Art. 14 in the notices referred to above, nor is it apparent in the legislative texts concerning the extrajudicial powers that the respondent Government might exercise them in a discriminatory way. However, as the Commission will examine separately whether the respondent Government have exercised them in conformity with Art. 14 read in conjunction with Art. 5, it is not necessary to discuss the matter further at the present stage (see below, Chapter 2).

c) <u>The need for bringing the extra-judicial powers into operation</u>

Art. 15 provides that measures in derogation from the Convention may only be taken "to the extent strictly required by the exigencies of the situation." This is a further condition, and a limitation to any derogation which has to be discussed for the different measures in question.

As shown above the measures applied deviate from the provisions of Art. 5 on a number of points, which may conveniently be grouped as follows: (1) they authorise deprivation of liberty on grounds not recognised by Art. 5, and (2) a number of guarantees required by Art. 5 are not observed. The respondent Government has sought justification under Art. 15 for these measures in referring to the security situation in Northern Ireland at the relevant times.

The Commission observes that such justification under Art. 15 does not follow automatically from a high level of violence. There must be a link between the facts of the emergency on the one hand and the measures chosen to deal with it on the other. Moreover, the obligations under the Convention do not entirely disappear. They can only be suspended or modified "to the extent strictly required" as provided in Art. 15. (This limitation, in the circumstances, may require safeguards against the possible abuse, or excessive use, of emergency measures.) In the present case, it must be shown that the emergency affected the normal functioning of the community and the administration of law. If, for instance, the courts could have worked normally if they were only themselves sheltered from attack, extrajudicial measures would not have been justified. But this was not the situation.

In order to deal with the emergency the security forces had to obtain information which was not in the circumstances of, for instance, "no-go" areas and intimidation of witnesses, available through normal police enquiry. Therefore, extended powers of arrest and detention, such as were originally given in the Special Powers Act Regulations 10 and 11 (1), were required.

The main reasons for exercising the extrajudicial powers of detention and internment under the Special Powers Act Regulations 11 (2) and 12, were said to be the existence of three factors: (1) the inability of the ordinary criminal courts to restore peace and order, (2) the widespread intimidation of the population and (3) the difficulties for control presented by the ease of escape across a territorial border. The Commission notes that the last-mentioned factor cannot be an argument of independent importance in this respect (cf. the submission by the applicant Government, above p. 64), and also that the two others are very closely interrelated as well.

In regard to the proceedings before the ordinary courts, the Report of the Diplock Commission (p. 8) had considered that the minimum requirements of a judicial process were based on the assumption that witnesses to a crime will be able to give evidence in a court of law without risk of their lives, their families, or their property. No particular instances of intimidation of witnesses, whether living in "no-go" areas, or outside the urban areas but exposed to terrorist raids, have been investigated. Nevertheless the Commission, on the facts before it, accepts that the level of intimidation generally warranted the findings of the Diplock Commission which concluded that the only kind of case in which a conviction of a terrorist would be obtained was where there was oral evidence from soldiers or policemen, or physical evidence, or an admissible confession.

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It should be recalled that the extrajudicial measures were made operative only for persons believed to be connected with or have information about the campaign of very serious violence, as elsewhere described. The Commission therefore accepts that it was allowed under Art. 15 of the Convention to bring such measures into operation. The way they were operated must, however, be further examined in order to decide whether this went further than strictly required.

d) The practice of arrest and detention on extraordinary grounds

It is convenient to separate temporary arrest (i) from the other forms of detention (ii).

(i) The initial arrest and detention of a person under Regulation 10 under the Special Powers Act, which was brought into operation on 9 August 1971, was authorised for the purpose of interrogation for not more than 48 hours. The person arrested need not himself have been suspected of an offence. Regulation 11(1) authorised the arrest of any person suspected of any of four different alternative offences prejudicial to the preservation of peace and maintenance of order. The duration of such arrest was not explicitly limited by the Regulation itself. The power of arrest conferred by this Regulation was in fact, however, used only to detain the person for interrogation for a period limited to 72 hours.

These provisions were replaced on 8 August 1973 by the Emergency Provisions Act which provided powers for the arrest of any person who was suspected of being a terrorist or of having committed certain offences.

The Commission is not called upon to determine whether all arrests made during the emergency were in fact strictly required, only whether the authorisation of arrests for these purposes and as generally practised in fact was necessary in the circumstances.

The Commission has examined a large amount of evidence as to the manner in which arrests were carried out by soldiers. There cannot be any doubt that many arrests were carried out in difficult situations, where necessary enquiries could not have been made without arresting persons. There has also been evidence, on the other hand, that arrests were carried out in the early hours of the morning with no surrounding disturbance. Unless the person was under suspicion, the need for doing so would appear less evident. It is not possible to establish the extent to which such doubtful situations have arisen. Generally, the Commission accepts the argument made by the respondent Government that when a person is on the spot uncooperative and when there is at the same time a risk of being exposed to shooting it may be strictly necessary to arrest him for the purpose of interrogation whether he is suspected of having committed an offence or not. Also, where there is no immediate threat to the arresting party and the arrested person, an arrest for interrogation may be considered strictly necessary. Thus, an arrest operation might need to be carried out quickly for a number of reasons, including the risk of escape. Also there may be reason to believe that the individual concerned has particularly interesting information to give, for example, if he is found on suspected premises.

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A minimum requirement must nevertheless be that the arrest is likely to contribute to the aim of finding those who are engaged in organising or taking part in terrorist actions and that this aim could not be obtained if there were only resort to normal legal procedures.

The evidence in respect of the internment operation of 9 August 1971 is to the effect that the authorities lacked wholly adequate information on the organisation of the IRA, and that a particular feature of the operation was the arrest of a number of persons not involved in terrorist actions or guilty of any offence. Nevertheless, given the serious increase of violence at the time, the Commission considers that the arrest operation itself as a whole was justified in the circumstances and the minimum requirement was met. The same consideration applies to the later stages of the emergency.

(ii) The ground given for detaining a person for 28 days, under Regulation 11 (2) made under the Special Powers Act, was to enable the police to investigate further the suspicion against him, and also to prevent his escape until a decision had been taken either to release him or to bring charges against him or intern him. Here it is not without independent importance that alleged terrorists if released could escape across the border between Northern Ireland and the Republic of Ireland.

The ground for subsequently interning a person as indicated in Regulation 12 (1) was that it should be expedient for "securing the preservation of peace and the maintenance of order". The person should also be suspected of acting or having acted or being about to act in a manner prejudicial to the preservation of the peace and the maintenance of order in Northern Ireland.

It is recalled that the measures contained in these provisions were modified earlier than the provisions for temporary arrest. The system of interim custody orders came into effect on 7 November 1972. Essentially, however, the system remained the same. Thus, throughout all stages under consideration, detention pending further investigation was practised without judicial control, in many cases followed by preventive detention lasting for years, without trial. These deprivations of liberty on grounds and conditions not consistent with the normal requirements of the Convention were, however, only resorted to in a situation of grave emergency where the need, for reasons of public security, for investigation and prevention of further violence by such measures has been sufficiently shown. The fact that some individuals could become the victims of regrettable errors does not in itself in these extraordinary circumstances, show that the use of these powers as applied was excessive. But this fact raises the question of the safeguards against abuse in individual cases.

Result

Having examined the various stages, the Commission is generally satisfied that the extraordinary powers of arrest and detention derogating from Art. 5 (1) were at all stages only applied to an extent "strictly required by the exigencies of the situation" within the meaning of Art. 15 (1).

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e) The extent of the derogation from the further guarantees under Art. 5: general assessment

As shown in the opinion under 1 above, the extrajudicial measures applied during the time material to this application also deviated from the provisions of the Convention concerning the further, mainly procedural, guarantees laid down in Art. 5 (2) to (4). The remaining issue under Art. 15 is whether or not it was strictly necessary to suspend or modify them, by way of derogation, to this extent.

In its examination of this issue the Commission has been much assisted by the detailed submissions of the parties concerning the applicable legislation on extrajudicial measures and their operation phase by phase. However, in order to preserve a proper perspective it is necessary to maintain an overall approach. These phases of legislation related to a process of attempts to deal with one continuing and developing emergency. The dynamics of such a situation require an assessment embracing it as a whole. Static comparisons of one stage to another may be misleading, and so may reflections in hindsight. The relationship of cause and effect between violence, special measures and new violence is not easily foreseeable.

The unprecedented wave of violence before the internment operation in August 1971 was followed by an even more violent reaction from within the Catholic community and the IRA. The terrorism at the time was mainly believed to be perpetrated by the IRA although there was in 1972 also a marked increase of militancy and violence from the Loyalist side. These developments are described in detail elsewhere; see in particular Chapter 2. Although the statistics show a decrease in explosions, shootings and deaths in 1973 and 1974, the violence was nevertheless of extraordinary dimensions.

There has been nothing precisely comparable in the history of the Convention.

It is, of course, not decisive that the legislation originally applied dated from a period long before the Convention was created or the present emergency arose, and thus contained very general provisions (as e.g. power of unlimited arrest) which clearly would not be compatible with the Convention if applied to their full extent without regard to the emergency. As described above they were only operated during the emergency, and not to their full extent.

Both from the beginning and during the later phases the emergency procedures nevertheless lacked the guarantees required by Art. 5. The Commission has considered why persons arrested in connection with the emergency should neither have the right under Art. 5 (2) to be informed of the reasons for their arrest, nor to be brought promptly before a judge, and be brought to trial within a reasonable time, under Art. 5 (3), nor have the lawfulness of their detention decided in accordance with Art. 5 (4).

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Different reasons for these deviations from Art. 5 have emerged. Some of them are directly connected with the emergency, such as security considerations, the interests of police investigation, and the level of intimidation, others only indirectly, as for example, a reluctance to modify the normal judicial procedures even in an emergency and hence a preference for extrajudicial proceedings for this purpose.

The Commission is of the opinion that both the direct requirements of the emergency and the more indirect considerations as to how the emergency procedures should be organised in relation to normal processes of law, must be in the first place determined by the State concerned, unless the Commission finds that the reasons given cannot, even in the circumstances, justify the extent of derogation.

The derogation from the normal guarantees could become excessive, however, if no other safeguards were put in their place. The question therefore remains whether or not in fact such alternative safeguards in favour of the arrestees and detainees at the various stages were so lacking or inadequate in comparison with the normal requirements of the Convention in Art. 5 (2) to (4), that the scope of permissible derogations was exceeded.

The Commission recalls that even the answer to this question under the Convention depends on what the "extent strictly required by the exigencies of the situation" means. This is the only limitation to any derogation. It is true that the European Court in the Lawless Case stressed the importance of certain safeguards applicable under the legislation contested in that case. The Commission does not, however, consider that it follows from this judgment that exactly these or similar safeguards - e.g. parliamentary control - are necessarily required in any other emergency, let alone the one in the present case. The State facing the emergency must choose its means and prescribe its safeguards against abuse, subject to the terms of Art. 15 and the control machinery of the Convention.

The Commission notes that in fact erroneous arrests were made, in particular in the first phase. But they were apparently mostly due to wrong information and other factual circumstances, in the emergency conditions, rather than to the lack of formal safeguards in that phase. It furthermore notes that in the circumstances of the emergency the required information to a person that he was being arrested under the emergency legislation might be, in fact, sufficient information for him, and that extrajudicial safeguards later introduced included quasi-judicial features resembling those normally required under Art. 5 (as the recourse to the Detention Appeal Tribunal in relation to Art. 5 (4)).

It has been argued in retrospect that although the emergency grew more serious, the practice which was followed, and in particular the improvement of the safeguards, shows that the measures initially were excessive. Under the Convention the justification of the measures cannot depend on whether they succeeded or failed in their aim of ending violence.

It is true that the safeguards were improved over time despite the increasing gravity of the emergency.

The respondent Government, having assumed in March 1972 direct responsibility for the governing of Northern Ireland, introduced new procedures concerning detention marked by their more comprehensive safeguards against abuse. Otherwise the procedures were not substantially altered. The fact that the measures were improved with time whereas the crisis became more grave cannot be taken to show that the measures under the Special Powers Act ever exceeded the requirements of the situation. Experience must allow improvements to be made by a Government without its afterwards being held guilty of having violated the Convention. Otherwise this possibility might even conceivably impede the improvement of the safeguards as experience was gained.

The Commission notes that the Government, while upholding the principle of detention by executive order, repeatedly has tried to improve the system of extrajudicial measures by providing better safeguards of a quasi-judicial nature: by the appointment of the Diplock Commission in October 1972; by the passing of the Detention of Terrorists Order in November 1972; by the passing of the Northern Ireland (Emergency Provisions) Act 1973 on the basis of the recommendations of the Diplock Commission, which was subsequently to be in fact reconsidered annually by Parliament; and lastly by the new scrutiny by the Gardiner Committee appointed in 1974 which, significantly, reported in January 1975 that they could not yet recommend that detention should be abolished, but again the procedures were critically examined. It was now, however, proposed to revise them so that the responsibility for ordering or releasing from detention should again solely and ultimately be that of the Secretary of State (1).

This development shows that the difficulties in operating these procedures have been recognised and that efforts have been made to overcome them. It does not show that the measures applied at any stage were excessive. In the view of the Commission it rather indicates that the Government has exercised its discretion in a responsible way and on the basis of the experience it has gained.

Moreover, no facts have come to the knowledge of the Commission which give it cause to hold that these measures as such may have conflicted with the Government's other obligations under international

(1) Cf. Northern Ireland (Emergency Provisions) (Amendment) Act 197[illegible]

law, as referred to in Art. 15 (1), and it is not deemed necessary to go into such obligations here.

CONCLUSION

The Commission is therefore of the opinion, by a unanimous vote, that in the situation in Northern Ireland the measures for detention without trial in derogation from Art. 5 of the Convention were, during each phase of the operation of the legislation concerned, measures "strictly required by the exigencies of the situation" within the meaning of Art. 15 (1).

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Chapter 2: The Discrimination Issue
(Article 14 of the Convention)

INTRODUCTION

1. The substance of the application concerning Art. 14 of the Convention

The applicant Government have alleged that the exercise by the respondent Government, and by the security forces under their control, of the powers to detain and intern persons, as well as the procedure relating thereto, had been, and was still being, carried out with discrimination on the grounds of political opinion contrary to Art. 14, read in conjunction with either Arts. 5 or 6 of the Convention.

The respondent Government have contested this allegation as being unsupported by the facts.

a) **Art. 14 in conjunction with Art. 5.**

The applicant Government submitted that, during all times since August 1971, the relevant extra-judicial powers of detention and internment were carried out with discrimination on the ground of political opinion in that the authorities of the respondent Government in Northern Ireland, without any justification, failed to detain and intern members of unionist (Protestant) terrorist organisations in the same way as they interned and detained members of terrorist organisations on the non-unionist (Catholic) side. This allegation did not relate to arrests during marches and demonstrations, but only to the exercise of the powers of detention and internment. On the other hand, evidence as to the circumstances of searches and assassinations could be a corroboration of the allegations made in relation to discrimination in detention and internment, and was therefore equally relevant.

The respondent Government submitted first that the Commission had admitted only the complaint of discrimination in relation to detention and internment. Therefore, allegations of discrimination in relation to other matters were irrelevant and could not be introduced into the case on the ground that they corroborate matters which were relevant. As regards detention and internment, it was not true that the respective powers had been exercised in a manner discriminating on the ground of political opinion. The only criterion on which a decision to detain and intern had been based was whether or not the person involved had been engaged in terrorist activities, and this applied both to the unionist and the non-unionist sides. The fact that more persons on the non-unionist side had been detained and interned than on the unionist side was to be explained by the fact that the terrorist threat to security came mainly from the former.

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b) Art. 14 in conjunction with Art. 6

The applicant Government submitted that the authorities of the respondent Government in Northern Ireland also discriminated on the ground of political opinion, in the various proceedings relating to the lawfulness of detention and internment in that there had been differential treatment in the institution of charges, the procuring of evidence, the granting of bail, and the selection of juries.

The respondent Government first submitted that Art. 14 was not applicable, as the proceedings concerned fell outside the scope of Art. 6. In any event, it was not true on the facts that the Northern Ireland authorities had discriminated on the ground alleged or any other ground.

2. The issues under Art. 14

In accordance with the jurisprudence of the Commission and the Court, discrimination under Art. 14, which must always be read in conjunction with another article in Section I, is established where three elements are found to exist in the case concerned, namely:

(a) the facts found disclose differential treatment, and

(b) the distinction does not have a legitimate aim, i.e. it has no objective and reasonable justification having regard to the aim and effects of the measure under consideration, and

(c) there is no reasonable proportionality between the means employed and the aim sought to be realised,

Having regard to this jurisprudence, the general points at issue under Art. 14, read in conjunction with Arts. 5 and 6, can therefore be stated as follows:

(1) Whether or not the Commission is satisfied on the evidence before it that, during any or all of the stages concerned, there has in fact, been differential treatment in the exercise of the powers of detention and internment, having regard to the nature, the duration and the extent of the threat to security from the different extremist groups concerned.

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(2) If so, whether or not such differential treatment was discriminatory at any or all of the relevant stages, i.e. did not have an objective and reasonable justification having regard to

(a) the aim which was sought to be realised by such detention and internment, and

(b) the effect of the detention and internment in achieving this aim.

(3) Whether or not the relationship between the means employed, i.e. detention and internment, and the aim which was sought to be realised, i.e. restoration and maintenance of public order and security at the relevant stages, was reasonably proportionate.

3. The evidence adduced by the parties

Six witnesses, being political and community leaders in Northern Ireland, have given oral evidence on behalf of the applicant Government.

Thirteen witnesses, being senior members of the security forces in Northern Ireland or of the Northern Ireland Office, have given oral evidence on behalf of the respondent Government.

Both parties have also submitted documentary evidence, including newspaper articles and reports. In essence, the applicant Government's evidence was to show that there was, since 1966, considerable terrorist activity on the part of the (Protestant) UDA and UVF with which the security forces failed to cope in the same way as they did cope with terrorism stemming from the (Catholic) IRA. On the other hand, the respondent Government's evidence was to show that, during all relevant times, the main threat to security came from the IRA and was directed not only against the majority community but, more significantly, against the security forces themselves.

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The evidence adduced by the parties can be grouped under the following headings:

(1) The extent of the security situation from 1966 to 1974 as shown by

(a) The existence of para-military organisations, e.g.

- Irish Republican Army (IRA)
- Ulster Vanguard Movement
- Ulster Defence Association (UDA)
- Ulster Volunteer Force (UVF)
- Ulster Freedom Fighters (UFF)
- Tartan Gangs

(b) Terrorist activities, e.g.

- possession of weapons and explosives
- bomb explosions
- intimidation affecting housing and administration of justice
- assassinations

(c) Other threats to peace and public order, e.g.

- marches and parades
- wearing of uniforms
- barricades and "no go" areas
- speeches and literature inciting violence

(2) The attitude of the security forces in relation to

(a) Searches of homes

(b) Investigation and prosecution of criminal offences of a terrorist nature

(c) Detention and internment

4. The course of the Commission's investigation and the procedural issues dealt with

In the course of the Commission's investigation of the facts in accordance with Art. 28 (a) of the Convention, a number of procedural questions arose which called for rulings by the Commission or its delegates conducting the investigation. The Commission therefore considered it appropriate to set out in some detail the course of its investigations and in particular to describe the procedural issues which arose.

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The application was declared admissible on 1 October 1972. Having received written observations on its merits from the applicant Government on 19 November 1972 and from the respondent Government on 15 March 1973, following an extension of the time-limit from 1 February 1973, the Commission considered on 6 April 1973 the way in which it could accomplish its task under Art. 28 (a) of the Convention.

Oral hearing on the merits

The Commission decided to hear the oral submissions of the parties on the merits of the case at a hearing which was fixed to take place during its 107th session beginning on 9 July 1973. Each party was invited clearly to define, in the course of that hearing, their position in respect to the issues in the case and also to state whether they had proposals for the hearing of witnesses or obtaining of other evidence with regard to the issues, inter alia, under Art. 14 of the Convention. Such proposals would be taken into consideration by the Commission when deciding what witnesses it should call or what evidence it should otherwise obtain.

On 22 June 1973 the respondent Government requested the Commission to grant an adjournment of the July hearing in view of the elections, on 28 June 1973, to the Northern Ireland Assembly pursuant to the Northern Ireland Assembly Act, 1973. In a letter of 28 June 1973 the Agent of the applicant Government stated that his Government would not object to the adjournment sought in view of the critical and wholly exceptional political situation then existing in Northern Ireland. In the light of these statements the Acting President of the Commission decided to adjourn until the autumn the hearing which had meanwhile been fixed to begin on 10 July 1973.

On 9, 11 and 13 July 1973 the Commission again discussed the future procedure to be adopted and fixed 2 October 1973 as the new opening date for the hearing on the merits of the case. This hearing was concerned with the issues under Arts. 5, 6, 14 and 15 of the Convention and ended on 5 October 1973.

The first proposals for evidence under Art. 14

On 30 October 1973 the Agent of the applicant Government submitted, in reply to a letter of 19 October 1973 from the Commission's Secretary to the Parties, that his Government proposed six witnesses, namely D.1, D.2, D.5, D.3, D.4 and D.6 to give evidence in support of their claims under Art. 14. In proposing these witnesses the applicant Government referred to the affidavits and statements which they had previously submitted inter alia from the above persons and stated that it would naturally assist the Commission's task of ascertaining the facts to have the benefit of hearing their oral evidence.

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On 5 November 1973 the Agent of the respondent Government informed the Commission that his Government did not propose witnesses on these issues. They proposed that the matters be dealt with by a) the Attorney General addressing the Commission, and b) affidavits, inter alia, with regard to the matters dealt with in the affidavits submitted by the applicant Government and, if necessary, with any evidence given by the witnesses suggested by them.

On 19 December 1973 the Commission considered the question of oral evidence under Art. 14 and decided that the witnesses proposed by the applicant Government in their letter of 30 October 1973 should be heard by delegates. The question of the dates for the hearing was adjourned until the next session beginning on 28 March 1974. The Commission also decided that the respondent Government should be invited to submit, as soon as possible, the affidavits proposed by them on 5 November 1973. These decisions were communicated to the parties on 20 December 1973.

On 25 January 1974 the Agent of the applicant Government stated in a letter to the Commission's Secretary that his Government were extremely anxious that the affidavits referred to by the respondent Government should be filed without delay and copies of the affidavits furnished to them. In the meanwhile, they awaited details as to the date and place of the proposed hearings of witnesses under Art. 14.

On 4 April 1974 the Commission fixed 22 to 25 July 1974 as the date for the hearing at the Human Rights Building in Strasbourg of the applicant Government's witnesses. At the same time the Commission fixed 15 June 1974 as the time-limit for the submission by the parties of further written material in the present case and reserved its right itself to request further evidence or other material at any time if it found it necessary.

On 7 June 1974 the Agent of the respondent Government wrote to the Commission's Secretary to say that his Government hoped to be able to file the affidavits and associated memoranda in answer to affidavits filed by the applicant Government before the hearing of witnesses in July. If therefore the time-limit of 15 June was to be construed as affecting the submission of his Government's affidavits and associated memoranda, he requested that this time-limit be extended to 15 July 1974. Further, the respondent Government might wish to answer matter introduced by the applicant Government's witnesses at that hearing and his Government therefore reserved the right to file further affidavits and associated memoranda in reply to any such matter.

On 14 June 1974 the Agent of the applicant Government wrote that his Government were strongly opposed to the extension requested. He recalled that his Government had already argued that the affidavits should be filed as soon as possible and submitted that, if the request were granted, the Irish

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representatives would not have an adequate opportunity to examine these affidavits before the hearing. He was therefore to urge the Commission not to grant this request which would once more place the Irish side at a disadvantage in their conduct of the proceedings.

The respondent Government's second proposal for evidence under Art. 14

In a letter of 10 July 1974 from their Agent, the respondent Government made the following submissions: in its decision of 1 October 1972 the Commission had declared the Art. 14 issue admissible only insofar as it concerned the allegation that the exercise by the respondent Government of their power to detain and intern persons was being carried out with discrimination on the grounds of political opinion. The affidavits and statements submitted in respect of the intended witnesses (Appendix 11, with three Addenda), however, included allegations and material other than those encompassed by or relevant to that decision. His Government assumed that the scope of the inquiry by the delegates would be confined to matters directed specifically to the allegations declared admissible and that allegations and materials not directed specifically to that allegation would be excluded. They asked the Commission to give directions to that effect or otherwise to hear the representatives of the respondent Government prior to the hearing and before coming to a decision in that regard. Furthermore, in the light of the four hearings of witnesses under Art. 3 which had been held in the meanwhile, the respondent Government had re-examined their proposals that the matters should be dealt with by the Attorney General addressing the Commission and with affidavits. It was now their wish, to the extent that the allegations made in Appendix 11 and its Addenda were relevant to the issue under Art. 14, to adduce the evidence of a witness or witnesses in reply.

An indication of such evidence would be forwarded to the Commission within the next few days and it might well be that the respondent Government would need to request for such witnesses the same facilities as had been granted in respect of their witnesses under Art. 3 (1). The Agent further stated that, in essence, his Government's position under Art. 14 was as follows: (a) the only criteria for the exercise of these powers had been, in the case of detention and internment under the Special Powers Regulations that, in the particular case, it was necessary for the preservation of the peace and the maintenance of order and, in the case of the detention procedure, that in the particular case there were sufficient grounds to satisfy a commissioner that the person detained had been engaged in or in the organisation of terrorism; (b) the fact which the respondent Government did not dispute, that more persons belonging to the minority community had been detained and interned than persons belonging to the majority community was a reflection of the fact that since the introduction of internment in August 1971 the threat of organised terrorism had come chiefly from the IRA which drew its support from sections of the unionist community. It was not evidence of discrimination. Finally, the Agent added that, if the Commission or its delegates came to the conclusion that any other matters were relevant to the

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(1) Cf. below, pp. 228 et seq.

issue under Art. 14 and there was any question outstanding at the conclusion of the July hearings with regard to such other matters, his Government would file a statement of the proposed evidence of a witness or an affidavit in reply to such other matter.

By telex of 12 July 1974 from their Agent the respondent Government proposed the evidence of a witness or witnesses from the Royal Ulster Constabulary and gave details of their evidence.

The Commission's decisions on evidence in general

On 15 July 1974 the Commission considered the questions raised with regard to the scope of the evidence under Art. 14. It confirmed that the time-limit of 15 June 1974 also applied to the submission of the affidavits proposed by the respondent Government with regard to the issue under Art. 14 and that the time-limit had now expired. However, in view of the Commission's own right to request further evidence at any time if it found it necessary, the Commission decided that its delegates are entitled, in any proceedings before them, to admit evidence proposed by the parties and found by the delegates to be relevant in those particular proceedings.

The Commission further decided that the issue of discrimination under Art. 14, in conjunction with Arts. 5 and 6, as set out in the decision on admissibility, must involve some general considerations of the background situation, going beyond the respondent Government's formulation. It would therefore not be appropriate at this stage to invite the parties to make oral submissions on the scope of the evidence and the delegates should be authorised to hear all the evidence now proposed by the applicant Government. The Commission would subsequently have to appreciate the relevance of any such evidence and the parties would in this connection have the opportunity of making submissions before the Commission reached any conclusions in this respect.

These decisions were communicated to the parties on 15 July 1974. In a telex of 17 July 1974 from their Agent the applicant Government objected to the calling of a witness or witnesses by the respondent Government on the issues arising under Art. 14. He recalled that on 5 November 1973 the respondent Government had notified the Commission that they did not propose to have witnesses under this provision. Although no change had since taken place in the position with regard to the evidence proposed on this issue, the respondent Government now proposed to adduce the existence of a witness or witnesses only one week before the hearing without even submitting a statement or statements of the evidence which each witness will give. His Government had already frequently protested against the respondent Government's disregard of the Commission's directions with regard to witnesses under Art. 3, and the statements of their evidence. This attitude seemed to continue with regard to all the evidence which might be adduced by the respondent Government under all the complaints before the Commission and his Government now submitted their strongest protest at the continuing disregard by the respondent Government of the directions of the Commission. The applicant Government assumed that the controversy which had now arisen would not be decided by the delegates at the July hearings but would be resolved by the Commission at a later date.

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The Commission considered the matter again on 18 July 1974 and confirmed that its delegates had been authorised to call any witness or obtain any further evidence which they found necessary in order to accomplish the Commission's task under Art. 28(a) of the Convention. The delegates could therefore take any decision in this regard irrespective of whether the time limits fixed by the Commission for the submission by the parties of proposals for evidence to be taken had expired. In this connection the Commission also recalled that all witnesses in the case had been called ex officio by the Commission or its delegates although this had generally been done on proposals from the parties. The Commission had, however, from the beginning reserved the right to call any further witness or request any other evidence which it might find necessary. The Commission now asked the delegates to consider, after having heard the witnesses proposed by the applicant Government under Art. 14 at the hearing from 22 to 25 July whether or not the witness or witnesses proposed by the respondent Government should be called. The delegates would at the same time also consider whether they wished to take any evidence other than that which had been proposed by the parties. Before calling any particular witness the delegates would, however, consult the parties. The parties were informed of the ruling on 19 July 1974.

The delegates' first hearing of witnesses and the Commission's decision on evidence

From 22 to 25 July 1974 delegates of the Commission (1) heard five of the witnesses proposed by the applicant Government, namely D.1, D.2, D.4, D.3 and D.6. The sixth witness, D.5, had come to Strasbourg but fell ill and had to return home before he could give evidence. At the end of the hearing the delegates drew up their first interim report on the taking of evidence under Art. 14 which they presented to the Commission during its 113th session.

On 8 October 1974 the Commission considered various procedural points in connection with the evidence under Arts. 3 and 14. As regards the oral evidence under Art. 14 the Commission confirmed that the delegates should complete the taking of evidence proposed by the parties. This implied the hearing of D.5 at a hearing fixed to take place at the Human Rights Building in Strasbourg from 28 to 30 October 1974. It might further involve the hearing of witnesses to be proposed by the respondent Government and the delegates would decide, at the above hearing and after having taken the evidence of D.5 whether or not such evidence should be called

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(1) MM. Sperduti, Opsahl and Polak.

The respondent Government was expected to indicate as soon as possible, but not later than 28 October 1974, any witness or witnesses they wished to have called and the details of the evidence which any such witness or witnesses were expected to give. The Commission intended to finish the taking of the above evidence in January 1975 and to hear the parties' oral submissions on the evidence at a session fixed to take place from 13 to 21 March before the plenary Commission. These decisions were communicated to the parties on 11 October 1974.

In a letter of 25 October 1974 from their Agent the respondent Government proposed 10 witnesses to give evidence under Art. 14 and submitted details of the evidence which these witnesses were expected to give. They also proposed a statement on behalf of the Northern Ireland Office, a summary of which was also included.

The delegates' second hearing of witnesses and decisions on evidence

On 30 October 1974 delegates of the Commission (1) heard the evidence of D.5 and during the hearing the parties made submissions on the evidence to be called. The Attorney General of the applicant Government recalled that the Commission had decided to hear oral evidence. However, the respondent Government now proposed to submit a written statement on behalf of the Northern Ireland Office which was not in accordance with the ruling of the Commission that no further evidence should be filed. Moreover, such statement was not evidence but comment and there was no indication as to which person in the Northern Ireland Office would prepare this statement. Furthermore, referring to the list of witnesses proposed by the respondent Government the Attorney-General complained generally of the "inadequacy of information which the respondent Government gives in relation to their witnesses". He referred to two witnesses who were expected to present and comment upon certain statistical information and he submitted that this information should be made available prior to the hearing of the witness or witnesses concerned.

The Agent of the respondent Government submitted that in proceedings of this kind between States the parties must have a certain latitude as to the manner in which they presented their evidence.

As long as the evidence was acceptable to them the delegates should accept it de bene esse. As regards the scope of the evidence now proposed by his Government the Agent explained that as long as the scope of the Commission's investigation of the allegations under Art. 14 was not limited to particular points, their evidence must cover the entire spectrum of the evidence given on behalf of the applicant Government.

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(1) MM. Ermacora, Opsahl and Jörundsson

The delegates, referring to the Commission's decisions in July 1974 relating to the taking of further evidence decided to call the witnesses proposed by the respondent Government at a hearing fixed to take place at Sola Air Base in Norway from 13 to 25 January 1975 and, where the evidence of witnesses included statistical information, to request the respondent Government to submit such information in writing before the hearing and not later than 13 December 1974. The delegates further decided to call for the written statement on behalf of the Northern Ireland Office as proposed by the respondent Government and, in connection with such a statement, to hear the oral evidence of a responsible official of the Northern Ireland Office who would be in a position to give further explanations in reply to any questions which the parties and/or the delegates might have with regard to the matters dealt with in that statement. This statement should also be submitted not later than 13 December 1974.

Furthermore, the delegates considered that they would like to hear evidence from certain politicians who had been responsible for the policy leading to the introduction of internment in August 1971 and its subsequent application. During the hearing they had asked D.5 who, in his opinion, would be best able to give evidence in these matters and he mentioned various names including G.2 and G.3.

The delegates then indicated informally to the Agent of the respondent Government that they wished to obtain such evidence. Furthermore, the delegates instructed the Secretary to the Commission to enquire, also informally from the respondent Government whether such persons would be available to be heard in this context and to discuss the necessary arrangements for hearing them. As regards the procedure the delegates had agreed that such hearings might be held at a place and time which was convenient to the witnesses and, if necessary, in the absence of the parties. In that case, however, they would perhaps invite both parties to submit to them in writing beforehand any questions to be put to the witnesses, and the delegates would, in any event, communicate to the parties the verbatim record of the hearing in the normal way.

The Commission's Secretary subsequently contacted the Agent of the respondent Government and explained to him further the delegates' request. He also had discussions with officials of the respondent Government in London from 27 November to 3 December 1974 on this matter.

On 12 December 1974 the Commission, at its 114th session, considered the Second interim report of the delegates on the taking of evidence under Art. 14. It took note of the delegates' initiative and of the Secretary's procedural discussions in London and approved both.

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The respondent Government's further proposals on evidence including the "political" witnesses

In a letter of 13 December 1974 the Agent of the respondent Government submitted the statistical information to be produced by witnesses at the forthcoming hearing at Sola Air Base. As regards the statement from the Northern Ireland Office he regretted that it had not yet been possible to finalise this statement. He submitted that, during the relevant period there had been several changes in Government and the process of consulting those concerned in the formation of policy at that time had inevitably taken time. He would, however, do his utmost to ensure that this evidence was put before the Commission as quickly as possible and also hoped to be able to submit to the delegates the names of one or more witnesses to speak to this evidence in Stavanger.

In a letter of 31 December 1974 the Agent of the respondent Government stated that every endeavour was being made to complete and to dispatch as soon as possible the written statement to be furnished by the Northern Ireland Office. Copies of the statement would be sent to the applicant Government at the same time as they were sent to the Commission.

With regard to the delegates' request to hear the oral evidence of a responsible official of the Northern Ireland Office in connection with the above statement, the respondent Government invited the delegates of the Commission to a meeting in London with senior officials whom the respondent Government might propose to be so interviewed together with the delegates, the Secretary to the Commission and such secretarial staff as might be agreed. This proposal superseded the proposal in the letter of 13 December 1974 to hear at Stavanger one or more witnesses who would speak to the statement.

On 3 January 1975 the Secretary to the Commission informed the Agent of the applicant Government by telephone of the above proposal and telexed the complete text to him on 6 January 1975.

In a letter of 8 January 1975 the Agent of the respondent Government submitted the statement from the Northern Ireland Office.

In a telex of 9 January 1975 from the Agent, the applicant Government protested strongly at the failure to furnish the statement within the time limit prescribed and

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particularly at the proposal of the respondent Government that the Commission's delegates should go to London to participate in a meeting with an official or officials of the Northern Ireland Office. They submitted that the proposal fell entirely outside the procedures decided upon by the Commission and was clearly inappropriate to the Commission's functions under the Convention. It also represented another failure to comply with the decisions and requests of the delegates.

The third hearing of witnesses and the issue of the "political" witnesses

The hearing at Sola Air Base opened on 13 January 1975 and ended on 25 January 1975. At this hearing delegates of the Commission (1) heard the respondent Government's witnesses both under Art. 3 and under Art. 14 of the Convention. Furthermore, the whole question of the "political" witnesses was extensively argued, and decided by the delegates, as follows:

At an informal meeting on 13 January 1975 between the delegates and representatives of the parties the delegates explained the background of the issue of the "political" witnesses under Art. 14. The Agent of the respondent Government indicated that his Government was suggesting three witnesses to give evidence with regard to the matters which came within their knowledge.

At the hearing on 14 January 1975 he then made a statement clarifying the position with regard to these witnesses proposed by his Government. He also emphasised that these witnesses would not be available for hearing under conditions other than those previously considered by the delegates, namely at a place which was convenient to the witnesses and in the absence of both parties. He explained in particular that their status and position as principal advisers to the Government did not allow these witnesses to be cross-examined by the applicant Government particularly as they had been involved in bilateral discussions between the two Governments. He requested the delegates to adhere to their previous proposals and indicated that Mr Silkin, Attorney-General of the respondent Government, could come to Sola and give further explanations if this was required.

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(1) MM Ermacora, Kellberg, Daver, Opsahl, Nørgaard, Frowein and Jörundsson

The Attorney-General of the applicant Government stated that he considered the respondent Government's proposal to be outrageous. He reminded the delegates of the decisions previously taken with regard to the hearing of evidence under Art. 14 of the Convention and of the fact that his Government had only recently been informed of the proposal to hear one of these witnesses and only the previous day of the proposal to hear the other two. He considered that it was inappropriate not to allow cross-examination of these witnesses and said that one of them in particular was not able to speak to the events which had happened in 1971/72.

As regards the statement from the Northern Ireland Office, the Attorney-General recalled that the respondent Government had failed to file affidavits on the Art. 14 issues as requested by the delegates on 11 October 1974. He made the application that it should not now be admitted in evidence but should be referred to the Commission for its decision as to whether or not it should be admitted in evidence. The reason was that without a person speaking to this statement there could be no cross-examination with regard to the matters dealt with therein, that it was out of time, and that it seemed to be an attempt to give in evidence the views of MM. Whitelaw and Faulkner.

The delegates then present (1) decided that they would announce a decision on the next day but that, in the meanwhile, they would explain to the parties the background of the present proposal by the respondent Government as outlined above. The delegates also decided that the respondent Government should be requested to indicate the exact position of one of the proposed witnesses at the relevant times, and that the statement of the Northern Ireland Office should be treated like any other unsupported document submitted in the Commission's proceedings, i.e., it should be included in the case-file for the Commission's appreciation in due course.

The Agent of the respondent Government explained that the Northern Ireland Office had, of course, not been in existence when interrment was introduced in August 1971. It had been formed in Spring 1972. The Department in the Government which had been concerned with, and had been responsible for, Northern Ireland Affairs before the establishment of the Office was the Home Office. His Government therefore proposed that a senior official from both the Northern Ireland Office and the Home Office should be available. The Attorney General of the applicant Government maintained his previous objections.

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(1) MM. Opsahl, Nørgaard, Frowein.

The delegates then took the following decisions which they announced on 15 January 1975. They observed that the witnesses proposed by the respondent Government now were high ranking civil servants and military personnel, and that they did not quite correspond to what the delegates had in mind when they took the initiative in this respect. They decided that it would nevertheless be useful to obtain evidence from the persons who had directed the operations at the relevant times on the following matters: (a) the policy decision by which detention was ordered in August 1971; (b) the subsequent policy of the implementation of that decision, including the instructions given to, and the supervision of, the security forces; (c) the allegation that the policy of detention was differently applied by the authorities when dealing with acts of terrorism originating from different extremist groups. The delegates further decided not to call a senior official from the Northern Ireland Office or Home Office.

As regards the procedure for the obtaining of this evidence the delegates noted that the above two witnesses were not available to give evidence in accordance with the procedure so far followed in the present case. They therefore decided to hear these witnesses in the absence of the parties and at a date and place to be fixed after consultation with the respondent Government; such date was not to be later than mid-February 1975.

The delegates further decided that, in the meanwhile, the parties should be invited to suggest before 5 February 1975 the text of any particular questions which they wished the delegates to put to the two witnesses concerned within the scope of the evidence already described. The transcript of the evidence obtained should be given to the parties immediately after the hearings and the parties should have an opportunity, at the hearings before the Commission in March 1975, of making submissions on the evidence so obtained.

The Attorney General of the applicant Government asked that the evidence taken in the way suggested by the delegates should not be circulated to the Commission until the March hearings at which they would have an opportunity of asking the Commission to rule on the whole matter. This was refused by the delegates on the ground that they were not authorised to withhold anything from the Commission on the basis of a request from a party.

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Both sides reserved the right to raise before the Commission the whole matter of the hearing of these witnesses.

On 24 January 1975 the Agent of the respondent Government requested that the delegates should modify their previous decision so as to include G 1 among the witnesses to be heard in London. He explained what his position was and said that there might have been a misunderstanding or misapprehension about the respective position, responsibilities and function in relation to the matters referred to by the delegates of the security force commanders on the one hand and the senior officials on the other whom his Government had proposed as witnesses. He said that his Government attached great importance to his being heard as a witness who could give the best evidence about these matters from his own knowledge as he had been closely connected with Northern Ireland Affairs since 1969.

The Agent of the applicant Government, in reply, said that his Government's attitude to the whole proposal remained unchanged for the reasons already given by the Attorney General, although they had been prepared to act in accordance with the delegates' decision of 15 February 1975 adopting the proposal in a modified form. Now, another suggestion was made by the respondent Government to the effect that that decision should be changed so as to conform more closely with what had been proposed in the first instance. However, no arguments had been advanced which could justify the delegates in changing their above decision and they should therefore reject the proposal that G 1 be included among the persons to be heard in London.

He further said that at the informal discussions last week between the representatives of the two Governments and the delegates he had understood the Agent of the respondent Government to have said that statements were available from G 2 and G 3. Referring to the time-limit of 5 February within which proposals for questions to these witnesses were to be submitted to the delegates, he requested that these statements should be handed over at once.

The delegates then present (1) decided on 25 January 1975 to hear G 1 in view of the further information supplied to them by the respondent Government with regard to the respective position of each of the three witnesses to give evidence on the matters described in their decision of 15 January 1975. Furthermore, it went without saying that the assessment and appreciation of all the evidence obtained by the delegates would be a matter for the full Commission and the parties would have an opportunity of making comments at the hearing in March 1975. ./.

(1) MM Kellberg, Daver, Opsahl and Jörundsson.
MM Nørgaard and Frowein were consulted.

As regards the proofs of evidence of the witnesses the Agent of the respondent Government said that he was not authorised to deliver these proofs this morning. He undertook, on behalf of his Government, that the proofs would be delivered in Dublin and in Strasbourg next week and he also undertook personally that every endeavour would be made to ensure that they were delivered as early in the week as possible.

The Agent of the applicant Government replied that the proposal had now become even more outrageous because the basic terms on which it had been suggested, i.e. that statements would be available in Stavanger, had now been withdrawn after a decision had been made on this basis. He suggested that this was another attempt to hamper the conduct of this case. He therefore asked that it should be made a condition of the hearing of these witnesses that these statements be delivered in Dublin on 28 January at the latest. This applied also to G 1's proof.

The Agent of the respondent Government protested against the Agent of the Irish Government questioning his good faith and that of his Government. He also said that G 1 would speak to the Northern Ireland Memorandum without putting in a different proof.

The delegates made the following ruling in regard to this matter:

They noted that they had not been aware of these statements before and agreed that, as they themselves had decided the evidence which they intended to obtain from these witnesses, they did not find proofs to be necessary. However, they appreciated that the applicant Government required these statements in order to help them formulate the questions which they proposed should be put to the witnesses and they agreed to extend the time-limit for the applicant Government's submission of such questions until 10 February, if so requested. They expected the proofs to be made available early next week, as indicated by the Agent of the respondent Government and agreed that they would reconsider the position as regards the proposed hearings if these proofs were for some unforseen reason not forthcoming during the course of the following week.

The hearings in Norway were followed by a series of discussions between the Commission's Secretary and the Agent of the respondent Government in relation to the order of the witnesses to be heard in London, the procedure to be followed in hearing them, the date of the hearing and various administrative arrangements to be made. The delegates (1) then confirmed that the hearings should take place on 20 and 21 February 1975 in the absence of the parties.

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(1) MM Opsahl, Nørgaard and Frowein

As regards the order of the witnesses, the delegates decided that they would first hear G 1, then G 2 and finally, G 3. This evidence would be recorded verbatim in the usual way and the witnesses would then have an opportunity of reading the transcript of the evidence so taken. They would subsequently be asked jointly to appear before the delegates in order to reply to any further questions which the delegates might put to them.

These decisions were communicated to the parties on 4 February 1975.

On 10 February 1975 the Agent of the applicant Government addressed a letter to the Commission's Secretary submitting his Government's comments in relation to the invitation to suggest the text of questions to be put to the three witnesses to be heard by delegates in London. Giving their reasons based on the nature of the evidence to be given by these witnesses, the applicant Government submitted that it was for them impossible, inappropriate, wrong or pointless to suggest questions in relation to any of the witnesses concerned.

The hearing of witnesses in London

On 20 February 1975 delegates of the Commission (1) heard in London, and in the absence of the parties, the evidence of G.1, G.2 and G.3. In accordance with the delegates' decision the witnesses were first heard separately in the order indicated above. Their evidence was taken down verbatim and subsequently each witness had an opportunity of reading the full transcript of the evidence so taken. They then appeared jointly before the delegates and replied to a few further questions which the delegates put to them.

Final conclusions and submissions of the parties

From 14 to 19 March 1975 the Commission heard the parties' final conclusions on the evidence and submissions on the case. These are summarised below (pp. 128 et seq.).

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(1) MM. Opsahl, Nørgaard and Frowein

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I. SUMMARY OF THE SUBMISSIONS OF THE PARTIES

A. Original submissions of the parties

1. The applicant Government (VR I, pp. 44-68, 133-141)

The applicant Government's claim under Art. 14 of the Convention was that the exercise by the respondent Government, and by the security forces under their control, of their powers to detain and intern persons had been, and was being, carried out with discrimination on the ground of political opinion, and that this constituted a failure of the respondent Government to secure without discrimination to persons within their jurisdiction the rights and freedoms conferred by Arts. 5 and 6 of the Convention.

The Government have submitted, in support of their claim, affidavits from newspapermen, from community leaders and politicians in Northern Ireland, from solicitors and from a priest. They have also cited witnesses.

In the applicant Government's submission the effect of their evidence was as follows: There were two terrorist campaigns in Northern Ireland. One was aimed at overthrowing the Constitution by attacking security forces while the other was designed to intimidate the authorities in Northern Ireland and the minority community by acts of force and violence. "Terrorism", in the terms of the Detention of Terrorists Order 1972, means"the use of violence for political ends and includes any use of violence for the purpose of putting the public or any section of the public in fear". Certain acts on the part of the Ulster Defence Association (UDA), such as parades, putting up barricades, and the use of military-type and para-military uniforms were illegal and constituted acts of terror in that they were designed to put the public in fear and to use violence to obtain political ends. The applicant Government pointed out further that the above definition of terrorism was maintained without change in the Northern Ireland (Emergency Provision) Act 1973 where a terrorist was defined as meaning "a person who is or has been concerned in the commission or attempted commission of any act of terrorism or in directing, organising or training persons for the purpose of terrorism".

In the applicant Government's submission the evidence established that Unionist terrorist organisations were very large, that they were well armed and that they had broken the law by intimidation carried out by drilling, parading and obstruction by road blocks, as well as by murder. The allegation in relation to Art. 14 referred to the failure on the part of the United Kingdom authorities to intern and detain members of these terrorist organisations in the same way as they interned and detained members of the terrorist organisations on the non-Unionist side.

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According to the applicant Government, the special powers of internment and detention contained in the Regulations made under the Special Powers Act of 1922 had never been used against even one member of Unionist extremist organisations. Further, since the introduction of the Detention of Terrorists Order in 1972 and the Emergency Provisions Act in 1973, only very few detention and internment orders had been issued under the above legislation against members of the Unionist organisations despite their increasing terrorist activities. There was therefore no substance in the respondent Government's argument that, numerically speaking, more members of the minority community had been detained and interned in the past because the practice of violence had previously not been found to exist among the supporters of the majority community in Northern Ireland. For, on the one hand, it was simply not true that there had been no Unionist terrorism prior to August 1971 and, on the other hand, the low number of Unionists interned or detained at present, in spite of increased violence from Unionist quarters, showed that members of the majority community were not treated in a manner equal to the members of the minority community.

To that extent the figures which the respondent Government had submitted of the numbers of members of the Protestant majority community charged with security offences in the ordinary courts, namely 288 Protestants charged between August 1971 and February 1972 as opposed to 491 Catholics, did not support the suggestion that internment and detention of Protestant extremists was not necessary, as it would then appear as if internment and detention of Catholics was equally unnecessary.

The applicant Government further made submissions regarding the interpretation of Art. 14 of the Convention. They first referred to a passage from the judgment of the Permanent Court of International Justice in the Polish National's Case, which had been quoted in the Commission's opinion in the Belgian Linguistic Case (Publications of European Court of Human Rights, Series B, Vol. I, p. 324). It was there established that "the prohibition against discrimination, in order to be effective, must ensure the absence of discrimination in fact as well as in law. A measure which in terms is of general application, but in fact is directed against /certain/ nationals... constitutes a violation of the prohibition".

The applicant Government next referred to the principle, which was also established by the European Court of Human Rights in the Belgian Linguistic Case (Yearbook 11, p. 862, paras. 8 and 9), that a measure may be in conformity with the requirements of an article enshrining a right or freedom but nonetheless that measure may infringe Art. 14 because it is discriminatory. They submitted that, consequently, where the Commission found in the present

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case that no breaches of Arts. 5 and 6 occurred or that any such breaches were protected by Art. 15 of the Convention, it would still be open to the Commission to find that detention and internment had been carried out in a discriminatory way.

The applicant Government furthermore referred to the submissions, which the Commission had made at the hearing on the merits of the Belgian Linguistic Case before the European Court of Human Rights (Yearbook 11, p. 854), to the effect that a State did not discriminate if it limited itself to conferring an "advantage", a "privilege" or a "favour" on a particular group or individual which it denied to others. In the Commission's opinion, the question of a possible discrimination arose only if the difference in treatment in issue amounted to a hardship inflicted on certain people which could not be justified by considerations based on the general interest and particularly by administrative or financial needs. The applicant Government maintained that it was this type of discrimination which was alleged in the present case, namely a discrimination which imposed a hardship on one section of the community.

Finally, relying on a report of 30 September 1971 by Sub-Committee No. II of the Committee of Experts on Human Rights (Doc. DH/Exp. II Discc/Misc (71) 3), the applicant Government submitted that Art. 14 of the Convention included the concept of equality before the Court and, as a part of that concept, the concept of equal treatment in the enforcement of the law. The applicant Government suggested, therefore, that, if the Commission found that there had not been equal treatment of terrorists in Northern Ireland in that the authorities had interned one set of terrorists but had not interned, or interned only to a very minor degree, members of other terrorist groups in Northern Ireland, then the enforcement of a law, which appeared to apply equally to everybody, had been far from equal and thus discriminatory in the sense of Art. 14 of the Convention.

The applicant Government finally pointed out that it was not their submission that there had been discrimination in relation to the failure to arrest, nor was the Commission, after its decision on admissibility, directly concerned in this case with the question whether or not there had been discrimination in relation to searches. However, the evidence, which had been tendered of discrimination by the security forces otherwise than in the realm of internment and detention, was strong corroborative evidence of the allegations which the applicant Government made in relation to internment or detention. It was indicative of a course of conduct by the authorities in Northern Ireland and helped to explain why for a considerable period no terrorists on the loyalists side, who had operated before August 1971 and even before 1969, had been interned and why, only after a considerable time had elapsed, so few terrorists on the unionist side had been interned.

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2. The respondent Government (VR 1, pp. 108-116, 156-157)

The respondent Government emphasised at the outset that their observations were confined to those matters declared admissible by the Commission, namely the allegations of discrimination on the ground of political opinion in relation to detention and internment. Their observations accordingly did not deal with other allegations of discrimination contained in the applicant Government's memorial or in the Appendices and, indeed, it would be wrong to evade the Commission's ruling by seeking to include such evidence in the case in alleging that it was corroborative of the matters relevant.

On the substance of the allegation the respondent Government denied that the powers of detention and internment were carried out with discrimination on the ground of political opinion. They submitted that it was important to recollect the history of internment and detention which had been brought into operation on 9 August 1971 following the organised attack in Northern Ireland in 1971 by the IRA whose declared object was violence and opposition to the union between Great Britain and Northern Ireland. It was therefore obviously those people who were engaged in the organised attack on this union who became the subject of detention and internment, and this meant that those who were detained and interned came from that element of the community in Northern Ireland which was the minority and which was in contra-distinction to the loyalists or the Unionists.

Thus, it was true that, numerically speaking, more members of the minority might have been detained and interned since August 1971, but there were several reasons for this. First, they had been engaged in terrorist activities for a longer period of time. Second, the only basis on which the powers of detention and internment under the Special Powers Regulations had been exercised was that it had been necessary for the preservation of peace and the maintenance of order. Similarly, under the Detention of Terrorists Order 1972 and the Emergency Provisions Act 1973, a commissioner could only order that a person be detained if he was satisfied that that person had been engaged in terrorism. As a matter of fact, the threat to peace and order had come in August 1971 from members of an organisation of one political opinion. However, it was not because of particular opinions held by these persons that they were detained and interned at that time, but because of their terrorist activities.

The respondent Government denied that, in August 1971, there had been a threat to public peace and order or any terrorist activity from the members of the majority community.

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Furthermore, the suggestions made by the applicant Government that the setting up of barricades and the wearing of paramilitary uniforms, in which both communities had engaged, constituted terrorism, i.e. the use of violence for a political purpose, were totally unrealistic. However, after August 1971, throughout 1972 and into 1973, the situation had somewhat changed because the years of violence from the side of the IRA had eventually produced a reaction among the supporters of the union where the practice of violence was now also to be found. The consequence of this change was that the powers of detention had been, and were being, exercised against members of the majority community. Indeed, up to 1 October 1973, 48 interim custody orders had been made against Protestants and, of these, seven had been discharged by the commissioners, two by the Appeals Tribunal, and two had been released by the Secretary of State. The other 37 were still in custody, 24 under the interim custody orders and 13 under detention orders made by the commissioner.

The actions of the authorities in other fields were entirely consistent and, when acts of terrorism were committed, the law was impartially enforced. Thus, between July 1972 and 25 September 1973, some 1600 people had been charged with security offences and 611 of these were Protestants.

In reply to the allegation that the powers of detention should have been exercised more extensively against leading members of the extreme loyalist organisations, the respondent Government made two points: first, the UDA was not illegal and it was not evidence of terrorism to be a member of the UDA in the same way as it was not evidence of terrorism to be a member of the Catholic Ex-Servicemen's Association; second, the responsibility for deciding whether there should be arrests and prosecutions in these matters was very heavy and the consequences of such action had to be taken into account. There were difficult and delicate questions of judgment about whether or not action should be taken in any particular case, since the judgment had to be based on an appreciation whether such action might or might not worsen the political and the security situation.

In conclusion, therefore, the respondent Government submitted that the relevant powers of detention and internment had been exercised only where there was an organised threat to the life of the community which could not be dealt with by the ordinary processes of law and, further, that these powers had been exercised without discrimination as to political opinion within the meaning of Art. 14, read in conjunction with Art. 5 of the Convention.

As regards the allegation under Art. 14 related to Art. 6 of the Convention, the respondent Government submitted that the exercise of powers of detention and internment did not raise issues under Art. 6 and thus no question of a breach of Art. 14, read in conjunction with that provision, arose.

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B. Conclusions and final submissions of the parties

1. The applicant Government (VR 12, pp. 229-292)

a) Survey of the evidence (VR 12, p. 229)

At the outset of their conclusions, the applicant Government gave a survey of the evidence which was before the Commission under Art. 14 of the Convention. This included, on behalf of the applicant Government, documentary evidence in Appendix 11 and Addenda 1 to 3, in Appendix 20, the Intimidation Report of the Community Relations Commission, affidavits, newspaper reports and photographs, a diary of loyalist acts of terrorism, a book called "Political Murder" by Dillon and Lehane, a book called "The UVF" by Boulton, a two-volume work called "A Chronology of Events 1969-1973" and oral evidence from six witnesses. The Government submitted that, insofar as these works contained statements of facts which were considered during the oral hearings and not controverted, the Commission could accept the facts as agreed ones.

The Commission had further before it, on behalf of the respondent Government, the reports of certain commissions of enquiry, and the applicant Government submitted that, where these reports contained admissions made by or on behalf of one of the parties in these proceedings, they could be accepted for the purpose of ascertaining the facts. The Commission had further obtained oral evidence, some of which it should not accept as part of the record in this case.

b) The relevant powers of detention and internment (VR 12, p. 230)

The applicant Government after again stating their claim under Art. 14 of the Convention, referred them to the relevant powers of detention and internment. Thus, from 9 August 1971 to 7 November 1972 these powers were under the Civil Authorities Special Powers (Northern Ireland) Act, 1922 and they could be exercised when orders for detention or internment were deemed necessary by the Minister for Home Affairs for the preservation of the peace and the maintenance of order. From 7 November 1972 to 25 July 1973 these powers were under the Detention of Terrorists Order, and thereafter under the Northern Ireland Emergency Provisions Act 1973, and they could be exercised against those committing terrorism which was defined as meaning the use of violence for political ends, including any use of violence for the purpose of putting the public or any section of the public in fear.

c) Applicant Government's contentions (VR 12, pp. 231-233)

It was the contention of the applicant Government that, insofar as the period before 7 November 1972 was concerned, if the facts justified extra-judicial procedures, there had been

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individuals and organisations other than the IRA who were a threat to the preservation of the peace and the maintenance of order, and against whom detention and internment orders had not been made. Indeed, there had been a campaign of violence and terrorism emanating from the Loyalist community which had been demonstrably at an unacceptable level and which had clearly established that ordinary law could not deal comprehensively or quickly with it.

It was the applicant Government's further contention that, after 7 November 1972, the failure to intern and detain any Loyalists who threatened the preservation of peace and the maintenance of order, or who were terrorists, until February 1973, and thereafter to detain such persons only in small numbers, was the discrimination alleged to be in breach of Art. 14.

In the present case the Commission was not considering measures which the respondent Government said amounted to a distinction; in the present case the Commission was considering measures which the respondent Government said were applied without any distinction, as having been directed against terrorists without regard to the community from which they came. All the evidence pointed in that direction, and if therefore the Commission found that such a distinction was made, the Commission did not have any material on which to inquire further to see whether the distinction could be justified. A breach of the Convention was established by the distinction.

d) Evidence on behalf of the applicant Government
(VR 12, pp. 234-244)

The applicant Government then examined the evidence before the Commission in relation to the nature, duration and extent of violence and terrorism by different extremist groups during the relevant period. They submitted in the first place that no substantial disagreement existed between the parties in relation to the violence of the IRA. It was generally agreed that the IRA campaign did not get under way until after the middle of 1970, after a split had occurred in 1969 dividing the IRA into two separate movements: the Provisional IRA and the Official IRA. Nevertheless, throughout the campaign, the vast majority of the Catholic minority had voted in numerous elections for parties who opposed the IRA and who believed in the democratic processes.

On the other hand, there was substantial disagreement on the nature, the duration and the extent of Loyalist terrorism. The figures relating to internment (VR 10 I, Annexes, p. 15): showed that detention or interim custody orders were served as follows:

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	Protestants	Catholics
August - December 1971	-	770
1972	-	524
1973	64	441
1974	35	225

Furthermore 342 persons were arrested on 9 August 1971, of which 105 were released by the end of August. Between 9 August 1971 and 10 November 1971, 980 persons were arrested of which 508 were released by 10 November.

The applicant Government then outlined the evidence of the witnesses on their behalf. They pointed to the significance of D.4's evidence which contested the view that the juries in ordinary courts could not adequately deal with IRA terrorism and which further established that, if internment were justified, then the manner in which jury trials operated in favour of Protestant accused would have been a good reason for the application of internment against Protestant suspect terrorists. If from the beginning of 1972 onwards a campaign of sectarian killings was reintroduced by Protestant extremists and if it was not possible to obtain evidence against individual killers sufficient to secure a conviction, this fact would be an added reason why the internment laws should have been applied against the organisers of the terrorist groups. Indeed this fact was one of the reasons which had been used by the respondent Government to justify the introduction of internment against the IRA.

e) **Evidence on behalf of the respondent Government**
(VR 12, pp. 244-272)

The applicant Government then dealt with the evidence on behalf of the respondent Government. They submitted in the first place, that the evidence obtained from three witnesses in London on 20 February 1975 should not be accepted since it was obtained in the absence of the parties and thus contrary to the provisions of Art. 28 of the Convention, there being no exceptional reasons which might have permitted such procedure. In particular, the principle of equality of arms had been violated, at the disadvantage of the applicant Government, by the refusal of the respondent Government to allow the cross-examination of the three witnesses concerned.

As regards the other witnesses, neither of them had been able to give any direct evidence relating to policy decisions about internment and detention. The value of their testimony was restricted to the evaluation which these witnesses gave as to the strength of Protestant terrorism, and no witnesses had been proposed who were directly responsible for policy matters.

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N2 had given evidence about how the list of persons to be arrested in August 1971 had been compiled and he had stated that the army had been asked to prepare a list of key IRA figures of which the final list had 80 names. No lists of other terrorists had been asked for and no explanation had been given as to how the final list of almost 500 names of persons to be interned had come into existence. The witness had further said that when he arrived in November 1970 he did not regard the IRA as a serious threat.

The problem had appeared to him to be merely an inter-communal one in spite of the fact that throughout 1970 attacks had been made on Members of Parliament, that the UVF had claimed responsibility for bombs exploding outside a courthouse and that in June 1970 a church in East Belfast had been attacked with guns. Thus it was a reasonable inference from N2's evidence that the army did not appear to be greatly concerned with acts of terrorism emanating from the Protestant community. N2 had agreed that Mr. John McKeague, Chairman of the Shankill Defence Association had become a very dangerous person by January 1971, but until this had been put to him in cross-examination the witness had regarded these groups as harmless, an object of curiosity and not to be taken seriously. Similarly, he had regarded the UVF in 1970 as a shadow organisation. As regards intimidation he finally had agreed that he should have made some reference to intimidation from the Protestant side, and as to intimidation in the Rathcoole area which had been within his area of operation, he explained that he did not have enough troops to deal with Rathcoole which was done by the RUC quite normally and adequately. Furthermore, this witness had given a completely wrong account of the growth of the UDA and of the UVF, and he had refused to accept a statement made by his own Minister of Defence, Lord Balniel, to the effect that explosions in 1970 had come from more than one community in Northern Ireland. Thus, the evaluation of Protestant terrorism given by this witness was not an accurate one and was even in conflict with other evidence given on behalf of the respondent Government.

The applicant Government next considered the evidence of N1 and pointed out various inconsistencies between that witness's testimony and that of N2 in relation to the presence and growth of various Protestant terrorist organisations during 1970 to 1972. The applicant Government submitted that when the Commission came to consider the role of the UDA generally, it was the significance of N1's evidence in this respect that, when claims to murdering Catholics were made by an organisation called the UFF it turned out that no such organisation in reality existed and that in fact the murders were committed by members of the UDA itself. Moreover, N1 had explained why no Protestants were interned in 1972 after direct rule, namely because the Secretary of State was releasing detainees and was

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running down detention at that time. This was a clear indication that political considerations played a role in the operation of internment policies; however, notwithstanding the fact that a considerable number of internees and detainees were released in 1972, at the same time throughout 1972 new interim custody orders in respect of other suspects were being made. N1 had admitted that by the middle of 1972 the police would have had lists of the terrorists in the UDA and he had envisaged no difficulties in identifying the terrorists from that time if their internment had been decided upon. It might be difficult to accept that the RUC did not know their identity before then. But even accepting this evaluation of the position, the ability to operate detention procedures from the middle of 1972 against Protestant terrorists had thus been demonstrated.

N5, N6, N8, N9 and N12 had dealt with subsidiary issues and the applicant Government did not propose to comment on them.

Nor did they propose to comment on the evidence of the witnesses N3/7/11, N10 and N4 who had given statistical evidence. They only referred to what appeared to them to be the most relevant facts which emerged from these statistics. First, there was the fact that very extensive arms and illegal ammunition was found in the hands of Protestants and this was clear from the Annexes to the evidence of N3/7/11. Secondly, it was clear that terrorist assassinations commenced in March 1972 and reached their peak in July 1972. The figures submitted by N1 in Annex E concerning persons charged with terrorist-type offences (VR 10 I, Annexes, pp. 10-14) showed the high level of Protestant terrorism and established a rising graph of Protestant terrorism and an increasing proportion of Protestant terrorists amongst all terrorists charged. Taken in conjunction with the figures for persons against whom interim custody orders or detention orders were served (VR 10 I, Annexes, p. 15), the figures further showed that, notwithstanding the ability to charge 851 Catholics in the ordinary courts, a considerable number of interim custody orders, namely 446, had, in addition, to be served against such terrorists in 1973. The fact that 563 Protestants were charged, in 1973, with terrorist-type offences did not support the contention that the internment of Protestants (64 in 1973) was thereby rendered unnecessary.

The applicant Government then made some comments on the evidence of the London witnesses in the event the Commission should decide that it was to be accepted.

Starting with G 2, the applicant Government referred to the extent of Protestant violence during the relevant periods. They submitted that his evidence about the absenc

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Protestant extremist elements between 1969 and 1971 could not be reconciled with the well-documented UVF campaign in 1970 against members of Parliament. He had ignored the attempted assassination, claimed by the UVF, on Mr. Austin Currie; he had ignored that illegally held arms had been found in 1970 and 1971 in Protestant areas and that guns had been sold to the UVF by the IRA in 1970; he had ignored the bombing of Catholic owned premises and the attack by Protestant extremists on St. Malachy's College on 27 March 1970; and he had made no reference to a number of facts pointing to the violence of the UVF and the UDA in 1972. As regards the developments leading to the internment of the first Protestants in February 1973, being a time when G 2 had already left Northern Ireland, the only inference to be drawn from his evidence was that, at that time all that was in existence was a list of possible Protestant terrorists against whom no evidence existed to justify an interim custody order but in respect of whom it was hoped that evidence would be found. However, this was not reconcilable with the evidence of G 3 relating to the first internment of Protestants only four days after G 2's departure which showed that there was in fact evidence in existence prior to this. Finally, G 2 had confirmed a matter of detail in the evidence given by D.3 and relating to G 2's promised television appearance which had not taken place.

G 3's evidence concerning acts of terrorism by the UVF before 1972 were equally not reconcilable with the facts and with the evidence of N1. As to the internment policies after March 1972 he had said that it had not been the best time to start bringing in more detainees. Furthermore, the significance of his evidence in relation to the first internment of a Protestant in February 1973 was that it showed that the evidence was in existence which would have justified his internment even before he had committed the act, which was the bombing of a bus. This act had then caused a public outcry and had actually forced a decision to intern the first Protestant terrorist. The witness had failed to say that responsibility for this bombing was claimed immediately thereafter by the North Down UVF. He had further accepted that he regarded action directed against a group of the population as terrorism if it was trying to restrict them from their legitimate rights even as a minority, and the applicant Government submitted that, if the Commission accepted that widespread acts of organised intimidation occurred with which the ordinary courts were inadequate to deal, then a case of serious and sustained discrimination in the application of the internment policy was established. The applicant Government further submitted that, insofar as this witness gave evidence about the Orange Order, it had been incomplete, as the links between the Order and the Unionist Party should have been made clear.

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The applicant Government finally dealt with the evidence of G.1 which, they submitted, was mainly second-hand evidence merely repeating the views of the security forces and particularly of the Special Branch of the RUC. He admitted that, while security aspects were taken into consideration from March 1972, political considerations played an important role in the policy of the implementation of the 1922 Special Powers Act regulations and indeed, this was part of the applicant Government's case. This witness had further accepted that there were two parallel terrorist campaigns in Northern Ireland but said that the nature and the scale of violence had not been the same. This view could not be reconciled with the other evidence in the case which showed the existence of huge amounts of arms and explosives and ammunition in Protestant hands, and of well organised groups, with access to large sums of money. Furthermore, this witness had ignored many aspects of the campaign of terrorism against the minority, and had failed to take into account the threat emanating from the UDA in various ways and the effective structure of the Protestant extremist organisations.

f) Suggestions as to facts established (VR 12, pp. 272-290)

The applicant Government then suggested what facts the Commission should find as being established in relation to the nature and extent of Protestant violence.

(i) 1966 (VR 12, pp. 272-274)

They first referred to D.2's and D.1's evidence as to the historical background of the political situation in Northern Ireland and to the previous IRA campaign from 1956 to 1962. They submitted that by 1962 the IRA had become virtually extinct but that in 1966 Protestant violence began.

In March 1966 Catholic-owned premises were petrol bombed and in May one Captain Johnson, speaking on behalf of the Belfast UVF stated that they declared war on the IRA. In the same month one John Scullion was stabbed and in June 1966 the "Malvern Street Murders" happened. All had been victims of sectarian murders and none had had any connection with the IRA. Also in June 1966 the UVF had been declared an unlawful organisation.

The significance of these killings in 1966 was twofold: firstly they showed the willingness of a group of Protestant extremists to murder indiscriminately, and to combine together for this purpose, in the words of the judge who tried those responsible for the murders, in order to assert and maintain the Protestant ascendance; secondly, the traumatic effect which the banning of the UVF had on the Protestant community who always had regarded the Special Powers Act as a weapon to be used only against the IRA, was revealing of its attitude to law and order and was helpful to explain the attitude to internment policies in later years.

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(ii) 1968 to 1969 (VR 12, pp. 274-281)

During the years 1968 to 1969 three salient facts emerged. First, the Civil Rights Movement began in 1968 and developed in 1969; it was solely concerned with the civil rights of the people in Northern Ireland. Secondly, the IRA, during this period was virtually non-existent. Thirdly, the Civil Rights Movement produced a violent and extremely well organised reaction, (a) against the minority community and (b) against the Government, when it appeared to the Protestant extremists to be about to concede reform to the minority. These years saw the emergence of a pattern of Protestant violence which had continued since and their aim was to stop the demands of the Civil Rights Movement which were given by D. 1 in the course of his evidence, and confirmed by the Cameron Report (Ch. 16 of the Report). These demands dealt with the following matters:

- inadequacy of housing provision by certain local authorities, unfair methods of allocation of housing, and misuse of discretionary powers of such allocation;

- discrimination in the making of local government appointments;

- manipulation of local government electoral boundaries;

- failure to investigate complaints or to provide and enforce a remedy for them;

- the Ulster Special Constabulary ('B'-Specials);

- the continued presence in the Statute Book of the Special Powers Act;

- physical violence against Civil Rights demonstrators produced by the fears and apprehensions among Protestants of a threat to Unionist domination.

In 1968/69 there was growing opposition to the then Prime Minister, Captain O'Neill, from within the ranks of his own Unionist Party due to his liberal ideas. Between March and April 1969 five major explosions occurred to water and electricity installations in Northern Ireland which were all the work of Protestant extremists. Among them was Mr. Stevenson who was convicted and and sentenced for these crimes. The purpose of these incidents was to strengthen the campaign to topple Captain O'Neill from power and to secure the release from jail of Dr. Paisley and Major Bunting. Their intentions were realised as Captain O'Neill resigned in April 1969 and Dr. Paisley and Major Bunting were released in May under the terms of a general amnesty. Thus, a group of Protestant extremists were willing and able to use acts of violence and terrorism in pursuance of a political object. Their objectives

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were facilitated by holdings of enormous quantities of arms and ammunition which were also proof of an organisation which was able to bring in, buy and store weapons consisting not only of explosives but also of machine guns and other firearms.

In August 1969 there was then serious loss of life, intimidation, burning and rioting causing the authorities to deploy the British Army in Northern Ireland. Mr. McKeague, who was in August 1969 Chairman of the Shankill Defence Association had called a press conference shortly after the arrival of the troops in which he said that the Shankill Residents' Association had hundreds of guns and rich friends if they needed them.

In October 1969 the Hunt Report was published which related to the reorganisation of the police. It acknowledged that, since 1966 elements other than the IRA and its various splinter groups, including Protestant extremists, had required and had been given ever-increasing attention. The Hunt Report further recommended the disbandment of the 'B' Specials. The publication of the Report on 10 October 1969 was followed on 11 October by serious rioting in Shankill Road and confrontation with the security forces which caused the death of a policeman and two civilians.

(iii) 1970 (VR 12, pp. 281-282)

Coming to 1970, the applicant Government submitted that during that year, the UVF came into the open, claimed responsibility for the bombs which occurred in the early parts of that year, for the explosions which took place in the houses of Members of Parliament and for the threats to their lives which resulted in guards being placed on every member of Parliament in Northern Ireland. Arms were found throughout 1970 in predominantly Protestant areas and 42 licensed premises owned by members of the minority community were destroyed.

In this connection the applicant Government also referred to the evidence regarding intimidation about which there had been major controversy between the parties, and particularly to the report of the Community Relations Commission published in February 1974. The Commission had stated that between August 1969 and February 1973 conclusive evidence existed that 8000 families in the Greater Belfast area alone were forced to leave their homes as a result of intimidation, but it was likely that the total number of refugee families was in the region of 15,000. The applicant Government submitted that intimidation was well organised and carried out on a systematic and planned basis in different parts of Belfast over different periods of time and that the UDA was involved in organising this. This organised intimidation was terrorism in that it was the use of violence to put the public, or a section of the public, in fear. In addition it was a crime under ordinary law. Organisations played a major role at all stages of the intimidation process and over 80% of all those intimidated were Catholics. On the other hand, the conviction rate of all those involved in intimidation was less than 1%.

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(iv) 1971 (VR 12, pp. 281-286)

In 1971 the evidence of organised groups of Protestant terrorists accumulated. In January 1971 there was a confrontation with army and police on the Shankill during which 18 policemen and 11 soldiers were injured. Arms and ammunition in Protestant hands continued to be found throughout 1971, bombings by Protestant extremist groups continued also, and Lord Balniel of the Ministry of Defence visited Belfast in May 1971 finding that some of the explosions had been caused by different sections of the community, not all from one side. The IRA 's campaign of bombing and of attacks on army and police personnel had only gathered momentum in the second half of 1970 and in the early months of 1971 demonstrations took place against the Prime Minister (Mr. Chichester Clark) because of the alleged failure of the security forces to deal with the IRA threat. The Prime Minister resigned in March 1971 and Mr. Craig threatened in a television speech in Dublin that any attempt by the British Government to rule Northern Ireland would be met by massive resistance in which the minority would be the innocent victims.

The IRA campaign increased in magnitude in the months following internment and the security situation deteriorated rapidly. At the same time the terrorism from the Protestant community grew and its dual characteristic became more pronounced: its violence against the minority community became more intense, and when it considered that action by the Government threatened the interests of the Protestant community it used organised power against the Government.

The Protestant organisations had taken different names. There was the UDA which grew in 1972 to about 20,000-30,000 members, dressed in para-military uniforms and carrying weapons. Their bulletin openly urged ruthless, indiscriminate killing and asked people to join for this purpose. The UVF also was growing in size and by February 1973 had about 2,000 men trained in the use of arms. And in March 1972 Mr. Craig's Vanguard Movement was formed and the speeches by Mr. Craig incited to murder and violence.

(v) 1972 (VR 12, pp. 286-287)

The year 1972 saw the development of these sectarian murders continued throughout the year. These were not isolated or unplanned killings, but they were part of a deliberate campaign of terror and responsibility for them was acknowledged immediately after they took place. During the same time, whilst it was true that detainees were being released from March 1972 onwards, new detention orders were made against others suspected of terrorism: from March to November 1972 107 of such orders under Regulation 11, and from November 1972 up to 1 February 1973 166 interim custody orders under the Detention of Terrorists Order were made. None of these 273 orders were served on Protestant extremists who were all well known.

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(vi) 1973 (VR 12, pp. 287-290)

On 5 February 1973 the first two Protestants were interned, following a special meeting of those concerned in the decisions. This event was followed with widespread threats from the UDA. Furthermore, the Protestant terrorists succeeded in bringing down by force the constitutional government of Northern Ireland which had then been established in the form of an executive under the new Constitution Act of 1973 and had come into existence on 1 January 1974.

In March 1973 the British Government had made proposals for the constitutional future of Northern Ireland which became law in the Constitution Act 1973. A general election was held in June 1973 and extreme loyalist parties campaigned against the proposed constitution. Nevertheless, 51 out of 78 members of the Northern Ireland Assembly were those in favour of the new constitution and three parties in the new Assembly formed an Executive. At Sunningdale, in December 1973, these representatives met representatives of the Governments of the United Kingdom and the Republic of Ireland and agreed on the establishment of a Council of Ireland through which cooperation between North and South would take place. At the same time the Protestant extremist groups organised the Ulster Army Council bringing together all para-military organisations. Workers' groups organised the Ulster Workers' Council, and representatives from all these groups came together to form a co-ordinating committee which then organised the strike that brought down the Government and the constitution.

c) General observations (VR 12, pp. 290-292)

The applicant Government concluded with some general observations. Firstly, there was, at the beginning a legal, non-violent civil rights movement confronted with illegal, organised acts of terrorism. Later the IRA campaign developed coupled with the expansion of organised loyalist terrorism on a growing and developing scale.

Secondly, the loyalist terrorism had at all times a purpose, being a seditious combination of unlawful organisations whose activities were directed to asserting and maintaining Protestant ascendancy.

Thirdly, the means to achieve the purpose were twofold: Protestant terrorists were prepared to take action against the Catholic minority but also against the Government in Northern Ireland, be it the local government in Stormont or the United Kingdom Government in Westminster.

Fourthly, the means employed were many and included burning, bombing, intimidating, shooting, killing, raiding, building illegal barricades, striking, destroying the constitution of Northern Ireland, using violence and openly condoning it with massive quantities of arms and ammunition.

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Fifthly, these terrorists' acts were "terrorism" within the meaning of the 1972 Order and the 1973 Act, and prior to that their acts threatened the peace and maintenance of order. Yet, from August 1971 until February 1973 not one Protestant terrorist was interned and thereafter, notwithstanding their strength and success, they were only interned in small numbers.

Sixthly, there was only one reasonable explanation for the non-internment of Protestant terrorists, and that was that the law was applied in a discriminatory way, in breach of Art. 14 of the Convention.

2. The respondent Government (VR 12, pp. 292-360, 405-417)

a) The respondent Government's contention (VR 12, pp. 292-294)

The respondent Government submitted that it was essential to appreciate at the outset that in August 1971 it was against the IRA that the authorities in Northern Ireland were moving because they believed that it was from the IRA, and from the IRA alone, that there was proceeding an organised campaign for the destruction of life and property. If the authorities acted because this was their belief, then that by itself was a complete answer to the suggestion that they had acted in a discriminatory manner. In addition the respondent Government submitted that the authorities were right. They had maintained and they still maintained that as between one terrorist and another no distinction had been made. But equally it was of course clear that in August 1971, in another sense, distinction was made insofar as it was, at that time, those who supported or favoured the IRA who were interned, and not those who took an opposite political stand.

b) The case law of the Court and the Commission (VR 12, pp. 294-298)

However, it was perfectly clear from the Commission's case law, particularly from the Court's judgment in the Belgian Language Case and the Commission's report on the Gandrath Case, that any difference between the treatment of one citizen - and another in respect of the rights set out in the Convention is justified if it is shown to rest on reasonable and objective grounds. Thus, what first had to be done was to look at the situation with which the authorities were faced in August 1971 - and not in 1970 or before that - in order to see whether there was reasonable and objective justification for seeking to break the power of the IRA by use of the power of internment.

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c) The extent of IRA violence in 1971 (VR 12, pp. 299-317)

The respondent Government then referred to various passages in the evidence relating to the extent of IRA violence in the summer of 1971 about which, it was submitted, there was no dispute. They quoted from the evidence of D. 4 (VR 7, p. 287) and of D.5 (VR 9, pp. 30 and 47), of N2 (VR 10 I, pp. 8, 35 - 37, 155 and 171 et seq.), N1 (VR 10 I, pp. 212, 215, 405), and also referred to certain statistics (VR 10 I, Annexes, pp. 6/7).

In this connection the respondent Government also dealt with the propriety of the London evidence. They admitted that their proposals in relation to the taking of evidence under Art. 14 had changed in the course of time but submitted that these proposals had finally been accepted by the Commission. As regards the manner in which this evidence was taken, the Government referred to the way in which this matter had arisen. They submitted that the evidence was taken in a way which was in no way inconsistent with either Art. 28 or any other provision of the Convention, but very useful when such evidence of a very important kind had to be received. Besides, for the reasons given previously at the hearings in Sola in January 1975 it had not been possible to give that evidence in circumstances in which the witnesses would be cross-examined by the representatives of the applicant Government. In this connection the Government also referred to the rule of Crown Privilege, i.e. the rule of public interest protection. This meant that, although nobody was immune from the duty to give evidence, a witness may refuse to answer questions on grounds of public interest.

The respondent Government then referred to several passages in the "London evidence" which in their submission supported the view of there having been in August 1971 a very substantial threat to security only from the IRA (cf. VR 11, pp. 12, 21/22, 70, 86, 123, 125/130).

The respondent Government concluded that this evidence showed what they had submitted at the outset, namely that in August 1971 the IRA carried on disastrous activities and that the authorities believed that organised bombing and killing was coming from one source only, and that was the IRA. It was because of this belief about the difference of the behaviour of the IRA from the behaviour of other people that they locked up supporters of the IRA and did not lock up other people. To make that distinction on the basis of that belief was in their submission, not discrimination on the ground of political opinion and even if that were all, it would be enough to show that the charge of discrimination on the ground of political opinion had not been made out.

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However, the respondent Government further submitted that it was clear from the evidence that the authorities did not only believe this but that they were right. As far as the events in 1971 were concerned, all that the applicant Government relied on to show that the violence came not only from the IRA were the following facts: two days' rioting in the Shankill Road in January 1971, five discoveries of arms between the end of January and the middle of April 1971, the statement made in Belfast by Lord Balniel on 5 May 1971 that the bombing was coming from both sides and not just from one, an article in the "Loyalist News" in February 1971, and a speech by Mr. Craig on television in Dublin after Mr. Chichester-Clark, the Prime Minister, had resigned.

d) The security situation in the previous years (VR 12, pp. 317-322)

Of course, the applicant Government had also relied substantially on what had happened in the years preceding 1971, in particular the three "Malvern Street Murders" in 1966, some serious explosions at public utilities at the beginning of 1969, and on some events in early 1970 when there were some explosions at homes of Members of Parliament and threats of violence made to Members of Parliament. As regards these earlier events, the respondent Government submitted that it was quite unrealistic to imagine that the security forces in deciding what to do in 1971, would have been at all likely to cast their minds back to what had happened in 1966 or 1969 or 1970.

In fact, the evidence given showed that there was very good reason for thinking that whatever troublesome elements there had been in those three earlier years they had been apprehended and dealt with. Thus, as regards the Malvern Street Murders, Gusty Spence and two others were convicted and given life imprisonment, and the small group of five or six people surrounding Spence and calling themselves UVF was inactive until 1969. As regards the 1969 explosions, Stevenson was convicted and sent to prison for 12 years and the police had known of no further activity on the part of the others against whom it had not been possible to obtain a conviction in court. The only man who was regarded to be dangerous at the time was a man called McKeague who had also been in prison and in detention. As regards 1970, there were the attacks on the Members of Parliament, but the police had discovered the identity of the four or five persons who were responsible for this trouble and they were apprehended, not in connection with these attacks but in connection with another matter. Three of them received prison sentences and one man killed himself while trying to escape. Furthermore, these and other explosions by Protestant extremists had been minimal in comparison with those for which the IRA had been responsible.

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Thus, what the evidence really showed was that the authorities were perfectly justified in taking the view that the threat with which they were dealing in 1971 was a threat which came from the IRA; that the Loyalist extremists who had been responsible for these events in 1966, 1969 and 1970 had been apprehended and taken out of circulation, and that anything which was going on on the Loyalist side at that time was beneath any comparison with what was being done by the IRA.

e) Intimidation (VR 12, pp. 322-333)

The applicant Government had placed considerable emphasis on the subject of intimidation by which people were by various means forced out of their homes or at least induced to leave. In this connection the respondent Government first submitted that, although it might be quite legimitate to say that intimidation that was going on was a form of terrorism, it was by no means the form of terrorism with which the authorities were trying to deal by way of internment.

Secondly, by using the word "intimidation", many different things were described which varied widely from each other, e.g. barricades, sending bullets through the post, sending letters, calling people on the phone, throwing stones in corridors, etc. Some of these matters were almost impossible to detect and intimidation generally was something about which really nothing at all could have been done by means of internment. Furthermore, where specific complaints had been made such as those made by D. 1 about the Newtownabbey Police Station in connection with the matter of the "certificates", they were investigated. In regard to the Newtownabbey enquiry the respondent Government referred to the evidence given by Witness N9 (VR 10 I, pp. 609 et seq.).

f) The security situation during the period subsequent to August 1971 (VR 12, pp. 334-352)

The respondent Government then dealt with the period subsequent to August 1971 which was, in their submission, not the same. In the couple of years which followed internment, i.e. in 1972 and 1973, there was undoubtedly a development of violence on the Loyalist side. However this was still to be distinguished from the violence of the IRA in three respects. First, in the type of conduct with which the authorities were dealing in that on the Loyalist side it consisted largely of a series of sectarian assassinations. Secondly, in the possibility of bringing charges under the ordinary process of law, in that that procedure was available with less difficulty when dealing with Loyalists than when dealing with nationalists. Thirdly in point of volume.

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In support of their contentions the respondent Government again referred to various passages in the evidence of D. 5 (VR 9, p. 47), of G 3 (VR 11, pp. 151, 161), of N4 (VR 10 I, p. 494 and Annexes, pp. 6/7), of G 1 (VR 11, p. 37), of G 2 (VR 11, pp. 109/110). This evidence confirmed that there was, during that time, a changing situation: the Loyalist organisations were emerging, the sectarian murders were breaking out and there was other Loyalist violence occurring as well, although not on a similar scale as on the Nationalist side. At the same time it was clear that the authorities were doing their best to deal with this trouble from whichever side it came. This was shown clearly from the statistical evidence on the number of charges for terrorist-type offences which were brought in the last months of 1972, in 1973, and in the first nine months of 1974 (VR 10 I, Annexes, pp. 10, 12, 14 and 45) as well as from the statistical evidence on the ammunition recovered from both sides (VR 10 II, Annexes, pp. 3 et seq.)

Then in February 1973 action of another sort than through the ordinary processes of law, namely internment came to be taken against the Loyalists. Thus, when the time came when the authorities thought that they had the material which would justify the making of an interim custody order, they put it forward to the Secretary of State who in fact made the order.

The applicant Government had argued that discrimination over this particular period existed because action of a particular kind was not taken against Loyalists earlier and because it was not taken against them more frequently. However, this was material to show that both the ordinary process of law and special processes of law were used both against Nationalists and against Loyalists. Furthermore, there were reasons why there were differences between the two groups in the application of the special processes. First, the level of violence was still very much higher on the Nationalist side than on the Loyalist side. Secondly, evidence could be obtained more readily against a Loyalist than it could be obtained against a Nationalist. Finally, as soon as a case arose in which the authorities thought there was material on which an interim custody order could be made against a Loyalist, they put it up. In that situation it would be impossible to say that the question of the date or of the number of the cases could be accepted as establishing discrimination.

In the respondent Government's submission internment was used only as a last resort if the ordinary processes of the law seemed not to be available. The evidence before the Commission showed that many persons were charged with criminal offences which indicated that the ordinary processes of the law were available in a substantial number of cases. It was true that evidence concerning convictions had not been submitted. However, firstly, what was

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most significant was the action which was within the authorities' discretion and whether or not a person was charged in court was something for which the police were responsible; secondly, the difficulty with juries, i.e. the possibility of juries being biased or intimidated, were never regarded as a good ground for interning people. It was only in cases in which the authorities had conclusive information but not sufficient admissible evidence that they used internment. Moreover, in connection with the use of internment, there was no evidence of any possible lack of communication between the lower police authorities collecting the information and the higher authorities making the order for internment, and in the absence of any evidence in this respect it would not be right to presume such lack of communication.

Furthermore, the evidence did not bear out any suggestion that there had been some hesitation before the making of an interim custody order against the first Protestant. However, if it was thought that the evidence in this respect was weak, then particularly three things had to be borne in mind: first, that from March 1972 onwards the Secretary of State was anxious to get rid of internment altogether; secondly, allowance must be made for a natural reluctance on the part of the officials to take an important step of this kind until it appeared to them that they had no alternative; thirdly, the events which have followed upon the introduction of internment in August 1971 might have given support to such reluctance.

g) Replies to specific matters raised by the applicant Government (VR 12, pp. 353-358)

The respondent Government then dealt with a number of individual matters which had been raised by the applicant Government.

(i) Development of Loyalist organisations (VR 12, p. 353)

As regards the development of the Loyalist organisations, there were certain inconsistencies in the evidence of different witnesses. These organisations were just emerging, after 1971, from the secret out in the open. This was certainly clear for the UDA which seemed to have been formed some time in the autumn of 1971 and appeared on the streets in Belfast in the spring of 1972. Thereafter it undoubtedly developed great numerical strength. However, these facts really had no bearing on the question of whether the power of internment was being exercised at this time with discrimination on the ground of political opinion, because it was quite clear that that power was never used against anybody from either side to meet cases of illegal parading or illegal wearing of uniforms. It was true that in certain cases the difficulty and risk of enforcing the law had been so great that it seemed better not to enforce it. But it was not a question of enforcing it on one side and not on the other; it was the same for both.

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(ii) MM. Craig and McKeague (VR 12, pp. 354-355)

Then there was the matter of two predominent leaders of these organisations who have attracted much attention: MM. Craig and McKeague. In the case of Mr. Craig the question of whether or not a prosecution should be brought against him for making seditious utterances was considered repeatedly and each time the authorities came to the conclusion that the material was not sufficient to justify a prosecution. As to Mr. McKeague, he was sentenced to imprisonment in October 1969 and again in February 1973. About that time an interim custody order was also made against him and he was in fact in detention from February 1973 until January 1975.

(iii) Searches of arms (VR 12, pp. 355-356)

Another matter was the question of searches of arms which were said by the applicant Government to provide strong corroborative evidence of the allegations which they made about detention and internment. However, the disparity between the number of searches carried out in Nationalist quarters and the number of searches carried out in Loyalist quarters had been explained by Witness N3/7/11. Thus, it had been quite regular for information to be received from Loyalist quarters that arms were being hidden in a certain house, whereas this kind of information had not or only very seldom been received from the Nationalist side. Furthermore, the habits of storing arms had differed, as was explained by the witness. Finally, a large number of the searches had been so-called hot pursuit searches and that had led much more often into Nationalist quarters than it did to a Loyalist quarter.

(iv) Sectarian murders (VR 12, pp. 356-358)

Finally, there was the matter of the sectarian murders whose real significance was that since 1972 they have been the outstanding feature of Loyalist violence. In this connection the respondent Government referred to the evidence of D. 6 (VR 7, p. 377) and to statistical evidence (VR 10 I, Annexes, pp. 8/9) and concluded that there was no foundation whatever for the insinuation that the security forces were not pursuing these murders with proper diligence or that there was any connivance at them on the part of the Government.

h) Summary (VR 12, pp. 358-360)

Summing up the second period of the case the respondent Government submitted that it was perfectly clear that the authorities were prepared to use the weapon of detention against the Loyalists, because they did use it. At the same time the ordinary processes of law were also being used normally and properly against Loyalists. Consequently, when all the facts

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were reviewed there was a reasonable explanation for what the authorities had done which did not involve discrimination at all. Furthermore, what the authorities had done in the political field was a clear confirmation that their attitude towards the minority had certainly not been an attitude of unfavourable discrimination.

As regards the relationship between Arts. 14 and 15 of the Convention, the respondent Government submitted that, in the context of their argument, it was not relevant. However, the construction to be placed on these provisions should be that, when a notice of derogation under Art. 15 was made, a right which was formerly guaranteed under the Convention had pro tempore ceased to be such a right. As Art. 14 protected against discrimination only in relation to "the enjoyment of the rights and freedoms set forth in the Convention", the effect of a notice of derogation was to render inapplicable that provision pro tempore.

i) Concluding remarks and political reforms (VR 12, pp. 405-417)

In conclusion the respondent Government made general submissions on the question of alleged discrimination in Northern Ireland. What made the position in Northern Ireland peculiarly difficult and different was that the two religious communities, Protestant and Catholic, had generally differing national aspirations: the aspirations of the minority Catholic community, with some exceptions, were directed towards a unification of Ireland which also found support in the Constitution of the Republic of Ireland stating in Art. 2: "The national territory consists of the island of Ireland, its islands and territorial seas". This was bitterly resented by the majority Protestant community which, also with some exceptions, wished to maintain union between Great Britain and Northern Ireland. As the political divide in Northern Ireland remained based on the different national aspirations of the two communities, and as this divide involved a permanent majority and a permanenent minority, power inevitably resided permanently in the majority community. This understandably disenchanted the minority community which saw the majority as protecting its vested majority advantage and considered itself as the object of discrimination with no democratic possibility of achieving political power and so being dependent on other communities for the removal of discriminatory practices.

Allegations of discrimination had been the basis of the Civil Rights Movement in 1968 which provoked the disturbances which in turn led to the greater involvement of the United Kingdom in the everyday affairs of what was, in effect, a self-governing province. The United Kingdom Government had long recognised the importance of this problem of discrimination and during the last six years had undertaken a close and continuous study of it, until direct rule, in co-operation with the Northern Ireland Government. Various steps had been taken

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to safeguard the full human rights of every citizen. Fundamental changes had been made in the systems of provincial and local government with the aim of obtaining acceptance and support of a Government established in 1920 and suspended in 1972. A Northern Ireland Assembly, elected by proportional representation in order to provide a fair representation for the minority was set up in 1973 and on 1 January 1974 a Northern Ireland Executive was formed on the basis of the concept of power sharing.

In addition there had been radical changes in the structure of local government: universal adult suffrage was introduced in 1969, proportional representation in 1972, local government boundaries were revised in 1973, and many of the important functions such as education and housing were transferred to special area boards or to central government bodies in the hope of reducing and ending the fear of discrimination in the social field. Furthermore, in 1969 the Northern Ireland Government established not only a Parliamentary Commissioner for Administration but also a Commissioner for Complaints responsible for investigating complaints of maladministration, including discrimination in central and local government. The Northern Ireland Constitution Act of 1973 made it unlawful for any government department, public body or local authority to discriminate against any person on grounds of religious belief or political opinion and it became government policy to let contracts only to firms who undertook not to practice any form of religious discrimination. Far reaching legislation making discrimination in employment unlawful in the private sector would soon be introduced. These immense efforts for constitutional and other reforms, made both for its own sake and also to remove any conceivable justification for the use of violence, should be borne in mind when considering the period under review in this case.

Another factor which should be recognised was the two levels of violence. There was, on the one hand, the violence of the bomb and of the gun threatening life and limb which, in the earlier stages came from the IRA, but in the later stages had characterised the extremist organisations on both sides. On the other hand, there was the violence causing destruction to property, sometimes injuries but rarely deaths; the street demonstration, the march, the barricade had always been used by extremists on both sides, but that had been much more a feature of the activities of the majority community. In their separate ways, these different levels of violence were very capable of being used in order to secure political ends, but there was an essential difference in that shooting and bombing could never be acceptable whilst peaceful demonstrations within the law were a legitimate means of political expression. Between these two there was a difficult area in which peaceful demonstration shaded into riots and disorder and posed a threat to legitimate political authority. In this area difficult problems were posed for the authorities responsible for law and order, as too violent a response could lead to unnecessary injuries, damages and even to death, and too limited a response could lead to an excess of undemocratic action and undermine the task of the legitimate government. In the submission of the respondent Government the security force had dealt with this delicate situation in an effective way. ./.

The acts of the authorities had been an appropriate response to the violence of a character of a particular gravity and could not be attributed to a policy of discrimination. In addition, the policies and the programme of political and social reform of the United Kingdom Government had been pursued in the face of bombing from extremists on the one side and demonstrations of power on the other and were utterly at variance with the concept of discrimination. The case of the applicant Government had been based on inferences which it was impossible to draw and the Commission should therefore find that there has been no violation of Art. 14 in relation to internment and detention.

3. The applicant Government in reply (VR 12, pp. 430-444)

The applicant Government submitted in reply that there was very little legal difficulty in this aspect of the claim, as the issues were really issues of fact. It was clear that the laws in force in Northern Ireland during the relevant periods made no distinction between different classes of persons. The question therefore was whether or not a distinction was made first of all by the Northern Ireland Government in August 1971 in the application of its 1922 Act regulations, and secondly by the United Kingdom Government.

On a preliminary point regarding the relationship between Arts. 15 and 14 of the Convention the applicant Government submitted that, as a matter of fact, the respondent Government had not derogated from their obligations under Art. 14 and that, consequently, the question was not before the Commission.

As regards the London evidence the applicant Government submitted that it was contrary to the rules of the Convention that witnesses should be heard in the absence of the parties. Only in very exceptional circumstances could that be done but those circumstances did not apply. Particularly it was not a valid reason that an official who advised a Minister should not be subjected to cross-examination. Furthermore, any such witness could have claimed Crown Privilege, as the respondent Government had suggested, if questions had been asked by the delegates or either party which the witness could not have answered by reason of the public interest involved.

What the Commission was in fact faced with in this case was a conflict between the security witnesses who were defending what they did, and the evidence on behalf of the applicant Government about the level and scale of Protestant Loyalist violence. Furthermore, there were substantial inaccuracies in the evidence given on behalf of the respondent Government and these were of great significance. For instance, it was important to know whether the acts on the Protestant side in 1971 were merely acts of hooligans or whether they were parts of an organised terror. The mass of evidence before the

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Commission concerning intimidation was not that of young boys and girls deciding to intimidate, but organised intimidation by groups whose members deliberately set out to intimidate and whose members must have been known.

Furthermore, the description given by the respondent Government of the UDA was completely inadequate. They were not in politics. They were a para-military force demonstrating in the streets, wearing masks and uniforms, carrying cudgels and putting up barricades. This was different from normal street demonstrators proclaiming a political point of view.

As regards sectarian murders, a very small percentage was cleared and the murderers were not dealt with by the ordinary law. There were many terrorists on the Protestant side and the evidence of the applicant Government was that the police must have known who were the terrorists. The police were from the community, most of them were Protestants, and the Hunt Report had stated that by 1969 consideration had been given to drawing up lists of Protestant terrorists.

It was further clear from certain contradictions in the evidence of G1 and N1 that initially there had been a decision not to intern Protestants, that the names of Protestant extremists had been known in 1972, and that although internment was run down, suspected IRA terrorists were interned at the same time. Also there was uncontradicted evidence that whatever the orders may have said the army carried out blanket searches, as in the Falls Road in July 1970.

Finally, the Commission had been asked by the respondent Government to draw certain inferences from the fact that the British Government was trying to engage in political initiatives in respect of power-sharing and in respect of programmes of reform. However, as far as August 1971 was concerned, the British Government did not have direct rule; it was the Stormont Government which introduced and controlled internment and it was a high probability, based on the political situation, that the leaders of the Unionist Party would be very slow to use internment against Protestant extremists. Later, after direct rule, and again talking in terms of probabilities, the applicant Government submitted that, although the political will to deal with the problem in Northern Ireland had been present, it could well have been a view that, in order to get agreement from the Unionist majority to a coalition government, they should not be antagonised too much by a large-scale internment of Protestant extremists.

4. The respondent Government in reply (VR 12, pp. 493-498)

The respondent Government, in their reply, drew attention to a few matters referred to in the reply of the applicant Government and relating to the derogation under Art. 15, the London evidence, the evidence heard on both sides, intimidation and the intimidation report, and searches. They submitted in

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in particular that their notice of derogation did not refer to any specific Article of the Convention, but generally to internment and detention, and that this must have consequences under Art. 14. They further pointed out that their witnesses had been the people involved in the operations and coming from outside Northern Ireland, whereas the applicant Government's witnesses had all been observers of what the security forces were doing and, coming from Northern Ireland, had been prisoners of their own position. As regards intimidation, it could not have been expected that groups mentioned in certain passages of the intimidation report, being material which had not been tested by questioning its authors, should have been dealt with by way of internment. Then finally, what had been said about searches by the applicant Government was simply not borne out by the evidence before the Commission.

The real question under Art. 14 throughout the whole period was: insofar as there was any difference of treatment between one citizen and another, was there any difference in their behaviour to explain it. It was the submission of the respondent Government that, in respect of the events which the security forces were trying to check in the summer of 1971, the authorities believed there was, and indeed there was in fact such a difference. As regards the later period, any difference that then existed - and such difference was very limited because the ordinary and the special processes of law were being operated against both sides - could not possibly be explained as constituting discrimination on grounds of political opinion.

II. ESTABLISHMENT OF THE FACTS AND OPINION OF THE COMMISSION

A. INTRODUCTION

1. Character and scope of the allegations under Art. 14

The applicant Government have alleged that the exercise by the respondent Government, and by the security forces under their control, of their powers to detain and intern persons has been carried out with discrimination on the ground of political opinion and thus constitutes a breach of Art. 14 with respect to the rights and freedoms guaranteed in Arts. 5 and 6 in conjunction with Art. 14 of the Convention.

The applicant Government have put forward this allegation as one of a continuing violation and the Commission, as it has done in respect of the allegations under Arts. 5 and 6 of the Convention themselves, has treated it as such. The Commission's investigation has accordingly covered all three phases referred to in relation to the issues under Arts. 5 and 6, namely the periods:

- 1. from 9 August 1971 to 7 November 1972, when powers of detention and internment were operated under the Civil Authorities (Special Powers) Act (Northern Ireland) 1922 and the regulations made thereunder;

- 2. from 7 November 1972 to 8 August 1973, when powers of detention were operated under the Detention of Terrorists Order 1972;

- 3. from 8 August 1973 onwards, when powers of detention were operated under the Northern Ireland Emergency Provisions Act 1973.

The content of these laws has already been explained in relation to the issues arising under Arts. 5 and 6. The applicant Government have accepted that they were not in their terms, discriminatory and the Commission is itself of the opinion that they were not. The only issue under Art. 14 is therefore whether the powers of detention and internment provided by the legislation were in fact applied in a discriminatory manner contrary to Art. 14.

In considering the manner in which these powers were applied as opposed to the nature of the powers themselves, the Commission has found it convenient to distinguish between

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three further periods in each of which it can be said that the manner of application of the powers in fact varied in some respect. These periods are:

-1. from 9 August 1971 to 30 March 1972, when powers of detention and internment were applied by the Northern Ireland authorities exclusively against persons suspected of involvement with the IRA;

-2. from 31 March 1972 to 5 February 1973, when, following the introduction of direct rule, powers of detention and internment were applied by the United Kingdom Government also exclusively against persons suspected of involvement with the IRA;

-3. from 5 February 1973 onwards, when powers of detention were applied by the United Kingdom Government both against persons suspected of involvement with the IRA and against persons suspected of involvement in Loyalist terrorism.

The applicant Government have alleged that the relevant powers were operated with discrimination during all three of these periods and, at the final hearing on the merits of the application in March 1975, alleged that this discrimination was continuing.

The respondent Government have denied that the relevant powers were operated with discrimination contrary to Art. 14 at any time during these periods.

Above all the Commission has considered in some detail the background to the emergency leading up to the introduction of internment, which has also been dealt with by both parties.

2. <u>The evidence before the Commission</u>

The evidence heard and the submissions of the parties both on the evidence and on the relevant law have been set out in detail elsewhere. It is, however, convenient to recall briefly what the evidence put forward by the parties was.

Six witnesses gave oral evidence on behalf of the applicant Government. These were D.1, D.2, D.4, D.3, D.6 and D.5. D.1 and D.2 were both politicians, prominent members of the Social Democratic and Labour Party and former members of the Northern Ireland Executive set up under the Northern Ireland Constitution Act 1973. D.4 was a lawyer practising in Belfast. D.3 was a Belfast businessman who had played a prominent part in community work in Catholic areas

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throughout the present disturbances. D.6 was a Roman Catholic priest who had made a particular study of sectarian assassinations and D.5 was a teacher, lecturer and journalist.

A total of thirteen witnesses gave evidence on behalf of the respondent Government. Ten of these witnesses were members of the security forces who were identified only by code letters and numbers, and all of whom had had responsibilities in Northern Ireland during the relevant period. In addition evidence was given by G 1, G 2 and G 3.

A considerable volume of documentary evidence was also before the Commission. This included affidavits by the witnesses proposed by the applicant Government, books, newspaper cuttings, photographs, official reports and legislation. Proofs of the evidence of the witnesses proposed by the respondent Government, other than G 1 were incorporated in the Verbatim Record of the hearings, as were a considerable number of documents produced by them, including numerous tables of statistics.

3. Preliminary observations on the evidence and legal issues

The task of the Commission is to determine, on the basis of the material before it, whether, in the period from 9 August 1971 onwards, the powers of detention and internment in question were exercised, in breach of Art. 14 in conjunction with either Art. 5 or Art. 6 of the Convention, with discrimination on the ground of political opinion.

It is convenient firstly to recall certain salient facts which are not in dispute and are clearly established in the evidence before the Commission:

- In the first place both before 9 August 1971 and during the period since, persons holding Republican views and persons holding Loyalist views have both indulged in terrorist activity. Republican terrorist activity has been carried out mainly if not exclusively by the IRA as later explained. Loyalist activity cannot be attributed to a single group in a comparable way.

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- In the second place until February 1973 powers of detention and internment were exercised only against persons suspected of involvement with the IRA and since then the number of IRA suspects detained has always greatly exceeded the number of suspected Loyalist terrorists detained.

In these facts lies the foundation of the allegation that powers of detention and internment were exercised with discrimination on the ground of political opinion.

The Commission is of the opinion, having regard to the principles in relation to the interpretation of Art. 14 of the Convention laid down by the European Court of Human Rights in its judgment of 23 July 1968 in the case "Relating to certain aspects of the laws on the use of languages in education in Belgium" (1), that in the circumstances of this case the following questions must be determined by it:

- 1. Did the non-application of the powers of detention and internment against Loyalists in the period up to February 1973 and the more limited application of the powers of detention against them than against Republicans thereafter result from the fact that the powers of detention and internment were applied differently against suspected Republican terrorists as opposed to suspected Loyalist terrorists; if so

- 2. Was there, having regard to the aim and effects of the differential application of the powers, any objective and reasonable justification for the differentiation or was the distinction made an arbitrary one based on the political opinion of the suspects concerned; and finally

- 3. If the differential application of the powers did have a legitimate aim, is it clearly established that there was no reasonable relationship of proportionality between the means employed (i.e. the differential application of the powers of detention and internment) and the end sought to be achieved by those means?

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(1) Yearbook XI, p. 832 at pp. 864-866.

The applicant Government have stated that since no argument or evidence was put forward regarding questions 2 and 3 all that needs to be answered is question 1. The Commission is unable to share this view and holds itself bound in principle to examine also the further questions.

The respondent Government have denied that any distinction was made in deciding whether suspected IRA terrorists on the one hand, or suspected Loyalist terrorists on the other, should be detained or interned. They have accepted, however, that a distinction could be said to have been made in the sense that in August 1971 and for some time thereafter while persons who supported or favoured the IRA were interned persons who took an opposite political stand were not.

Whilst it may be comparatively simple to determine from the examination of a given piece of legislation whether it is in its terms discriminatory, the task of deciding, in circumstances such as those giving rise to the present case, whether legislation which is not in itself discriminatory, is being applied with discrimination, is a much more complex one. In the first place it should be noted that there is nothing in the legislation under consideration which has ever imposed any obligation on the authorities to detain or intern anyone. It has, subject to conditions, provided them with powers to detain or intern persons and the Commission is therefore considering the exercise by the authorities of discretionary powers. In an emergency situation many different factors might influence the authorities in their exercise of such discretionary powers and their policy in exercising them may well vary in response to a changing situation or simply in an attempt to change a static situation. In the second place the powers in question in the present case form only one of many legal, political and military means used by the authorities in their attempts to cope with a dangerous and unstable situation. In such a situation the authorities may legitimately judge that two different types of conduct, either of which would in law justify the detention or internment of the persons responsible for it, should in fact be dealt with by different methods.

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There are obvious difficulties in proving that, in exercising such discretionary powers in a volatile and complex emergency situation, a public authority has in fact acted with discrimination contrary to Art. 14. In deciding whether the powers in question were applied with discrimination on the ground of political opinion the question is not simply whether all persons detained or interned, or a majority of them, were of one political outlook. The only persons subject in law to the powers were, in general terms, those suspected of involvement in terrorism. The question is therefore whether, in taking steps to apply the powers and in their actual application, unjustifiable differentiation was made by the authorities between persons of different political opinions on the ground of their opinions. In attempting to prove that this has been so in a situation where the authorities deny that differentiation has been made between different terrorist suspects in the application of the powers, it is unlikely that an applicant could ever produce direct evidence to show that the authorities had in fact, contrary to what they avowed publicly, unjustifiably differentiated between different groups of terrorists. Any such conclusion could, in general, only be arrived at as a matter of inference from evidence as to the level and nature of terrorism from each side and the numbers of persons from each side detained or interned and other evidence indirectly casting light on the attitudes, policies and activities of the relevant authorities. The evidence as to the levels of terrorism and numbers of persons interned may well be open to many interpretations particularly if looked at in isolation, and other evidence throwing light on the motives of the authorities may be of critical importance in interpreting it.

In these circumstances the Commission has considered it necessary to examine in some detail the background to the emergency situation and the application of the relevant powers and has therefore allowed both parties to adduce evidence going beyond the immediate issues. It has allowed evidence to be led not only on matters such as the level and nature of terrorist activity from the two sides, the success or otherwise of the ordinary processes of criminal prosecution in dealing with the situation, the numbers of suspects from each side detained or interned and other matters clearly relevant to the allegation of discrimination, but also, more broadly, on the background to and development of the emergency and the methods employed by the authorities to deal with it. Only by thus looking at the application of the powers of detention and internment in the light of the whole background situation in Northern Ireland, and as one of various steps taken by the authorities to deal with different aspects of that situation, can it be decided whether the inference of discrimination should be drawn.

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At the same time the Commission has attached considerable importance to obtaining the best possible direct evidence of the manner in which the powers of detention and internment were applied by the relevant authorities and their reasons for so applying them. It was for this reason that the Commission's Delegates decided to hear three high ranking witnesses proposed by the respondent Government. The procedural steps and decisions leading up to the hearing in London, on 20 February 1975, of the evidence of G 1, G 2 and G 3 have already been described. The applicant Government have throughout objected to the procedures which were adopted for obtaining this evidence and have submitted that it should not be received. They have, referring to the terms of Art. 28 of the Convention, submitted that an investigation carried out by the Commission under that Article should be undertaken with the representatives of the parties, and accordingly the Commission should, when it decided to hear witnesses, do so in the presence of the representatives of the parties, who should be accorded the right to question witnesses. The Commission does not, however, consider that Art. 28 of the Convention imposes any obligation on it to hear witnesses only in the presence of the representatives of the parties. The English version of Art. 28, insofar as relevant, is in the following terms:

> "In the event of the Commission accepting a petition referred to it:
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> (a) it shall, with a view to ascertaining the facts, undertake together with the representatives of the parties an examination of the petition and, if need be, an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities, after an exchange of views with the Commission;"

The French text is in the following terms:

> "Dans le cas où la Commission retient la requête:
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> a) afin d'établir les faits, elle procède à un examen contradictoire de la requête avec les représentants des parties et, s'il y a lieu, à une enquête pour la conduite efficace de laquelle les Etats intéressées fourniront toutes facilités nécessaires, après échange de vues avec la Commission;".

The Commission does not consider that this provision imposes on it any obligation to carry out its investigation together with the representatives of the parties. Whilst there may perhaps be some ambiguity in the English text, it is certainly clear from the French text that the Convention

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requires only that the examination of the petition should be carried out together with the representatives of the parties, not that the investigation into the facts should be so carried out. In the present case the parties have in any event been given the opportunity to participate in all stages of the Commission's investigation. The form of this participation is for the Commission or its Delegates to decide. Whilst the Commission's Delegates decided to hear the evidence of the three witnesses in question in the absence of the representatives of the parties, each party was given the opportunity of submitting beforehand questions which they wished to be put to the witnesses.

The applicant Government have also submitted that the respondent Government were in breach of the obligation incumbent on them under Art. 28 (a) of the Convention to "furnish all necessary facilities" for the conduct of the investigation. They have submitted that the respondent Government were in breach of this obligation firstly because they refused to make available the witnesses whom the Commission's Delegates wished to hear, namely persons responsible for taking decisions of policy during the relevant period, and secondly because they refused to allow the witnesses eventually proposed to be cross-examined.

It is true that in their initial informal approach to the respondent Government, the Commission's Delegates indicated that they were interested in hearing the evidence of a person or persons responsible for the policy leading to the introduction of internment in 1971 and its subsequent application. It is also true that the persons eventually proposed by the respondent Government were two senior officers of the security forces and a senior official, none of whom was himself responsible for the taking of policy decisions. Nevertheless they were persons who, because of their positions at the relevant times were capable of throwing light on the considerations surrounding relevant policy decisions and on the nature of the decisions themselves. It should also be noted that neither the Commission nor its Delegates at any time made a formal request to the respondent Government asking them to make available any particular person or class of person to give evidence. Whilst it might well have assisted the Commission in its investigation to have heard the evidence of the politicians responsible for taking the relevant decisions, the fact that the respondent Government did not propose such witnesses in response to the Delegates' approach does not in the opinion of the Commission constitute a breach of their obligations under Art. 28 (a) of the Convention.

It is also true that the respondent Government refused to allow these three witnesses to be cross-examined. Whilst it might have assisted the Commission's investigation if

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they had been heard under the same conditions as the other witnesses in the case and had been subjected to cross-examination, the procedure which was adopted after an extensive exchange of views between the parties and the Commission's Delegates, did not in any way hinder the Delegates in obtaining from the witnesses such information as they thought relevant and necessary for the purposes of the investigation. The Commission does not therefore consider that the respondent Government failed in this respect to furnish any facilities necessary for the effective conduct of the investigation.

The applicant Government have also submitted that the evidence of these witnesses should be rejected in any event because the procedure adopted in hearing them put the applicant Government at a disadvantage and constituted a violation of the principle of equality of arms. Nevertheless under the procedure adopted the applicant Government was made aware in advance of the matters on which the witnesses in question were to speak and was given the opportunity of suggesting to the Commission's Delegates, questions which they wished to have put to them. They have also been provided with the full transcript of the hearing in the normal manner and have had the opportunity of making any comments they thought fit on the accuracy, completeness or relevance of this evidence. Had these witnesses given their evidence under the same procedure as the other witnesses heard, the representatives of both parties would no doubt have questioned them at some length. The fact that the evidence has not been tested in cross-examination is of course a matter which the Commission must bear in mind in considering the weight which should be given to it. It does not, in the opinion of the Commission, constitute a reason for rejecting it <u>in toto</u> without examining it.

4. <u>Order of presentation</u>

The Commission will first explain the manner in which it has assessed the evidence and will then set out the facts which it has found established on the evidence. It will then express its opinion on the question whether, on the facts, the violation of Art. 14 alleged by the applicant Government has been established.

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B. ESTABLISHMENT OF THE FACTS

1. Preliminary Observations

In considering what facts are established, the Commission has taken into account both the written and oral evidence adduced by the parties. It has proceeded primarily on the basis of the oral evidence given in hearings before its Delegates, and in evaluating that evidence has received guidance from the Delegates who saw and heard the witnesses concerned.

There are essential differences in the nature of the evidence given by the witnesses proposed by each party. The witnesses proposed by the applicant Government were all persons who had lived in Northern Ireland throughout the period under consideration and who had, in different ways, been involved as civilians in the emergency situation. They were persons who were well placed to throw light on the background to the emergency and to describe the situation as it appeared to the civilian population. They were able, in particular, to throw much light on the feelings and attitudes of the Catholic community. They were obviously less well placed to give accurate statistics, for example as to the level of violence and the numbers of people interned or detained.

The witnesses proposed by the respondent Government, on the other hand, were all members either of the security forces or of the Northern Ireland Office. Their evidence was narrower in scope than that of the applicant Government's witnesses. Although they were extensively examined on background matters, their evidence in the main concerned the nature of the security situation from 1971 onwards and the steps taken by the authorities to deal with it. They produced a substantial quantity of statistical evidence relating to these matters. Although this evidence has thrown much useful light on the attitudes and objectives of the security forces, there has been no evidence from which the attitudes of the chief political decision makers could be directly established. The Commission's findings and opinion are therefore necessarily based mainly on the evidence as to the facts of the emergency and on inferences drawn from the facts established.

The evidence adduced by both parties has for the most part been directed to an examination of the emergency as a whole. Although much evidence, frequently conflicting, has been given about individual incidents, such evidence has largely, although by no means exclusively, been indirect or hearsay. The Commission has made findings in relation to individual incidents and on other matters of detail only where it has considered that these were relevant and important to an appreciation of the broad nature

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of the emergency situation, including the actions of the authorities, at any particular time and where there has either been direct evidence which it has felt able to accept or the matters in question are either not disputed or there is a measure of agreement within the evidence adduced by the parties as to what occurred. Whilst there have been considerable conflicts on matters of detail, there has been relatively little conflict as to the objective facts of the emergency, looked at broadly, at any given time. The difference between the parties and their witnesses has lain more in their interpretation of the facts and in the inferences which they seek to draw from them, than in any dispute as to the facts themselves.

The evidence as to the application of the powers of detention and internment has also been directed broadly to the practice of the authorities. Although reference has been made to some individual cases in the course of the evidence, the Commission does not consider that any of this evidence is sufficient to allow it to make findings as to whether the authorities improperly used or refrained from using the powers in any individual case. It is possible only to make findings in relation to the general practice of the authorities, on the basis of the statistical and other evidence produced.

In making findings as to the general nature of the emergency and the practice of the authorities in applying the powers of detention and internment the Commission has, particularly in relation to the period from 1971 onwards, necessarily relied heavily on the evidence of members of the security forces, which has been based on records kept on matters such as the level of violence and the numbers of persons detained or interned. The overall accuracy of the statistical evidence produced and spoken to by members of the security forces has been generally accepted by the applicant Government subject to reservations for example as to the accuracy of attributions of responsibility for incidents of terrorism to Republicans or Loyalists (1). The Commission itself sees no reason to doubt their general accuracy. In certain instances such evidence differs to some extent from figures produced by the applicant Government but such differences are not generally of material importance in assessing the overall nature of the security situation. Given that the members of the security forces have had access to the records kept, the Commission has therefore relied on the figures produced by them rather than other figures where these do not agree. In assessing the scale of the activities of each side, the Commission has also accepted the attributions of responsibility for incidents made by the security forces as having been made in good faith. It has been accepted that such attributions are in many cases only tentative and it is quite clear that the attribution of responsibility for a particular number of incidents to one side or the other cannot be wholly accurate. They do however generally provide the best available indications of the extent of the activities of each side.

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(1) See e.g. VR 10 I, p. 685

The evidence heard in the absence of the parties in fact contributed little new detail as to the emergency situation. Such detail as was spoken to by these witnesses was generally based on their recollection rather than on records. Their evidence did throw some useful light on the considerations in the authorities' minds, although the witnesses did not feel able to give evidence as to the advice given to the responsible Ministers before relevant decisions were taken. Their evidence as to the background to the policy decisions was thus of a somewhat general nature and in assessing the authorities' policies the Commission has in these circumstances relied more on the evidence as to the facts of the situation and the authorities' actions during it than on the evidence of these witnesses as to the background to policy decisions.

As evidence of the stated policy of the Government at any particular time, the Commission has relied on official statements and publications made at the relevant time. Some matters of general historical knowledge have also been referred to in the Commission's findings.

The Commission will state below the essential facts concerning Art. 14 which it finds established as regards:

- 1. The background to the present emergency;
- 2. The development of the emergency up to 1969;
- 3. The situation from 1970 until the introduction of internment;
- 4. The introduction of internment on 9 August 1971 and its application in 1971;
- 5. The situation from 9 August 1971 until 30 March 1972;
- 6. The situation from 31 March 1972 until 5 February 1973; and
- 7. The situation from 5 February 1973 onwards.

2. <u>The facts found by the Commission</u>

a) <u>The background to the present emergency</u>

The population of Northern Ireland is, and has for long been divided into two communities, Protestant and Catholic. In terms of the communities to which they belong about two-thirds of the population of one-and-a-half million can be described as Protestants and about one-third as Catholics. The division can be traced back to the seventeenth century when Protestant settlers moved in large numbers from Britain to Northern Ireland.

Traditional antagonism between the two communities has been based not only on religious differences but on social, economic and political differences as well. In particular the Protestant

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community has traditionally opposed the idea of a united Ireland independent of the United Kingdom and the Catholic community has traditionally supported it.

Protestant opposition to this idea was manifest in the nineteenth and early twentieth centuries as political moves towards home rule for Ireland gathered momentum. In 1894 a Home Rule Bill was passed by the House of Commons but defeated in the House of Lords. A further Bill was introduced in the House of Commons in 1912, after the Parliament Act 1911 had reduced the powers of the House of Lords. This produced a particularly strong reaction from the Protestants in Northern Ireland, who prepared for armed resistance with the aim of establishing a separate Government in the North should Home Rule come into effect. Guns were imported in large numbers and an armed volunteer force was set up, organised primarily by Sir Edward Carson. Volunteer forces were also set up by the Catholics in the South. In the face of bitter opposition both from the Unionists of Northern Ireland and Conservatives elsewhere, the Bill became law as the Government of Ireland Act in 1914. The Act provided for the setting up of a subordinate Government and Parliament for the whole of Ireland but never came into effect.(1).

At Easter 1916 there was a nationalist uprising centred on Dublin. This was put down and a number of its leaders were executed. Further troubles ensued after the end of the First World War and it was at about this time that the Irish Republican Army was formed through the amalgamation of a number of nationalist volunteer forces, the Hibernian Volunteers, the Irish Citizens' Army and the Irish Volunteers (2).

In 1920 a new Government of Ireland Act was passed which provided for the setting up of separate subordinate Parliaments and Governments in the six counties of the North and the remainder of Ireland. The Act never entered into effect in the South and disturbances continued. In 1921 "Articles of Agreement for a Treaty between Great Britain and Ireland" were entered into and in the following year legislation passed in both the United Kingdom Parliament and the Irish Free State Assembly endorsed the setting up of the Irish Free State, which later became the Republic of Ireland.

The Government of Ireland Act 1920 (3) formed the basis of the subsequent constitutional status of the six counties of Northern Ireland. Under its provisions and those of subsequent amending legislation it had a Government and Parliament of its own exercising extensive executive and legislative functions within defined limits. S.4 of the Act conferred power on the Northern Ireland Parliament "to make laws for the peace, order

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(1) VR 7 I pp. 141-144; VR 10 I p. 31 refers to this period.
(2) See VR 7 p. 191.
(3) See Annex I to United Kingdom Observations on Admissibility.

and good government of ... Northern Ireland." Certain functions notably defence and some taxation matters, were excluded from its competence and S.75 of the Act confirmed the overall supremacy of the United Kingdom Parliament, to which Northern Ireland returned members.

The differing political aspirations of the two communities resulted in the division between the main political parties in Northern Ireland being based primarily on their attitude to the status of the province as part of the United Kingdom rather than on political differences of the type commonly found in the rest of the United Kingdom and elsewhere. The Protestant community in general voted for the Unionist Party, which wished Northern Ireland to remain part of the United Kingdom whilst the Catholic community in general supported Labour, Republican or Nationalist candidates favouring a united Ireland independent of the United Kingdom. Given the relative sizes of the two communities the inevitable result of this polarisation was that the Unionist Party, supported almost exclusively by Protestants, had a permanent majority in the Northern Ireland Parliament and formed the Government of the province throughout the fifty years leading up to direct rule in 1972 (1).

From the time of partition onwards there has always been a greater or lesser degree of tension between the two communities although since the early 1920's there have been no disturbances comparable in scale to those of recent years. Serious sectarian rioting occurred at about the time of partition (2) and it appears that there was further rioting in Belfast in 1935. (3).

The IRA remained in existence after partition with the continued aim of establishing a united Irish Republic. It carried out acts of violence in both parts of Ireland and in Great Britain. In particular it was active in the South during the 1920's and carried on a bombing campaign in Great Britain in 1939-1942 and a border campaign in Northern Ireland in 1956-1962, although these were not on the same scale as its most recent one. Then as now the IRA appears to have enjoyed the support of only a small minority of the Catholic community in Northern Ireland and the 1956-62 campaign appears to have petered out through lack of support (4). The IRA appears to have remained in existence from 1962 onwards(5) although it was not overtly active for some years and certain witnesses apparently felt that it had gone out of existence. (6) ./.

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(1) See e.g. VR 7 pp. 4-6. United Kingdom submissions VR 12, pp. 405-406.
(2) See e.g. VR 7 p. 7; VR 7 pp. 191-192; VR 10 I pp. 202-309.
(3) See e.g. VR 7 p. 141; VR 10 I p. 301; VR 10 I pp. 202-309.
(4) See e.g. VR 7 p. 7; VR 7 pp. 191-192; VR 10 I pp. 202-309.
(5) See e.g. VR 7 p. 191; VR 10 I p. 202; VR 10 I p. 485.
(6) See e.g. VR 7 p. 10.

The Protestant community maintained their opposition to the idea of a united Ireland consistently and one of the principal aims of the Unionist party has always been to maintain the status of Northern Ireland as part of the United Kingdom. Whilst only a small minority of the Catholic community has supported the IRA, a very much greater proportion of the Catholics have for long been discontented with Unionist government and have felt themselves to have been discriminated against. Particular points of grievance have been alleged discrimination in the field of employment, both in local government and elsewhere, in the allocation of housing and in relation to the electoral system, which, particularly at local government level, was felt to be manipulated against the Catholics (1).

Whether these grievances were justified or not may not be directly relevant to the present enquiry but in considering the background to the present emergency it is worthy of note that the Cameron Commission, which reported inter alia on the immediate causes of disturbances in Northern Ireland in 1968-69, concluded that many of the grievances then felt by the Catholics, in particular "those ... concerned with the allocation of houses, discrimination in local authority appointments, limitations on local electoral franchise and deliberate manipulation of ward boundaries and electoral areas", were justified (2).

Another factor which can only have helped maintain tensions existing within the community was the holding of marches and demonstrations by each community to commemorate battles and other events which each felt to be significant in its history. The great majority of such parades appear to have been held by Protestants and in particular by the Orange Order, an organisation founded at the end of the eighteenth century following a battle between Catholics and Protestants. Before the present emergency some hundreds of Orange parades were held every year, although many were on a small scale. One significant annual demonstration by Protestants was the parade of the Apprentice Boys of Derry which took place annually in Londonderry on 12 August. Catholics for their part held parades or demonstrations, particularly at Easter time in commemoration of the rebellion of 1916. Each community resented the marches and demonstrations held by the other. (3)

The Catholic community disliked and mistrusted the Orange Order as such in addition to resenting its parades. It was described by one witness as one of the most divisive factors there had ever been in Northern Ireland (4). It was

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(1) See e.g. VR 7 pp. 8, 9-12; VR 7 p. 142; VR 7 p. 334.
(2) Cameron Report p. 84 para. 147; see also p. 91 para. 279.
(3) VR 7 pp. 8, 14, 59-60; VR 10 I p. 209 and 310.
(4) VR 7 p. 8.

undoubtedly essentially sectarian in character and appears to have had a wide membership. It was felt by the Catholics to have considerable influence within the Unionist Party and whilst the extent of any such influence cannot be determined its existence and activities certainly contributed to Catholic distrust of Unionist government and to the keeping alive of sectarian tensions (1).

It was against this background of long-standing sectarian tension that the present emergency arose (2).

b) The development of the emergency up to 1969

In 1963 Lord Brookborough, who had been Prime Minister of Northern Ireland for some 20 years retired and was succeeded by Captain Terrence O'Neill, who adopted policies of moderation and tried to promote good relations with the Republic of Ireland (3). At about this time also, the first moves towards a campaign for "civil rights" for the Catholic community began to be made (4). At the same time manifestations of Protestant extremism began to emerge. In 1964 the Rev. Ian Paisley threatened to organise forces to remove a tricolour flag being flown from the headquarters of a Republican candidate for Parliament. The flag was subsequently removed by the RUC (5). Following this incident the holding of a banned protest march by supporters of Dr. Paisley apparently led to serious rioting in Belfast (6).

In 1966, however, the first serious violence of the present emergency occurred. A number of petrol bombs were thrown at Catholic schools and property. (7). In one such attack a petrol bomb, apparently thrown at a Catholic owned public house, hit a house and caused the death of a Protestant woman, Mrs. Gould. In later court proceedings responsibility for this was attributed to an extremist Protestant body called Ulster Protestant Action (8). Republicans made preparations for the celebration of the fiftieth anniversary of the Easter rebellion of 1916 and an extra large parade was held to commemorate it.

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(1) VR 7 pp. 8-9; VR 7 pp. 144-145, 151.
(2) See also: VR 11 pp. 124-125.
(3) VR 7 p. 7; VR 9 p. 10.
(4) VR 7 p. 7.
(5) VR 7 p. 15.
(6) See The Chronology Vol. I p. 3.
(7) VR 7 p. 8.
(8) VR 9 p. 8; Chronology p. 4.

These celebrations provoked anger among the Protestant community(1). There was no violent activity of significance by the IRA, who appear, following the failure of their campaign of 1956-62 to have concentrated on Marxist orientated political activity (2), although there is evidence to the effect that they continued training and that a bombing campaign planned in 1966 was thwarted by the conviction in June 1966 of a Mr. Philip McCullough who was sentenced to 18 months imprisonment for causing an explosion which had damaged a telephone kiosk in Belfast (3).

On 21 May 1966, after the Republican celebrations at Easter a statement was issued, apparently in the form of an anonymous press release, by a body calling itself the Ulster Volunteer Force (UVF) declaring war on the IRA and warning of its intention to execute all IRA men. This body appears to have taken its name from the volunteer force originally formed in 1912 and to have been unknown to the police before the statement was issued (4). On 27 May a Catholic named John Scullion was fatally stabbed in the Shankill Road Belfast and on 6 June another Catholic, Peter Ward, was shot dead and two companions seriously wounded in Malvern Street, Belfast. From the police investigations it emerged that there was a UVF structure led by a man named Augustus ("Gusty") Spence. He and two companions, Williamson and McClean, were charged with the capital murder of Scullion and Ward, convicted of ordinary murder and sentenced to life imprisonment. The group surrounding Spence was believed by the police to have consisted of only five or six persons and according to police information the UVF was then inactive until 1969. Following these murders the UVF was proscribed (5). It was believed by at least one witness (5) to have remained in existence from 1966 onwards but it is not possible to determine whether this was so or not. No violent activity by it came to police notice after 1966 until 1969 (6).

In 1967 the movement for "civil rights" for the Catholic community continued. In February 1967 the Northern Ireland Civil Rights Association (NICRA) was formed. This was a non-political, non-sectarian body with members from both communities, although in the event the bulk of its membership appears to have been drawn from the Catholic community (7).

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(1) VR 10 II pp. 171-202.
(2) VR 7 p. 192; VR 10 I p. 485.
(3) VR 10 II p. 171.
(4) VR 7 p. 16; VR 10 II p. 172.
(5) VR 7 pp. 16-17; VR 7 pp. 266-267; VR 10 II pp. 172, 203-204.
(6) VR 10 I pp. 515-516.
(7) VR 7 p. 10.

In June 1968 (1) trouble arose over the allocation of a house in Caledon, County Tyrone to an unmarried Protestant girl. This house was allocated by the Dungannon Rural District Council, controlled by Unionists. It appears that other families, particularly Catholics, were in more urgent need of housing and the matter was raised in the Northern Ireland Parliament by Mr. Austin Currie, the local MP. Although he subsequently occupied the house, he was evicted and it appears that the decision to allocate the house to the Protestant girl was maintained. (2)

Following this incident the first civil rights march, over a five mile route from Coalisland to Dungannon, took place on 24 August 1968. A crowd of counter-demonstrators appears to have assembled and considerable feeling was aroused. It appears that the march was stopped and diverted by the police to avoid conflict with the counter-demonstrators but it seems to have passed off without any significant violence (3)

A further civil rights march was organised to take place in Londonderry on 5 October 1968. Thereafter, on 1 October 1968, the Apprentice Boys of Derry announced their intention of holding a march on the same day and on 3 October 1968 all marches within the city were banned. The Cameron Report describes the putting forward of proposals for a march or demonstration which, if held, would clash with one held by an organisation of an opposite political colour as a long recognised tactic of obstruction aimed at securing the prohibition or re-routing of the march in question (4). The ban was resented and the organisers of the civil rights march decided that it should proceed. A clash with the police took place, during which police used batons and water cannon and a number of the marchers, including D. L. were injured (5). Rioting ensued in Londonderry on 5 and 6 October. The Cameron Report gives the total casualties on these days as 11 police injured and 77 civilians (6).

In the remainder of 1968 a number of further demonstrations and disturbances occurred, notably in Armagh at the end of November, when Protestants, many armed with cudgels and other weapons, assembled in order to stop a civil rights march.

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(1) Cameron Report pp. 77-79, paras. 185-193; VR 7 p. 10.
(2) Cameron Report p. 21, paras. 27-28; Chronology p. 8; VR 7 p. 10.
(3) VR 7 pp. 10-11; VR 10 I pp. 318-319; Cameron Report pp. 21-23, paras. 29-36.
(4) Cameron Report p. 25, para. 41.
(5) VR 7 pp. 11-13; Cameron Report pp. 24-31, paras. 37-55.
(6) Cameron Report p. 30 para. 53.

Although the police succeeded in keeping the rival demonstrators apart it appears that they were forced to keep the civil rights marchers out of the town in order to prevent violence. Some relatively minor rioting appears to have occurred (1).

On 22 November 1968 the Northern Ireland Government announced a reform programme to deal with Catholic grievances and on 4 December 1968 the Prime Minister of Northern Ireland, Mr. Terrence O'Neill, made a television broadcast appealing for acceptance of the reform policies. This appears to have led to the calling of a halt to certain marches and demonstrations (2).

Certain civil rights leaders, in particular in an organisation known as Peoples' Democracy, rejected the reform programme as inadequate. Peoples' Democracy appears to have been a loosely organised radical body which came into existence following demonstrations at Queen's University, Belfast in October 1968, with the aim of bringing about social reforms in Northern Ireland and in the Republic. In January 1969 further violence occurred during and after a march from Belfast to Londonderry organised by the Peoples' Democracy. A particularly serious incident occurred on 4 January 1969 when the marchers, who were unarmed, were attacked at Burntollet Bridge by Protestants with clubs, stones and other missiles. A substantial number of off-duty members of the RUC and Ulster Special Constabulary (USC) were believed, in some quarters at least, to have taken part in this attack. Serious rioting followed the arrival of the marchers in Londonderry; police conduct in Londonderry was criticised in the Cameron Report and it appears that there, at least, the confidence of the Catholic community in the police diminished further (3). Other disturbances occurred in Newry on 11 January when members of a Peoples' Democracy march clashed with police attempting to re-route it. Serious riots occurred in Londonderry on 19 and 20 April 1969. These resulted in a number of casualties, including a Mr. Devenny who was seriously injured, apparently by police, and subsequently died. A subsequent enquiry was unable to attribute responsibility for his injuries and the lack of evidence was attributed by Sir Arthur Young, Inspector General of the RUC, to a conspiracy of silence amongst certain police. Further disturbances occurred in Belfast at this time (4).

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(1) VR 7 p. 145; VR 10 I p. 33; Cameron Report pp. 38-43, paras. 77-88.
(2) Cameron Report p. 44 para. 89; Chronology p. 13.
(3) VR 7 pp. 145-146 & 207-208; VR 10 I pp. 328-351; Cameron Report, paras. 89-101, and on Peoples' Democracy pp. 32-33, 80-84, paras. 56-61 & Appendix XII.
(4) Cameron Report pp. 53-54, paras. 121-125; Scarman Report, p. 6, para. 1.7; VR 10 I p. 360.

Prominent amongst the extreme Loyalists involved in the disturbances up to this time had been the Rev. Ian Paisley and a Major Bunting. The Rev. Ian Paisley was chairman of an organisation known as the Ulster Constitution Defence Committee (UCDC), which was apparently a twelve-man committee forming the governing body of an organisation known as the Ulster Protestant Volunteers (UPV), of which Major Bunting was a leading member. The whole organisation was openly sectarian and was nominally "pledged by all lawful methods to uphold and maintain the Constitution of Northern Ireland as an integral part of the United Kingdom as long as the United Kingdom maintains a Protestant monarchy". Only persons born Protestant were eligible for membership. Serving members of the RUC, but not of the USC, were excluded. The Cameron Commission found that these persons and their organisations "must, in our opinion, bear a heavy share of direct responsibility for the disorders in Armagh (in November 1968) and at Burntollet Bridge and also for inflaming passions and engineering opposition to lawful, and what would in all probability otherwise have been peaceful, demonstrations or at least have attracted only modified and easily controlled opposition". The Cameron Commission also considered it a reasonable inference that the UVF continued to exist at this time although it was unable to establish whether it had any links with the UPV. Whilst it has been suggested that the UVF "supplied the muscle to Mr. Paisley" the Commission is not able to determine whether the UVF in fact played an active part in these disturbances or not. (1)

At the end of March and in April 1969 serious violence occurred outside the context of civil disturbances or riots for the first time since the murders of 1966. On 21 March 1969 a Catholic church in County Antrim was damaged by an explosion (2).

There then followed a series of explosions at electricity and water installations (3). On 30 March an electricity sub-station at Castlereagh was damaged by a series of explosions. On 20 April an electricity pylon at Kilmore County Armagh was similarly damaged and an explosion damaged water installations at the Silent Valley reservoir in County Down. On 24 April an explosion damaged a water pipeline at Templepatrick (Clady), near Dunrady in County Antrim and the following day a series of explosions damaged another water pipeline at Annalong, about four miles from the Silent Valley. These explosions caused considerable damage and a water shortage in Belfast which lasted for some ten days (4). A number of British troops were flown into the province (5).

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(1) VR 7 pp. 201-203; Cameron Report, paras. 210-220 & Appendix IX.
(2) VR 10 I p. 334; Chronology p. 22.
(3) VR 10 I p. 336.
(4) Scarman Report pp. 20-21, paras. 4.1-4.11; VR 9 p. 9; VR 10 I pp. 171, 172, 204-335-336.
(5) Scarman Report p. 21 para. 4.12.

At about the same time a number of post offices in Belfast were petrol bombed. The Scarman Tribunal mentioned a total of eleven petrol bombings of post offices, all on the night of 20-21 April (1). The police considered that the IRA was responsible for the bombing of the post offices.

Responsibility for the explosions at the electricity and water installations remained a mystery for some weeks although it was thought that the IRA might be responsible. It subsequently emerged that they were the responsibility of a Protestant extremist group. On 19 October 1969 an explosion occurred at a power station at Ballyshannon in the Republic in which the person believed responsible was fatally injured. A UVF armband was found in his pocket. Police investigations then led to the arrest of a Mr. Samuel Stevenson who pleaded guilty to charges relating to three of the earlier explosions. A number of other persons were charged in connection with these explosions but acquitted, the only evidence being that of their alleged accomplice, Samuel Stevenson (2). During their trial, on 18 February 1970, a small bomb exploded in the courthouse. The UVF subsequently claimed responsibility for this (3).

It has been widely accepted, and there is no reason to doubt, that the purpose of the explosions in March and April 1969 was to add weight to an existing campaign among Protestants to remove Captain O'Neill from office. Captain O'Neill in fact resigned on 28 April and it appears that in his memoirs he subsequently said that he had been literally blown out of office (4). He was succeeded by Major Chichester-Clark who on 6 May 1969 declared a general amnesty for people charged with or convicted of offences connected with political protests or demonstrations in recent months. As a result of this amnesty the Protestant leaders, Dr. Paisley and Major Bunting, were released from prison and charges against a number of other persons were dropped (5).

Tension remained high after the amnesty and a number of demonstrations and disturbances took place in the period up to mid-August. In particular disturbances occurred in May, June and July in Belfast, particularly in the Ardoyne District and the vicinity of the Unity Flats, in Dungiven, and in Londonderry. Many of these disturbances appear to have taken the form of sectarian riots developing as a result of Catholic reaction to Orange Parades. Serious rioting also took place in Belfast from 2-5 August (6)

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(1) Scarman Report p. 21 para. 4.12.
(2) VR 7 pp. 17-18; VR 9 p. 9; VR 10 I pp. 337-338; Scarman Report pp. 22-24, paras. 5.2-5.5 and 5.10.
(3) VR 7 p. 18; VR 10 I pp. 357-358; VR 7 p. 204; VR 7 p. 260.
(4) VR 7 p. 18; VR 7 p. 143; VR 9 p. 10; VR 10 I pp. 349-350; Scarman Report p. 24, para. 5.10.
(5) VR 10 I pp. 337 & 339; Scarman Report p. 24, para. 5.10; Chronology p. 26.
(6) Scarman Report, Chapters 6-9; pp. 25-62; VR 7 pp. 14 and 60-61.

In mid-August very serious rioting broke out, first in Londonderry and thereafter in Belfast and other places, and as a result of this the Army was called in to assist the civil authorities. The trouble started in Londonderry during the annual march of the Apprentice Boys of Derry on 12 August 1969. In general this march appears to have been well disciplined at first, although a few marchers provoked Catholics in the Bogside by throwing coins down towards them from the walls of the city. Later in the day, when the head of the march reached a police barrier sealing off the Catholic Bogside area, nails and stones were thrown by the Catholic crowd and serious rioting developed in which Catholics, Protestants and the police were involved. This continued until 14 August (1).

On 13 August these riots spread elsewhere. It appears that the riots spread largely because of attempts by Catholics to divert police attention from Londonderry and draw pressure off the Catholics in the Bogside area there (2).

Particularly serious rioting occurred in Belfast from 13-15 August. The trouble appears to have started in Catholic areas with demonstrations against or attacks on the police, but to have developed rapidly into inter-sectarian rioting. Incidents on 13 August included attacks on RUC stations at Hastings Street and Springfield Road and particularly severe rioting occurred in the Ardoyne and Falls Road areas on the night of 14/15 August when some shooting occurred. On the morning of 15 August serious rioting occurred in the Clonard area in the course of which a large number of houses were burnt down. These were almost exclusively Catholic occupied houses and in particular a large number of Catholic occupied houses in Bombay Street were burnt. The Scarman Tribunal found (3) that out of a total of 63 houses in the street, 38 had to be demolished, 5 required major repairs and 10 required minor repairs. This rioting appears to have been started by Protestants reacting to what they believed to have been Catholic aggression in neighbouring areas on the previous two nights (4).

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(1) See e.g. VR 7 pp. 18-19; VR 9 p. 32; Scarman Report p. 9, para. 1.10, Chapters 11 and 12, pp. 77-77.
(2) See e.g. VR 7 p. 19; VR 7 pp. 213-214; VR 10 I pp. 350-351; Scarman Report p. 9 para. 21.22, Chap. 13 pp. 86-88.
(3) Scarman Report p. 20[illegible], para. 25.47, footnote.
(4) See e.g. VR 7 pp. 20-21, 82-84 and 70-73; VR 7 pp. 209-216; VR 9 pp. 10-11 and 32-35; Scarman Report, Chapters 23-27, pp. 133-221.

The riots appear to have died down everywhere after the Army was called in on 14 August. They entered Londonderry on that day and Belfast on 16 August and appear to have been well received by the Catholic community (1).

It is clear from the evidence that the riots in August 1969 greatly exceeded in severity any which had occurred in recent years. Firearms were used by both rioters and police. Petrol bombs were used by rioters from both communities on a large scale. Casualties and damage to property were considerable. The Scarman Report gives figures for casualties and damage to property in the disturbances of July and August. These show that 10 people were killed, all civilians with the exception of an off-duty soldier shot by the police, 154 were injured by gunshots and 745 by other causes. A list agreed with interested parties by the solicitors to the Tribunal indicated that 179 premises had required demolition, 94 major repair and 323 minor repair and that Catholics had occupied 83.5% of the premises damaged or destroyed (2). The great majority of the casualties and damage occurred in the riots on and after 12 August 1969. In particular considerable damage was caused to licensed premises in Belfast. A total of 30 were destroyed and 46 damaged. These were all owned or managed by Catholics and were situated in widely separated areas of the city including areas not affected by the riots (3). In addition widespread intimidation appears to have taken place mainly in Belfast and affecting mainly Catholic families (4). Then, as apparently at other times, the disturbances were centred in the working-class areas of the cities.

There is no evidence that the riots of August 1969 were planned in advance by any extremist organisation on either side. What is clear is that sectarian tensions were extremely high. Bigotry and hatred were present in elements of both communities and fear was widespread. It has been suggested, in particular, that the burning of houses in Bombay Street and the destruction of Catholic licensed premises must have been planned. Some premeditation may have been involved but the overall picture of the riots appears to be one of mounting mob violence from both sides, possibly encouraged by extremists on each side. In particular members of the Shankill Defence Association appear to have been involved on the Protestant side in the disturbances

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(1) Scarman Report, pp. 9 and 10, paras. 1.21 and 1.24; VR 10 I p. 354.
(2) Scarman Report pp. 241-244. See also VR 7 p. 20.
(3) Scarman Report pp. 244-245, para. 31.16; VR 7 p. 231; VR 10 I pp. 362-363.
(4) Scarman Report pp. 246-248.

which led to the burning of Catholic homes. One prominent figure in this body was Mr. John McKeague. There is also some evidence that the IRA had developed some connections with the NICRA and Peoples' Democracy by this time (1).

One feature of this period was the emergence of defence committees or associations in both Protestant and Catholic areas. The existence of the Shankill Defence Association has already been mentioned. Other such associations, noticeably the Woodvale Defence Association, were formed in Protestant areas in late 1969 (2). On the Catholic side a body called the Derry Citizens' Defence Association had been formed in July 1969 apparently for the defence of the Bogside (3). During the riots in August barricades were erected in a number of areas and Citizens Defence Committees emerged. There appears to have been some dispute as to whether these organisations should adopt physical or other means of defence. A Central Citizens' Defence Committee was eventually formed and moderate views appear to have prevailed in it. This body and its chairman, Mr. Conaty, had frequent contacts with the army and civil authorities (4). At the same time the IRA appears to have gained much more support as a result of these riots and of a resulting Catholic loss of confidence in the RUC (5).

Following the riots an advisory board under the chairmanship of Lord Hunt was set up to enquire into the organisation and functions of the RUC and USC ('B' Specials) and to recommend any necessary changes. A Tribunal of Inquiry under the chairmanship of Mr. Justice Scarman was set up to inquire into the disturbances and the explosions in March and April. On 19 August 1969, following a meeting between members of the United Kingdom and Northern Ireland Governments a joint declaration, the "Downing Street Declaration", was issued in which the two Governments inter alia reaffirmed their commitment to reforms in Northern Ireland. From 27 to 29 August Mr. Callaghan, the United Kingdom Home Secretary, visited Northern Ireland and met community leaders and members of the government. Another step taken to normalise the situation

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(1) See e.g. VR 7 p. 21; VR 7 pp. 288-290 and 303-304; VR 9 pp. 11 and 33-35; VR 10 I pp. 352-353; VR 10 I pp. 442 & 471-472; Scarman Report, Chapter 2, pp. 10-14; pp. 206-207, paras. 25.49-25.51; pp. 217-218, paras. 26.41-26.44.
(2) VR 10 I p. 172; VR 7 p. 147.
(3) Scarman Report p. 8 para. 1.16.
(4) VR 7 pp. 312-313.
(5) VR 7 p. 144; VR 7 p. 304.

was the calling of a Peace Conference by the Northern Ireland Prime Minister at Stormont Castle. This met on 18 August 1969 and was attended by representatives of both communities (1).

It appears that there was then a period of relative calm during which most of the barricades erected during the August riots were dismantled, although some further rioting occurred in September (2). On 10 October 1969 the Hunt Report was published. This recommended the creation of a police reserve force and a part-time military reserve, the Ulster Defence Regiment (UDR), to replace the USC, the object being to separate military and police roles, the USC having been an armed force with functions of a largely military nature. This report was accepted by the Government. Sir Arthur Young, a high ranking Chief Constable of the metropolitan police was appointed Chief Constable of the RUC (3).

Publication of the Hunt Report led to a reaction in Protestant areas and serious rioting occurred in Belfast between Protestants and members of the security forces. Snipers were active and on 11 October the first member of the security forces to die during the present emergency was killed. He was Constable Arbuckle who was killed by a shot fired from a Protestant crowd during a confrontation between Protestant rioters and the police (4).

After these riots the situation appears to have remained relatively quiet for the remainder of the year. Certain incidents were particularly referred to in evidence however. These included finds of arms and petrol bombs in Protestant areas in mid-October 1969, the explosion at Ballyshannon in the Republic of Ireland on 19 October (which has already been m mentioned) and another explosion in the Republic on 31 October at the grave of Wolfe Tone at Bodenstown, for which the UVF apparently claimed responsibility on the following day. Another incident mentioned was the finding of 180 petrol bombs in a Protestant area on 26 November. It also appears that at about this time a moderate Protestant MP, Mr. Richard Ferguson, announced his resignation, having been threatened and intimidated (5).

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(1) VR 7 pp. 311-314; Commentary to Cameron Report.
(2) United Kingdom Observations on Merits. Annex C13, pp. 2-3; VR 10 I p. 353.
(3) VR 7 p. 314; VR 10 I pp. 527-528; Text of Communiqué on Discussions of 9 & 10 October 1969.
(4) VR 7 pp. 21-22; VR 10 I pp. 173, 206, 354-355.
(5) VR 9 pp. 37-38; VR 10 I pp. 336-337 & 407-408.

The intimidation which accompanied the riots of August 1969 appears to have continued for a time. In response to requests made at the Prime Minister's Peace Conference a body known as the Public Protection Authority was set up on 9 September 1969 to combat intimidation, and a full-scale public relations campaign was launched. These steps appear to have been reasonably effective and intimidation declined for a time (1).

Towards the end of 1969 the IRA , which had previously been adopting a Marxist orientated political line, split into the Official IRA and the Provisional IRA. The Officials apparently continued to pursue a political line for the time being, whilst the Provisionals have consistently been more militant, although both factions appear to possess arms, to be hostile to the Governments of both the United Kingdom and Republic of Ireland and prepared to engage in violence. The reason for the split appears to have been dissatisfaction with the political line amongst certain persons and a desire to use force(2).

c) The situation from 1970 until the introduction of internment

The General Picture

In 1970 the situation worsened. In the early part of the year there were a number of explosions, of which a sizeable proportion appear to have been caused by Loyalists. In June 1970 the most serious rioting yet seen in Belfast occurred and at the beginning of July a two-day curfew was imposed on streets in the Catholic Falls Road area and searches were made. The number of explosions increased in the middle of the year to a peak of 23 in August and fell away gradually in the following months, there being only 5 in December according to police figures. A total of 155 explosions was recorded for the whole year . In 1971, up to the introduction of internment, the number of explosions rose steadily from 16 in January to 94 in July, the total recorded from January to July being 304 (3). These appear to have been almost exclusively the responsibility of the IRA. A total of 25 people were killed in 1970, of whom 17 were killed in June or July. All 25 appear to have been civilians, with the exception of two police officers killed in an explosion. None of these deaths were attributed by the

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(1) VR 7 pp. 323-324 & 345-346.
(2) VR 7 pp. 192-193; VR 10 I p. 177 & 415-416; VR 10 I p. 486.
(3) VR 10 I Annexes p. 7 - figures relating to explosions.

police to Protestant activity. It is not clear how many were caused by terrorists and how many from action by the security forces. A total of 27 people were killed in 1971 up to the end of July. Twelve of them were members of the security forces. Of the 15 civilians 5 were apparently killed in IRA explosions and 2 were victims of assassinations attributed to the IRA, 4 were shot by the security forces. One death, that of a Protestant woman, is generally accepted as having resulted from Protestant activity. Extensive search operations in July 1971 failed to produce significant results. On 9 August 1971 internment was introduced (1).

Throughout 1970 and in 1971 up to the introduction of internment, although there was undoubtedly rioting on a very considerable scale, violence in the streets during riots gradually ceased to be the dominant feature of the situation. Throughout the emergency large numbers of people from both communities have, from time to time, taken part in serious street disturbances in which much destruction and injury has been caused. Such riots have basically taken the form of sectarian fighting between mobs from both sides, with the security forces becoming involved in attempts to control the violence. Stones, petrol bombs and other missiles have been used and immense destruction to property has resulted. Such sectarian strife has been stirred up and aggravated by extremists on both sides. At the same time a smaller element on each side has resorted to acts of what can loosely be described as "terrorism", namely calculated acts of serious violence such as bombing or shooting. These two aspects of the situation cannot be rigidly separated. There are numerous instances, for example of snipers operating, of gelignite bombs being thrown, and of organised or semi-organised attacks on property with petrol bombs during riots. Nevertheless the activities of the rioters and the terrorists can be distinguished in view of the generally more serious threat to life and property presented by the "terrorists" on each side, the smaller number of persons involved in such activities and the higher degree of planning and organisation involved.

The terrorist activity by the IRA appears to have started in earnest in 1970 and developed on a large scale in 1971. The pattern of the IRA campaign began to develop as one primarily of bombing buildings and attacking the security forces. It was aimed at achieving the political change sought by the IRA, through disruption of ordinary life and attacks on the security forces. There was also some terrorist activity by the Loyalists and this appears to have been directed largely against the Catholic community, with a number of bomb attacks on the homes of politicians seen as hostile

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(1) VR 10 I pp. 179-180, Annexes p. 6; VR 10 I Annexes p. 89.

to Unionism, and attacks on Catholic owned or occupied property, notably licensed premises. Sectarian assassinations were not significant during this period. There seems to have been some intimidation by both sides particularly in 1971, but the precise extent of this in the months before internment cannot be determined. The dominant feature of the period from January to 9 August 1971 was undoubtedly the bombing and shooting by the IRA.

The situation in 1970

In 1969 the situation had been predominantly one of street disturbances with violent rioting involving both communities and the security forces, leading to loss of life, injury and destruction. There was further serious rioting in 1970 but the situation changed in that the IRA started its terrorist activity in earnest for the first time during the present emergency. The number of explosions recorded by the police increased dramatically from a total of 8 in 1969 to 155 in 1970. A number of these were caused by Loyalists but there is no dispute that the majority were caused by the IRA, although the bombing campaign was on nothing like the same scale as it reached in the four following years (1).

It appears that even at the end of 1970 the situation was seen by soldiers on the ground as being mainly an inter-community problem and that neither the IRA nor the street committees formed on the Protestant side were seen as a particularly serious threat at least by lower level army officers (2).

It is generally accepted that Loyalists caused a number of explosions during 1970, particularly in the early part of the year. These included explosions at the homes of members of the Northern Ireland Parliament, namely Miss Sheelagh Murnaghan, Mr. Austin Currie, Mr. Richard Ferguson and Miss Ann Dickson, on 8 February, 7 March, 28 April and 10 August respectively. Shots were also fired at Mr. Currie on 2 July. Other explosions in 1970 generally attributed to Protestants include one at Crumlin Road Prison on 10 February, the explosion at the courthouse on 18 February, which has already been mentioned, and an explosion at St. Aquinas Hall, a Roman Catholic Students' Hostel, on 7 March. It appears that the UVF claimed responsibility for the explosion at Mr. Currie's home on 7 March and threatened nationalist M.P.s (3).

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(1) See e.g. VR 7 pp. 23-24; VR 7 pp. 196-197; VR 9 p. 30; VR 10 I pp. 172, 363 to Annex p. 7.
(2) VR 10 I pp. 65-68.
(3) See e.g. VR 7 pp. 134-135; VR 9 pp. 12, 42 and 46; VR 10 I pp. 357-358; VR 10 I pp. 488-489.

It is also generally accepted that Loyalists were responsible for other bombings in 1970 as well. The "Schedule of Loyalist Acts of Terrorism" (1) lists a total of 27 explosions in Northern Ireland, said to have been caused by Loyalists during the year, including those mentioned above. It should be noted, however, that on the one hand this Schedule does not purport to be a complete list of incidents and on the other hand, not all the incidents have been spoken to by witnesses and the basis for attributing responsibility to Loyalists is not in all cases clear. One police witness thought that Loyalists would have been responsible for about 20-25 bombs in that year (2). The police regarded the Loyalist bombs as a dangerous threat, although the bombs they used, mainly pipe bombs, were small compared to those used by the IRA, and at least in the particular instances referred to caused no casualties, and it appears to have been the police view that a dangerous element on the Loyalist side persisted. They considered that only a small number of people were involved. Those believed to be involved were eventually identified by the police who believed them to be a gang operating from the Shankill Road. The police were unable to obtain adequate evidence to arrest them but three of them were convicted in March 1971 of offences arising out of a post office robbery and sentenced to terms of imprisonment. A fourth man fell through a roof during a police chase and was killed. Less success was met with following up IRA bombers who were more numerous and able to escape into areas to which the police did not have access (3).

The majority of Loyalist bombs in 1970 were exploded in the first four months of the year. The "Schedule" drawn up by the applicant Government indicates that 17 of the 27 explosions in Northern Ireland attributed to Loyalists occurred in the period to the end of April. The police recorded a total of 34 explosions during that period. During the remainder of the year the vast bulk of explosions were probably caused by the IRA (4).

During the first half of the year there were sporadic street disturbances and in particular very serious riots in Belfast and Londonderry at the end of June during which shooting broke out and a number of people were killed (5).

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(1) Prepared by the applicant Government, see Vol 7 p. 120.
(2) VR 10 I pp. 359-361.
(3) VR 10 I pp. 208-209, 356 et seq.; VR 10 I p. 516.
(4) VR 10 I Annex p. 7.
(5) The Chronology Vol. I p. 66; Annex 6M 6 - GA Observations on Merits.

In early July 1970 a large part of the Catholic Falls Road area in Belfast was sealed off for a two-day period, a curfew was imposed and extensive searches were carried out. This situation appears to have developed when rioting broke out following a search for arms in one house. Shots were subsequently fired at the soldiers, the situation escalated and progressively more houses were searched. A considerable quantity of arms were found. Five civilians were killed. Whilst this cordon and search operation appears to have been a reaction to the situation which developed rather than an operation planned in advance, it was widely believed by Catholics that it had been planned and this belief was understandable (1).

This incident in particular appears to have led to a deterioration in relations between the Catholic population and the Army. It was widely felt by Catholics that, following the United Kingdom general election of 18 June and the consequent change of Government, a hard-line was being adopted towards them (2).

Disturbances, bombings and other forms of violence continued for the rest of the year, although there was no rioting on the scale of that in the summer and at the end of the year the situation appears to have been relatively quiet.

The situation in 1971 up to the Introduction of Internment

After serious riots in the first two months of the year the amount of rioting decreased. On the other hand it is clear that terrorist activity by the IRA increased dramatically. There were numerous shootings and bombings and the first soldiers were killed. It is beyond dispute that the IRA was responsible for the very great majority of the serious violence during this period. Equally it is clear that Protestants were responsible for some of it. It is thus proposed to examine the security situation as a whole and then so far as possible to assess the nature and extent of Protestant involvement.

(i) The General Security Situation in 1971 up to 9 August

The police statistics show that in 1971 up to the end of July, there were a total of 27 deaths and 304 explosions. The highest number of deaths during the period occurred in February when 12 people were killed. The number of explosions rose from 16 in January to 94 in July (3).

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(1) See e.g. VR 7 pp. 155-156 & 224-232; VR 10 II pp. 997-998, 1012.
(2) See e.g. VR 7 pp. 23-24; VR 11, pp. (iv) & 116.
(3) VR 10 I Annex pp. 6-7.

In January 1971 there was prolonged rioting in the Catholic Ballymurphy area. This lasted for a total of eight nights and a few shots were fired. There was also rioting against the police and army over a two-day period in the Protestant Shankill Road area in which Mr. John McKeague, leader of the Shankill Defence Association, was believed by the army to have played a prominent part in stirring up feelings (1). On 3 February 1971 a number of houses were searched in the Catholic Clonard area and heavy rioting broke out which spread to other Catholic areas such as the Ardoyne, Falls Road, Divis Flats, Unity Flats and Bone areas. During this period the first soldiers were killed and a number injured by gunshot. Two IRA gunmen, named Saunders and Watts were killed by the army and subsequently given IRA funerals. At Saunders' funeral shots were fired over the coffin, which was escorted by uniformed men. Later in the year some people who had worn uniforms were charged (2). On 26 February an RUC Inspector and a Constable were shot dead in the Ardoyne District by IRA gunmen. Other incidents in the first two months of the year included an outbreak of incendiarium in shops and business premises thought to have been largely the responsibility of the IRA. A land rover was blown up on 9 February and five employees of the BBC were killed. This too was thought to have been an IRA action. There were also a number of attacks on RUC stations attributed to the IRA. Of the total of twelve persons killed in February, four were members of the security forces and five were civilians killed in terrorist explosions, of which there were 38, the vast bulk of which were attributed to the IRA. Attributions of responsibility for explosions were made by the police on the basis of evidence, intelligence or the circumstances surrounding an explosion. In many cases it was only tentative. (3)

In February and early March shooting at the security forces' patrols built up. On 10 March three unarmed soldiers were murdered whilst they were off duty. One other soldier was killed during the month in a petrol bomb attack on his vehicle in Londonderry. Two civilians were killed, one in a battle between the Official and Provisional wings of the IRA. There were a total of 31 explosions during the month. In April IRA bombing attacks continued and during the period up to mid-July they increased. There were 38 explosions in April, but no deaths. There were 43 explosions in May in which a soldier and a civilian died. Another soldier and another civilian were killed in gun battles. A total of 82 people were injured in explosions. In June there were 44 explosions but no deaths. In July the number of explosions more than doubled to 94 and two soldiers and two terrorists were killed (4).

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(1) VR 10 I pp. 5 & 69.
(2) VR 10 I pp. 179 & 212-213; VR 10 I pp. 5-6.
(3) VR 10 I p. 179, Annex p. 7; VR 10 I p. 5.
(4) VR 10 I pp. 6-7; VR 10 I pp. 179-180. See also VR 7 pp. 78-86.

In the period from 1-8 August there were a number of further explosions and shootings. Rioting also occurred from 4 August onwards, particularly in the Falls Road area. By 9 August a total of 13 soldiers, 2 policemen and 16 civilians had been killed, since the beginning of the year (1).

It appears that the bombs used by the IRA at this time ranged in size between about 5 or 10 lbs of gelignite and about 50 lbs and caused considerable damage. One particularly severe explosion took place at the "Daily Mirror" works on 17 July. This apparently caused some £2,000,000 worth of damage. Nevertheless it appears that the IRA in general gave sufficient warning after planting a bomb for people in the vicinity to be moved out. The majority of the explosions were occurring in Belfast (2).

Another form of activity indulged in by members of both communities at this time was intimidation of members of the opposite community to force them to move from their homes. This appears to have continued throughout the year on both sides. Police figures based on the number of cases reported for the whole year show that out of a total of 2,749 cases of intimidation reported during 1971, 57,5% involved Catholics and 47.5% involved Protestants. No separate figures are available for the periods during the year before and after internment but intimidation undoubtedly occurred on a substantial scale both before and after 9 August 1971 although the disturbances which followed the introduction of internment appear to have been accompanied by a considerable increase (3). The police figures do not however distinguish intimidation to persuade persons to leave their homes from other forms of intimidation, such as the intimidation of witnesses or jurors. In addition it is generally accepted that many cases of intimidation of all sorts occurred which were not reported to the police. Police estimate was that 75 to 80 per cent of cases were reported. It is also generally accepted that the majority of cases of intimidation in housing tended to affect Catholics, who tended to be in a minority in the large housing estates where it was most widespread (4).

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(1) VR 10 I pp. 16-17 & 19-20.
(2) VR 10 I pp. 11-19 & 40; VR 10 I pp. 214-215.
(3) See e.g. VR 10 I p. 436; VR 10 I pp. 94-97.
(4) VR 10 I pp. 436, 464, 470 & 491.

Intimidation took many forms including anonymous letters or phone calls, or the sending of a live round of ammunition through the post, action by mobs and groups and direct threats including the production of firearms or physical violence to the householder or his family. In addition it is clear that many families moved as a result of general fear for their safety without any specific threat or action against them (1). The police figures include cases of intimidation through "general unrest or fear" (2).

(ii) Protestant activity

During this period in 1971 there was a small-scale spate of bombing by Protestant terrorists and a number of incidents involving the use by Protestants of petrol bombs. High explosive bombs used by Protestants were generally much smaller in size than those used by the IRA. They were usually pipe bombs which consisted of a length of tubular metal 12 to 18 inches long packed with explosives. They were capable of killing a person standing close by, but not of causing great structural damage (3). Petrol bombs consisted in general of a bottle filled with petrol with a fuse in the end. The fuse was lit, the bomb thrown and fire caused when the bottle broke on landing.

It is not possible to assess accurately the number of Protestant high explosive bombings during this period, but it is not disputed that the vast bulk of the 304 explosions which occurred up to the end of July were the work of the IRA (4). Some indication of the extent of Protestant activity can be obtained from the "Schedule" produced by the applicant Government. This does not purport to be a complete list. It attributes to Protestants a total of 14 incidents in Northern Ireland in the period up to 9 August 1971 apparently involving high explosive bombs. Responsibility for one of these incidents, namely the planting of 4 bombs on the Belfast-Dublin railway line on 21 June cannot be attributed to either side however (5). Equally, responsibility for a bomb in a public house in Holywood on 17 February cannot be attributed to Protestants since it appears that this public house was used by soldiers and IRA responsibility was suspected (6).

Incidents which have been generally attributed to Protestants include the damaging by a bomb of a Catholic church at Whitehouse, Co. Antrim on 15 January 1971, an explosion on

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(1) See e.g. VR 7 pp. 40-41 & 45; VR 7 pp. 324-325 & 340.
(2) VR 10 I p. 662 & Annex pp. 83-86.
(3) See e.g. VR 10 I p. 214-216.
(4) See e.g. VR 9 p. 38.
(5) VR 7 p. 123; VR 10 I pp. 365-366.
(6) VR 7 p. 132; VR 10 I p. 364.

28 March at St. Malachy's College and an explosion at the premises of St. Malachy's Old Boys Association on the following day. An explosion on 8 May 1971 which resulted in the death of the mother of Mr. John McKeague, chairman of the Shankill Defence Association, was believed to be a 'Protestant explosion" and the police were satisfied of this (1).

The police apparently attributed responsibility for some of the earlier explosions to the "Protestant gang" operating from the Shankill Road who were thought to have been responsible for explosions in 1970, three members of which had been sentenced to imprisonment in March 1971 (2).

Incidents involving petrol bombs which have been generally attributed to Protestants include the destruction of Squires Hill Tavern by fire, apparently resulting from a petrol bomb on 27 March 1971 and damage to two Catholic churches in Belfast, St. Mathew's and St. Patrick's by petrol bombs on 13 April and 10 May (3).

With the exception of the incident resulting in the death of Mrs. McKeague, none of the incidents referred to resulted in any fatalities (4).

In addition to these incidents it is clear that there was also substantial rioting by Protestants during this period and, as has been said, substantial intimidation of Catholics.

d) <u>The introduction of internment on 9 August 1971 and its application in 1971</u>

Following extensive discussions and consideration over a long period the final decision to introduce internment was taken in London on 5 August 1971 by the Northern Ireland Government in consultation with the United Kingdom Government. In view of its importance the political decision was taken at a joint meeting between members of the United Kingdom Government and of the Northern Ireland Government, although the formal decision had to be made by the Northern Ireland Government. There had been considerable discussion of the possibility of internment both amongst politicians and in the press for some time before. Pressure had also been mounting from within the Protestant community for its introduction. Serious consideration was given to the question by the authorities from July onwards, when the volume of serious explosions had mounted rapidly (5).

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(1) VR 7 pp. 120-125; VR 10 I pp. 363-365.
(2) VR 10 I p. 365.
(3) VR 7 pp. 121 & 122; VR 10 I pp. 364-365.
(4) VR 7 p. 135.
(5) See e.g. VR 11 pp. 7-8; VR 11 pp. 10-13; VR 11 pp. 122-123.

In the latter part of July, apparently as a last resort before introducing internment, a number of extensive search operations were mounted by the police and army, in particular on 23 and 28 July, with the object of disrupting the IRA in the hope that internment would not be necessary. Some 90 persons appear to have been arrested in all. They were held for questioning but could only be so held for a maximum of 48 hours. These operations failed to yield significant results, in particular because the suspects arrested tended to remain silent when questioned in the knowledge that they could only be held for 48 hours (1).

The main factor in the security situation which led to the introduction of internment appears to have been the massive increase in serious bombing by the IRA in July 1971. The authorities appear to have taken the view that the ordinary methods of dealing with the situation available to them were inadequate, partly because of the presence of 'no-go' areas in Catholic districts, in which the police could not operate. In addition the authorities apparently considered that there was no further prospect of dealing with the situation by political means, the reform programme initiated in 1969 having failed to prevent continuing violence (2).

The prime aim of the introduction of detention and internment was to break the power of the IRA by taking suspected terrorists out of circulation. Mr. Faulkner, the Northern Ireland Prime Minister, in announcing it said that the main target of the operation was the IRA but that the authorities would not hesitate "to take strong action against any other individuals or organisations who may present such a threat in the future" (3).

Whilst the authorities were aware of some Protestant terrorist activity they did not consider that it represented a serious threat and considered it to be

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(1) VR 11 pp. 67-69; VR 11 p. 122; VR 10 I pp. 10, 14 and 19; VR 10 II pp. 763, 781, 785-787.
(2) See e.g. VR 11 p. 78; Northern Ireland Office Memorandum (NIOM) p. 1.
(3) UK Submissions VR 12 p. 293; NIOM p. 2; VR 10 I Annex p. 2.

of minute proportions compared to that of the IRA. In addition they considered that there were differences between the activities of the two sides in that the IRA was mounting a highly organised politically motivated terrorist campaign, whereas the Protestant activity was seenmore as the work of criminals or hooligans operating on a much less organised basis, even though they did from time to time give themselves titles (1).

In Northern Ireland consideration of the introduction of internment at the highest level was made within a body known as the Security Committee. This was a committee which met regularly under the chairmanship of the Prime Minister of Northern Ireland to discuss the security situation. Its members included other ministers with relevant responsibility, the General Officer Commanding, the Chief Constable and a senior United Kingdom official known as the United Kingdom representative. In addition frequent consultations took place between the Northern Ireland and United Kingdom Governments before the final decision to introduce internment was taken in London on 5 August 1971. It appears to have been generally recognised in governmental circles in August 1971 that if internment were introduced it would at that stage in fact be applied only against the IRA (2).

Discussions did, however, apparently take place during the preparatory stage as to whether there were any Protestant terrorists who should be interned, but the Protestants were not considered to be overtly active and there was felt to be insufficient intelligence available to justify the internment of any of them. (3).

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(1) See e.g. VR 11 pp. 47-50/55.
(2) VR 11 pp. 8-13.
(3) VR 11 p. 70.

In the weeks before the introduction of internment lists of persons who were to be arrested for interrogation and possibly interned were prepared by the RUC in consultation with the army, apparently mainly on the basis of intelligence supplied by the Special Branch. On 9 August 1971 a large arrest operation, Operation Demetrius, was mounted with the aim of arresting 452 people whose names were on the final list. In the event 354 people were in fact arrested, of whom 104 were released within 48 hours.

The list of persons who were to be arrested had been drawn up at RUC headquarters on the basis that persons in respect of whom the police had some intelligence of involvement with the IRA were to be arrested.

In addition to the consultation with the army, consultation with police at local level had also taken place in the preparation of the list.

Whilst no specific instruction was given, it was generally understood within the police that the operation was to be directed against the IRA and no Loyalists were on the list of potential arrestees. Those on the list were not necessarily themselves suspected of having been guilty of terrorism or of having been involved in IRA illegal activities, but were persons who were either suspected of being members of, or associated or involved with the IRA or who were suspected of terrorism. Those arrested included a small number of leading members of both the Northern Ireland Civil Rights Association and Peoples' Democracy who were arrested on the basis of suspected involvement with the IRA. The degree of intelligence available in any given case varied. The arrest operation was looked upon in principle as a preliminary to the application of the powers of detention and internment, but a small number of persons were nevertheless arrested not on the basis of any suspicion against them but on the basis that it was suspected that they might possess information about others who had been involved in terrorism (1).

There was widespread feeling in Catholic circles that the introduction of internment had been unnecessary and that in any event many members of the Catholic community had been arrested and detained wrongly, whilst there were extremists on the Protestant side who, if anyone were to be interned, should also have been interned. Both the introduction of internment itself and the feeling that it was not being fairly applied inflamed passions within the Catholic community. It was widely felt

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(1) VR 10 II pp. 789-797 & 816-817; VR 9 pp. 44-45.

that internment had been introduced to placate extreme Unionists and that in many cases people were being interned simply because they were opposed to Unionism (1).

It is now generally accepted that in many cases in August 1971 persons were arrested, and in some cases also detained, on the basis of inadequate and inaccurate information (2).

Arrests continued to be made during the rest of the year, partly of persons who had been on the original list, and partly of persons who became subject to suspicion thereafter. It appears that a total of 770 detention orders were made during the year under Regulation 11 (2) and 525 internment orders were made although a considerably larger number of people were arrested. Thus it seems that some 980 people had been arrested by 10 November. The numbers actually held under detention or internment orders rose steadily to over 500 in December 1971 (3).

e) The situation from 9 August 1971 until 30 March 1972

The introduction of internment provoked a violent reaction from the Catholic community and the IRA. Serious rioting broke out in Belfast and elsewhere and there was a considerable increase in shootings and bombings. In the immediate aftermath barricades were erected in Catholic areas and gun battles took place between the army and the IRA when the army attempted to clear them. The extent of the reaction surprised the authorities (4). In the course of sectarian rioting thousands of people were forced to leave their homes. Many houses were burned, frequently by the occupants who set fire to them on leaving to prevent them from being occupied by members of the opposite community. In the Ardoyne district of Belfast some 200 homes were thus burned by Protestants leaving them and a number by Catholics (5). There was also some shooting between the rival factions in the course of sectarian rioting (6).

Throughout the period from August to December 1971 the numbers of deaths and explosions recorded by the police for each month were higher than in any previous month of the year. A total of 146 people were killed and 729 explosions were caused. Of the 146 persons killed, 47 were members of the security forces and 99 were civilians. Explosions caused

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(1) See e.g. YB 7 pp. 29-30 & 77.
(2) See e.g. The Diplock Report p. 15 para. 32.
(3) YB 10 I p. 132 & Annex p. 15; YB 10 II p. 797; YB 7 p. 34 and Statistics of Monthly Holdings prepared by the applicant Government.
(4) See e.g. YB 10 I pp. 46-47; YB 11 pp. vi-vii.
(5) YB 10 I pp. 180 and 216-217.
(6) YB 10 I p. 379.

a considerable number of deaths. Thus in September 1971 7 civilians were killed in explosions and in the period from October to December 1971 41 persons were so killed, 7 of them being members of the security forces and 34 being civilians (1).

The introduction of internment and the riots which followed it led to a rise in support for the IRA within the Catholic community and further alienation of the Catholic community from the authorities and security forces (2). On the Protestant side the serious violence at this time led to the formation of further local defence associations or vigilant groups in Protestant areas. These eventually amalgamated to become the Ulster Defence Association. The precise date when this occurred is not clear but it appears to have been in about September 1971, although this organisation did not become openly active until about the spring of 1972 (3). The police apparently looked on the various associations primarily as defensive organisations which patrolled their areas. They were aware that there was a dangerous element within them but apparently did not have sufficient intelligence to identify the violent element in 1971 (4).

There appears to have been relatively little serious violence by Protestants, apart from rioting, between August 1971 and the end of the year. Nevertheless a minor bombing campaign, in particular of public houses, continued throughout 1971. The "Schedule" produced by the applicant Government lists a total of eight bombings attributed to Protestants during that period. One of those referred to was an explosion at a Catholic public house on 4 December 1971, in which 15 people were killed. Responsibility for this explosion was claimed by a group calling themselves the "Empire Loyalists". No such group had been heard of, however, and the police subsequently received information to the effect that the explosion had been caused by an IRA bomb which had exploded prematurely whilst in transit to its intended target which was a hotel nearby (5). One death only, between August and the end of the year, was attributed by the police to Loyalists. This was an assassination of a Protestant in September 1971 (6).

Intinidation appears to have become more serious after the disturbances following the introduction of internment. Much intimidation appears to have taken place on both sides

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(1) VR 10 I pp. 180-181.
(2) See e.g. VR 7 p. 31.
(3) VR 10 I pp. 180-181; VR 9 p. 14; VR 7 pp. 147-148.
(4) VR 10 I pp. 377-378.
(5) Schedule of Loyalist Acts of Terrorism; VR 10 I pp. 368-369.
(6) VR 10 I p. 181, Annex p. 6; VR 10 I , Annex p. 89.

in the course of these disturbances, notably in the Ardoyne area in the centre of the city. Intimidation became a particularly serious problem in newer housing estates on the outskirts of Belfast. One area where much serious intimidation occurred at this time was the Rathcoole Estate. This was a large housing estate, with a population of some 16,000.

Prior to the disturbances about 65% of the population was Protestant and about 35% was Catholic. In mid-1971, as the level of terrorism and violence in the area and elsewhere rose, a defence association, the Rathcoole Defence Association, was set up. This appears to have been an exclusively Protestant organisation which erected barricades during the disturbances after internment. After formation of the UDA it appears in effect to have amounted to a branch of the UDA. In addition so-called "tartan gangs" were active in the estate. These were gangs of Loyalist youths apparently responsible for threatening and beating Catholics and for acts of hooliganism. Frequent intimidation of Catholic families took place in the latter part of 1971. The situation was apparently aggravated by the arrival in Rathcoole of Protestant families who had evacuated other areas in the disturbances (1).

Whilst the bulk of the intimidation on the Rathcoole Estate at this time appears to have been carried out by Protestants against Catholics, there was also, in other areas, much intimidation of Protestants by Catholics. Thus police figures indicate that in police division "B" which included mainly Catholic areas such as Turf Lodge and Ballymurphy in Belfast, out of 298 cases of intimidation reported to the police during the whole year, 137 involved Catholics whilst 161 involved Protestants. The figures for the whole of Belfast indicate that overall the problem tended to affect Catholics more than Protestants however, since out of 2219 cases reported for the whole year, only 810 were cases involving Protestants. In Londonderry, on the other hand, out of 216 cases reported, only 32 involved Catholics (2). A number of the witnesses proposed by the applicant Government considered that the proportion of cases involving Catholics would have been much higher than indicated by the figures reported to the police and it must be borne in mind that these figures represent only the cases reported and that it is generally accepted that there were many unreported cases (3).

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(1) VR 7 pp. 40-43; Intimidation in Housing - Research Paper of Northern Ireland Community Relations Commission (Intimidation Report) pp. 34-35; VR 10 I pp. 437 and 491-492; VR 10 I pp. 379-380.
(2) VR 10 I pp. 485 and Annex p. 82.
(3) See e.g. VR 7 I p. 107.

Following the introduction of internment and increased arms finds by the security forces thereafter, there was apparently some small reduction in the level of violence by the beginning of 1972 as compared with the previous months. The level of terrorism still remained higher than at any time since before the introduction of internment, however. On 30 January 1972, "Bloody Sunday", an incident occurred in Londonderry in which 13 people were killed by army fire in the course of a riot. This led to a new upsurge in support for the IRA (1).

A total of 87 people were killed as a result of the emergency in the first three months of 1972. Of these 27 were members of the security forces. Two of the deaths were attributed by the police to Loyalist activity. Both of these were assassinations which occurred in March, one victim being a Protestant and one being a Catholic (2). A total of 421 explosions occurred during the same period, the vast majority of which were attributed to the IRA. Particularly serious explosions included one at the Abercorn Restaurant in Belfast on 4 March 1972, in which 2 women were killed and some 200 persons injured and another explosion in Belfast on 20 March in which 6 persons were killed and 142 were injured (3).

Whilst there was little serious violence from Protestants during these three months, this period did see the start of one development which was to become more significant at a later stage. This was the holding of large, highly organised, parades by Loyalist organisations. Early in 1972 a Loyalist political movement called the Ulster Vanguard Movement was formed under the leadership of Mr. William Craig. This movement held its first rally at Lisburn on 12 February 1972 and also held very large demonstrations in Belfast on 18 and 28 March at Ormeau Park in Belfast and outside Stormont. It was apparently estimated (see the Northern Ireland Office Memorandum, p. 8) that 52,000 persons had been present at the first rally and 22,000 at the second, although other estimates have been still higher. At the rally in Ormeau Park at least, some persons in para-military uniform were present. Mr. Craig made a speech there in which he threatened that if the politicians failed the Loyalists, it would be their job to liquidate the enemy (4).

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(1) VR 10 I p. 369; VR 10 I pp. 21-22.
(2) VR 10 I pp. 182-183 and Annex pp. 6 and 8.
(3) VR 10 I pp. 183 and 220; The Chronology, Vol. II, pp. 160 and 163.
(4) See e.g. VR 7 pp. 156-157; VR 10 I pp. 140 and 144-145; VR 10 I p. 375.

After the introduction of internment an organisation was formed on the Catholic side, known as the Catholic Ex-Servicemen's Association was formed. This appears to have acted for some time as a vigilante organisation in Catholic areas and to have carried out a number of patrols in co-operation with both the IRA and the army at different times. It also held a small number of parades or demonstrations in which its members were dressed in a form of uniform, apparently consisting of ordinary blazers. They do not appear to have been taken seriously by the Catholic community, at least from a time soon after their formation, when exaggerated reports of their strength appeared, onwards (1).

Throughout this period the number of persons held under detention or internment orders continued to rise until a total of over 900 persons, all suspected of involvement with the IRA, were held at the end of March (2).

In March 1972 the United Kingdom Government apparently considering that the security situation had reached an impasse, decided that it should assume direct responsibility for all law and order responsibilities in Northern Ireland. This decision was not acceptable to the Northern Ireland Government, who informed the United Kingdom Government that they would resign if it were put into effect. Following the Northern Ireland Government's refusal to accept this decision, it was announced on 24 March 1972 that direct rule from Westminster was to be introduced. The Northern Ireland Government and Parliament were suspended and their legislative and other powers and responsibilities were transferred to the United Kingdom Government under the Northern Ireland (Temporary Provisions) Act 1972, which came into effect on 30 March 1972.

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(1) See e.g. VR 7 pp. 96-98; VR 9 pp. 50-53.
(2) VR 7 p. 34 and statistics of monthly holdings referred to.

f) The Situation from 31 March 1972 until 5 February 1973

The General Picture

As part of a political initiative undertaken with the introduction of direct rule, the United Kingdom Government adopted a policy of phasing out the use of the powers of detention and internment so far as the security situation permitted. Large numbers of persons were released from detention and internment during the period of about five months following direct rule, although some new detention orders under Regulation 11 were made. IRA activity remained at a high level, however, although a ceasefire was declared by the Official IRA in May and a short ceasefire, which broke down after about ten days, was declared by the Provisionals at the end of June. From about September onwards the number of detention orders made began to increase and the number of releases to drop. In November detention and internment powers under the Special Powers regulations were replaced by new detention procedures under the Detention of Terrorists Order 1972. The powers of detention and internment were applied exclusively against persons suspected of involvement with the IRA until 5 February 1973, when interim custody orders were served on two Protestants.

Although the bulk of serious violence was attributed to the IRA there was a considerable increase in activity on the Loyalist side. A small number of bombings were attributed to Protestants but the most serious aspect of Loyalist activity was the perpetration of a large number of assassinations, these being mainly sectarian assassinations of Catholics. Protestants were believed to have been responsible for 67 assassinations between 1 April 1972 and the end of the year and for a further 4 in January 1973. Other aspects of Loyalist activity included continuing intimidation of Catholics, a problem which appears to have grown particularly serious in the summer of 1972, the erection of barricades in Protestant areas in Belfast, and the holding of large marches or demonstrations by the Ulster Defence Association and other Loyalist organisations. In addition a large-scale build up of arms was taking place on the Loyalist side at this time.

The General Security Situation from 31 March 1972 to 5 February 1973

Between 1 April 1972 and the end of the year there were a total of 381 deaths, of whom 108 appear to have been members of the security forces. Loyalists were believed to have been responsible for 68 deaths.(1) A total of 115 deaths during this period were classified as factional or sectarian murders and the IRA was believed to have been responsible for 32 of these

(1) VR 10 I pp. 183 & Annex p. 6.

and Loyalists for 65. Responsibility could not be attributed in 18 cases (1). In January 1973 there was a total of 17 deaths. Responsibility for four of these was attributed to Protestants. Five members of the security forces were killed and 12 civilians, of whom one was believed to be a terrorist. Eight of the civilian deaths were classified as the result of factional or sectarian murders, including all four of the deaths attributed to Loyalists. Responsibility for two of the factional or sectarian murders was attributed to the IRA, and responsibility could not be attributed in respect of the remaining two (2).

A total of 1,074 explosions were recorded by the police between 1 April 1972 and the end of the year. 388 of these occurred in the period to the end of June 1972. No detailed figures are available as to the number attributed to Loyalist activity, but the vast majority were believed to have been the work of the IRA. In the period from July to December 1972, the police recorded a total of 686 explosions whereas the army recorded 634 only. The army attributed responsibility for 23 of these to Loyalists, but police figures of attributions are not available. In January 1973 the police recorded 67 explosions and believed Loyalists to have been responsible for 8 of these, whilst the army recorded 57 and believed Loyalists to have been responsible for 6 (3).

On the introduction of direct rule the army was ordered to reduce patrolling in Roman Catholic areas whilst increasing patrolling on "inter-faces", the dividing lines between Protestant and Catholic areas, since there was a fear that the introduction of direct rule would lead to a Protestant reaction. They were also ordered to take care not to do anything which might increase the threat of inter-communal strife. Orders were given that arrest operations were to be carried out only in respect of key terrorists, which included officers of the IRA, members of Active Service Units of the IRA, bombers or members of assassination squads (4). IRA activity continued at a high level, however, although on 29 May 1972 the Official IRA, which had been responsible for a smaller amount of violence than the Provisionals, declared a cease-fire. It appears that this cease-fire has in general been kept ever since (5). Violence by the Provisional IRA remained at a high level, increasing steadily until their truce, announced on 22 June, became effective on 26 June.

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(1) VR 10 I, Annex p. 8.
(2) VR 10 I, Annex pp. 6 and 8; VR 10 II, Annex p. 17.
(3) VR 10 I, Annex p. 7 (police figures); VR 10 II Annex pp. 11-17 (army figures).
(4) VR 10 I p. 25.
(5) VR 10 I p. 184.

There was a steady rise in shooting incidents and casualties amongst the security forces over the period from March until the end of May. Thus 15 members of the security forces were killed in March, 24 in April and 38 in May (1).

Releases of internees started on 7 April 1972 and by mid-May 259 had been released (1).

Feelings amongst members of the Protestant community were aroused during the period after the introduction of direct rule both by the fact that it had been introduced and by the release of internees, and at about this time the UDA first began to appear in force on the streets and barricades began to appear in Protestant areas. Immediately after the announcement of direct rule a two-day strike was called by Mr. William Craig and this proved largely effective (2). Street demonstrations and marches ordered by the UDA appear to have started fairly shortly after direct rule was introduced. Large numbers of persons, many wearing para-military uniforms, and some of them also masked or wearing dark glasses, took part in marches through the centre of Belfast and elsewhere. On occasions members of the UDA appeared on the streets carrying sticks or cudgels but firearms were not carried openly on these marches. The UDA itself was apparently organised on pseudo-military lines, its members giving themselves military ranks. The UDA has never itself been an illegal organisation but it is generally accepted that its membership has overlapped, to some estent at least, with that of smaller and more militant bodies such as the Ulster Volunteer Force, which have been illegal. It is not possible to establish even approximately how many members the UDA had, but it is generally accepted that its membership was very large and one police witness (3) estimated its strength at between 20,000 and 30,000 (4). UDA parades were frequent at this time but although they had an intimidating effect on the population did not apparently lead directly to any violence. Whilst it was illegal to wear a para-military uniform or carry an offensive weapon such as a cudgel, the security forces did not attempt to arrest those taking part in these parades since they feared that major riots would result. Similarly they did not, except in the case of the funeral of MM. Saunders and Watts, in general attempt to arrest persons wearing uniforms at IRA or Protestant funerals where shots were sometimes fired over the coffin, although IRA funerals were apparently photographed by the security forces and there may have been some prosecutions (5).

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(1) VR 10 I pp. 25-26.
(2) VR 10 I p. 23; Chronology Vol. II pp. 164-165.
(3) VR 10 I p. 373.
(4) See e.g. VR 9 pp. 14-19; VR 10 I pp. 373-378.
(5) VR 7 p. 301; VR 10 I pp. 6, 84 and 146.

In May 1972 there was sectarian rioting in the Ballymurphy area in the course of which large numbers of shots were fired by the IRA, Loyalists and the army. On 20 May 1972 barricades were erected by Loyalists in the Willowfield area of Belfast. These were the first barricades to have been erected in Protestant areas for some time and they were removed by the security forces in the early hours of the following day. The next day barricades appeared in Protestant areas in many parts of the city. These appear to have been erected largely as a demonstration against the continued presence of "No-Go" areas in the Catholic areas of Bogside and Creggan in Londonderry, where massive barricades had been in place ever since the introduction of internment. The security forces were informed that the Protestant barricades would be removed by midnight and the Loyalists duly removed them themselves. Some 160 Protestant barricades were erected on 9 - 11 June 1972 but these too were removed by the Loyalists.

In March, April and May 1972, sectarian assassinations first reached serious proportions. Such assassinations were carried out by members of one community against members of the other, the motive being simply that the victim belonged to or had links with the opposite community (1). There were other reasons for many assassinations, such as disputes within militant organisations on both sides, personal motives and cases of mistaken identity. Figures kept by the police in relation to "factional or sectarian" assassinations apparently relate to all forms of assassination, but it is generally accepted that a substantial proportion of the assassinations which occurred in 1972 and thereafter were truly "sectarian". The police attributed responsibility for an assassination from criminal charges made or from intelligence or the circumstances of the death. In many cases the attribution was tentative only (2). Whilst both sides have committed sectarian murders, it is generally accepted that Protestants were responsible for more of them than Catholics. One reason for the outbreak of assassinations by Protestants appears to have been that there was a tendency in Loyalist extremist circles to identify any Catholic with the IRA (3).

It appears that the victims of sectarian assassinations were picked largely at random, although in some cases they were apparently selected because they had some link with the opposite community. A victim might be stopped whilst he was on foot or in a car, kidnapped and murdered. Sometimes the victims were tortured before they were killed. The body would later be dumped. In other cases, mainly in "fringe" areas on the edge of one particular Catholic or Protestant area, the murder might be carried out by gunmen cruising in cars and shooting down people in the street, either without ./.

(1) See e.g. VR 7 p. 33.
(2) VR 10 I pp. 427, 429-430 and 450-451.
(3) VR 7 p. 294; VR 10 I pp. 425-426.

stopping or stopping only momentarily. Another method, particularly common in Protestant or mixed areas, was for a gunman to call at a house and shoot the victim as he opened the door. This method appears to have been particularly common in cases where the victim was in some way linked with the opposite community, for example through a mixed marriage. Another method was to kill the victim at work, or on the way to or from work. There were many unsuccessful attempts at assassination in addition to those which succeeded. Most sectarian assassinations appear to have taken place at night (1).

Four assassinations occurred in March 1972. The IRA were believed to have been responsible for two and Loyalists for two also. In the period from April to May there was a total of 10 assassinations. Responsibility for one was attributed to the IRA, whilst Loyalists were believed responsible for seven and no attribution could be made in two cases. In June there were seven assassinations of which three were attributed to the IRA, one to Loyalists and of which three could not be attributed. The problem reached its most serious level throughout the emergency in July 1972, when there was a total of 36 assassinations, of which 13 were attributed to the IRA, 17 were attributed to Loyalists and six could not be attributed (2).

On 22 June 1972 the Provisional IRA, following contacts between the Government and representatives of the IRA, announced that they would observe a cease-fire from 26 June. At about the same time the Secretary of State announced that certain prisoners convicted of crimes which they claimed had been politically motivated should have a special status in prison (3). The IRA continued shooting up until 21 June when the cease-fire became effective. The army was ordered to stop all patrols except "confidence patrols" and patrols at "inter-faces" (4).

On 30 June the UDA again erected barricades in many areas of Belfast in protest at the "No-Go" areas in Londonderry. Large numbers of temporary barricades were removed by Loyalists on 2 July but barricades remained round "No-Go" areas which were formed in Protestant areas in the Bone, Woodvale and Ardoyne districts of Belfast. On 3 July a major confrontation between the UDA and the army took place when the UDA attempted to extend one of their "No-Go" areas in Belfast into a mixed area on the Springfield Road. A confrontation took place between the army and several

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(1) See e.g. VR 7 pp. 358-361.
(2) VR 10 I Annex p. 8.
(3) VR 10 I p. 27; Gardiner Report p. 34; VR 9 p. 58.
(4) VR 10 I p. 28.

thousand members of the UDA, who were apparently unarmed but in uniform and who had assembled with a view to moving one of their barricades forwards. Talks took place between General Ford, the Commander Land Forces in Northern Ireland, along with a Brigadier, and UDA leaders. As a result the situation was defused and the UDA barricade remained at or near the place where it had originally been placed (1).

On 9 July 1972, the Provisional IRA truce broke down following an incident on the Lenadoon Estate. It appears that the UDA in the area had objected to Catholics moving into a number of empty houses which had been allocated to them. Some Catholics had moved in on 6 July. About 150 UDA men had demonstrated against this but had been headed off by the army. The local army commander, to whose discretion it had been left whether the families should be allowed to move in or not, decided not to allow further families to move in at that time for security reasons. The following day a crowd of about 1,400 Catholics assembled but eventually dispersed after being told that their representatives could talk to the officials involved. On 9 July a crowd of about 1,000 Catholics assembled to support the families who wanted to move in. Violence between the crowd and the army took place and this eventually developed into a major gun battle between the IRA and the army. The cease-fire was called off by the Provisional IRA leadership (2).

After the breakdown of the cease-fire, IRA violence was resumed at an increased level. There was a total of 95 deaths in July, of which 18 were attributed to Loyalists, and 196 explosions according to police figures (3). According to army figures 21 of those killed were members of the security forces. Army figures also indicate that there were 184 explosions, of which two were attributed to Loyalists (4). These figures were the highest for any month in the entire emergency to the end of 1974. Particularly serious bombing incidents occurred in Londonderry on 13 and 14 July when bombs attributed to the IRA caused over £1,000,000 worth of damage and in Belfast on 21 July, when 27 bomb explosions, all attributed to the IRA, occurred in the Greater Belfast area, killing 7 civilians and 2 soldiers and injuring 130 civilians. On 31 July 1972 a large scale operation, Operation Motorman, was mounted to reoccupy the Catholic "No-Go" areas in Londonderry and the Protestant "No-Go" areas in Belfast. After this operation there was a

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(1) VR 10 I pp. 28 and 56-58; VR 9 pp. 20-21 and 55-56.
(2) VR 9 pp. 57-58; VR 10 I pp. 607-608; VR 10 I pp. 28 & 59.
(3) VR 10 I Annex pp. 6-7.
(4) VR 10 II Annex p. 11.

gradual reduction in the level of violence for the rest of the year, although it still remained at a very high level. The figures of deaths and explosions for January 1973, which have already been referred to, were both lower than any since the introduction of internment, with the exception that the number of explosions in January 1973 was slightly higher than the figure for December 1972 (1).

During the period from July 1972 until January 1973, however, the Loyalists became increasingly militant. Apart from numbers of assassinations and explosions attributed to them, there were serious disturbances in Protestant areas in September and October 1972 in particular, in which Loyalist terrorists exchanged fire with the security forces. Following the outbreak of rioting in the Shankill Road area of Belfast and East Belfast on 15, 16 and 17 October in which shots had been fired at the security forces, a meeting took place between UDA leaders, the Under Secretary of State, the General Officer Commanding and representatives of the Northern Ireland Office. The rioting continued and further meetings took place on the following day, after which the UDA ordered the confrontation with the security forces to cease. The rioting apparently stopped thereafter (2).

There was also a high level of intimidation during 1972 and this appears to have been particularly serious after the introduction of direct rule. Police figures indicate that a total of 3,656 cases were reported during 1972, of which 2,073 involved Catholic victims and 1,583 involved Protestant victims (3).

It is generally accepted that, apart from the UDA, a number of other organisations were operative on the Loyalist side in 1972. Although precise details of these organisations cannot be obtained, the police had some knowledge of their nature. The most important of these was the "Ulster Volunteer Force" (UVF) which, in the view of the police had remained dormant from the time of the explosions at electricity and water installations in 1969 until 1970-71. They considered that both its membership and acts of terrorism by it had increased from early 1972 onwards and looked on it as a well armed and organised body. Numerous contemporaneous press reports also indicate that the UVF was armed and active in 1972 (4). Another organisation of which they were aware

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(1) VR 10 II pp. 932-958, Annex pp. 11-17; VR 10 I pp. 185-188, Annex pp. 6-7.
(2) VR 10 II pp. 938 and 942-943.
(3) VR 10 I, Annex p. 82.
(4) VR 10 I pp. 172, 174 and 177; see also e.g. VR 7 pp. 171-174.

was the "Red Hand Commandoes", who were apparently a much smaller body of extreme Loyalists, which had been formed in 1971 and whose members had been known to engage in terrorism, including assassinations and bombings. The Red Hand Commandoes in the Shankill Road area were, in 1971 at least, operated by Mr. John McKeague, leader of the Shankill Defence Association. The members of this organisation were mostly young (1). In addition, "Tartan Gangs", which have already been referred to, were active. These appear, in general, to have been more in the nature of gangs of teenage delinquents than serious terrorists, although they seem to have been responsible for much intimidation and on occasions for serious acts of violence as well. It has been suggested that they formed the junior UDA (2) but it is not possible to establish what their links with the UDA were.

The police had difficulty in detecting those responsible for sectarian assassinations, whether those responsible were Loyalists or Republicans. Witnesses were reluctant to come forward and were subjected to intimidation. They also had difficulty in carrying out investigations in Catholic areas when the assassination had occured in such an area. In addition they were seriously over-burdened with work (3). Assassinations by Loyalists were however linked by the police with Protestant extremist organisations such as the UVF. By about the middle of 1972 the police had reasonably good information as to who the violent element on the Protestant side was. By about that time they would have been in a position to draw up lists of persons from the Loyalist side who could have been detained (4). There were numbers of cases in 1972 involving Loyalists in which sufficient evidence to prosecute could not be obtained. Where such cases were being dealt with by the ordinary police, they would have been referred to the Special Branch (5).

Action taken by the Authorities

During the period from 31 July to 31 December 1972 a total of 531 persons were charged with "terrorist type offences", which included firearms and explosives offences, murder, attempted murder and conspiracy to murder, theft, arson and other offences arising out of the security situation. Of these, 178 were Protestants and 353 were Catholics. Of these, 13 were murder charges, 3 Protestants and 10 Catholics being charged and 16 were charges of attempted murder or conspiracy to murder, 5 Protestants and 11 Catholics being charged. In January 1973 16 Protestants were charged with murder and no Catholics. In that month a total of 109 persons were charged with "terrorist type offences", of which 60 were Protestants and 49 were Catholics (6). ./.

(1) VR 10 I pp. 177 and 211.
(2) VR 7 pp. 33-34.
(3) VR 10 I pp. 432-433.
(4) VR 10 I pp. 378, 394 and 410.
(5) VR 10 I pp. 504-505.
(6) VR 10 I Annex pp. 10-11.

In December 1972 a special joint RUC military task force was set up to patrol in the East Belfast area, where a number of assassinations had taken place. It appears that it had some success in arresting persons in possession of firearms soon after its formation (1). Other attempts to combat intimidation and assassinations included the institution of a confidential telephone system in August 1972, whereby information could be given anonymously to the security forces.

After the introduction of direct rule no new internment orders were made under Regulation 12 of the Special Powers Regulations but in the period up to 7 November 1972, it appears that 107 detention orders were made under Regulation 11 (2). The number of orders made fell to a low level in July 1972, when only two were made. Eight persons were detained in August. Releases from detention appear to have remained at a high level up until September 1972, when only 17 persons were released (3). By the end of October the total number of persons held had fallen from the peak of over 900 in March 1972 to some 272 (4). A total of 128 persons were detained in the period from November 1972 to January 1973 and 94 were released in the same period (5). Prior to the detention of the first Loyalists in February 1973 no recommendation for the detention of any Loyalist had apparently been made to the Secretary of State, nor had papers for such a recommendation apparently reached the Chief Constable (6).

g) The situation from 5 February 1973 onwards

From February 1973 onwards violence from both sides of the community continued, although at a somewhat lower level than in 1972. In the period from 1 February onwards there was a total of 233 deaths, of which 53 were believed to be the responsibility of Loyalists. There were 940 explosions, of which 218 were attributed to Loyalists. The number of factional and sectarian murders recorded in the same period was 79, of which 47 were attributed to Loyalists, 24 to the IRA and 8 in respect of which no attribution could be made.

During the same period a total of 1,309 persons were charged with "terrorist type offences", of whom 503 were Protestants and 802 were Catholics, the remaining four being soldiers. These included 29 Protestants and 34 Catholics charged with murder. Interim custody orders during the same period were made in respect of 64 Protestants and 401 Catholics (7). ./.

(1) VR 10 I pp. 188 and 228; VR 10 I pp. 431-432 and 451-452; VR 7 pp. 344 and 351-352.
(2) UK Counter-Memorial p. 27.
(3) VR 10 II Annex pp. 11-13.
(4) VR 7 p. 34 and figures referred to.
(5) VR 10 II Annex pp. 15-17.
(6) VR 11 p. 155; VR 11 p. 38.
(7) VR 10 I Annex pp. 6-8 and 15; VR 10 II Annex p. 17.

In 1974 up to October the violence continued although again at a lower overall level, a total of 170 deaths being recorded up to October 1974, 63 of these being attributed to Protestants. Out of a total of 658 explosions in the same period 112 were attributed to Protestants. There was a total of 66 factional and sectarian murders, of which the IRA were thought to be responsible for 16, and Protestants for 48.

In the period up to the end of October 1974 a total of 1,169 persons were charged with terrorist type offences, of whom 539 were Protestants, 618 were Catholics and 12 were soldiers. These charges invluded 31 charges of murder against Protestants and 32 against Catholics. Interim custody orders were served on 35 Protestants and 225 Catholics (1).

By 19 June 1975 the police had apparently been able to bring charges in respect of 49 sectarian murders, as opposed to murders for other motives. A total of 93 persons, 73 Protestants and 20 Catholics, were charged with these murders. Thirty-six of these cases had been dealt with by the courts with the result that 25 Protestants and 4 Catholics had been convicted of murder, 3 Protestants and 2 Catholics had been convicted of manslaughter and one Protestant, a defendant on two charges, was acquitted (2).

In general the pattern of violence in the period from 5 February 1973 onwards can be said to have followed the previous pattern, with the IRA responsible for most of the bombing and shooting at the security forces, and the Loyalists for most of the sectarian assassinations.

Following an announcement on 24 July 1975, the Secretary of State for Northern Ireland signed orders on 5 December 1975 for the release from detention of the last 75 persons held under the Northern Ireland (Emergency Provisions) Act 1973. All these persons were released apart from those then remanded in custody on criminal charges or serving sentences of imprisonment (3).

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(1) VR 10 I Annex pp. 6-7, 9 and 13-15.
(2) Letter from Agent of the respondent Government of 8 July 1975.
(3) Letter from Agent of the respondent Government of 10 December 1975.

C. OPINION OF THE COMMISSION

Preliminary considerations

Article 14 of the Convention is in the following terms: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The applicant Government have alleged that the respondent Government in applying their powers of detention and internment, have acted in breach of the obligation incumbent on them under Art. 14 to secure without discrimination on the ground of political opinion, rights set forth in Arts. 5 and 6 of the Convention.

The Commission has already expressed its opinion that the exercise of these powers was not in conformity with the requirements of Art. 5, but that this did not constitute a breach of the Convention since the exercise of the powers was strictly required by the exigencies of a situation of public emergency within the meaning of Art. 15 of the Convention. It has also expressed the opinion that Art. 6 of the Convention is not applicable to the detention and internment procedures.

In this situation the Commission has, in considering the allegation of a violation of Art. 14 in conjunction with Art. 5 had regard to the principles laid down by the European Court of Human Rights in relation to Art. 14 of the Convention in its judgment of 23 July 1968 in the case "Relating to certain aspects of the laws on the use of language in education in Belgium", and in particular to the following passage in the judgment:

> "While it is true that this guarantee has no independent existence in the sense that under the terms of Art. 14 it relates solely to the 'rights and freedoms set forth in the Convention' a measure which is in itself in conformity with the requirements of the Article enshrining the right or freedom in question may however infringe this Article when read in conjunction with Article 14 for the reason that it is of a discriminatory nature". (1)

The "measures" under consideration in relation to the allegations under Art. 14 in the present case are, as the Commission has already observed, not the legislation itself but the steps taken by the authorities to exercise their powers under it. The fact that the exercise of such powers does not, by virtue of Art. 15, in itself involve any violation of Art. 5

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(1) Yearbook XI p. 832 at p. 862

of the Convention (even though the exercise of the powers was not in conformity with the provisions of Art. 5 read by itself), does not, in view of the above-mentioned jurisprudence of the Court, preclude the possibility that the powers might in fact have been exercised in a discriminatory manner so as to infringe Art. 5 when read in conjunction with Art. 14.

The position with regard to the alleged breach of Art. 14 in conjunction with Art. 6 is different, however. Art. 14 of the Convention can only apply in conjunction with another Article setting forth a right or freedom which is itself applicable to the matter under consideration. In view of its opinion that Art. 6 is not itself applicable to the exercise of the powers of detention and internment, the Commission considers that it cannot apply in conjunction with Art. 14 either. The only remaining question is therefore whether the exercise of these powers involved a violation of Art. 14 in conjunction with Art. 5. In principle the answer may require an examination of the possible influence on the application of Art. 14 of a derogation under Art. 15 (see also pp. 95-96).

The Commission has already referred to the questions which it considers must be determined by it in considering the allegation under Art. 14 (1). The Commission has also observed that in view of the nature of the evidence in this case it is not in a position to make findings in relation to the application of the powers of detention and internment in individual cases, but only to make findings relating to the situation as a whole (2). The Commission considers that it would only be justified in holding that the powers had been applied in a discriminatory manner on the ground of political opinion in this case if it could be clearly inferred from the facts established that there had been a policy or practice of discrimination by the authorities responsible for applying the powers.

In considering this question it is essential in the first place to realise that the application of these powers did not simply involve the taking of decisions by one authority. The decision to introduce detention and internment and decisions as to the general policies to be followed in their application were taken by the Northern Ireland Government in consultation with the United Kingdom Government, and after the introduction of direct rule, by the United Kingdom Government alone. The actual decision to make a detention order under Regulation 11 (2) of the Special Powers Regulations or an internment order under Regulation 12 was taken by the Prime Minister of Northern Ireland in his capacity as Minister of Home Affairs and, after the introduction of direct rule, by the Secretary of State for Northern Ireland. Under the subsequent legislation interim custody orders were made by the Secretary of State whilst detention orders were made by the commissioners.

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(1) See p. 154.

(2) See p. 161.

The security forces were, however, intimately concerned in the application of the powers since detention or internment orders would in any case only be made on the basis of information gathered and put forward by them. An internment order under Regulation 12(1) could only be made on the recommendation of a senior police officer, who in practice appears to have been the Chief Constable. A detention order under the subsequent legislation could only be made if the Chief Constable referred the case to a commissioner for determination. The Chief Constable himself could only act on the basis of information passed up to him from the lower ranks of the police force, who collected and assessed intelligence. The Special Branch were particularly closely involved since they made the initial assessment as to whether there was sufficient intelligence available in a given case to justify an application for detention or internment. The army too were involved. At the higher level there was co-operation on security matters between the police, the army and the civil authorities in the Security Committee. At the lower levels the army was involved, although to a lesser extent than the police, in the collection and assessment of intelligence and they co-operated with the Special Branch in these activities. In particular there was co-operation between the army and the Special Branch in the preparation of lists of persons to be arrested in the initial internment operation.

Apart from the civil authorities and security forces, the Advisory Commission acting under the Special Powers Regulations and the commissioners and Appeal Tribunals acting under the later legislation were involved in the application of the powers. However the Advisory Commission was never in a position to influence the application of the power of internment against any Loyalist suspect, since it is established that no case involving a Loyalist suspect would ever have come before it. No suggestion of any discrimination on the part of the commissioners or Appeal Tribunals has been made and there is nothing in the evidence to support any such suggestion.

The question therefore is only whether the application of the powers is shown to have been influenced by a policy or, regardless of the official policy, a practice on the part of either the competent organs of government, or members of the security forces with relevant responsibilities, of discriminating on the ground of political opinion as between Republicans and Loyalists in the application of the powers.

It has not been suggested that the detention or internment of IRA suspects was in itself discriminatory. The applicant Government's allegation is, in essence, that the powers of detention and internment were not applied in an even-handed manner against all suspected terrorists and that "to intern and detain only IRA terrorists when others from a different community commit acts of terrorism amounts to discrimination contrary to Art. 14" (1). The discrimination is thus alleged

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(1) Applicant Government's submissions on the merits, VR 1 p. 6.

to arise from differential application of the powers of detention and internment as between different groups of terrorists on the ground of their respective political opinions. The applicant Government have further submitted that if such a differentiation is established there is, in the present case, no material before the Commission on which it could hold that the differentiation was justified since the respondent Government denied that there had been any distinction made in the application of the powers and had not put forward any case to the effect that there was a justified distinction, or had any evidence to this effect.

The respondent Government have accepted, on the other hand, that a distinction was made in the sense that only those who supported or favoured the IRA were, in August 1971, and for some time afterwards, detained or interned and have submitted that there was objective and reasonable justification for this distinction. They have, however, maintained that as between one terrorist and another no distinction was made.

The Commission has already observed that in the present case it is dealing with the exercise by the authorities of discretionary powers. The mere fact that the powers of detention and internment were exercised almost exclusively against persons suspected of involvement with the IRA clearly does not, of itself, amount to a differentiation in the application of the powers. There would obviously be no differentiation if it were proved that only such persons had engaged in terrorist acts. Only if it were shown that this fact resulted from a policy or practice of the authorities of making distinctions between Republicans and Loyalists carrying out comparable activities could it be said that the powers were in fact applied differently. If this is shown to have been the case

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the question then arises whether the policy or practice in question was objectively and reasonably justified and whether there was any reasonable relationship of proportionality between the means employed and the end sought.

The Commission will therefore consider these questions in four sections, namely in relation to:

- 1. the introduction of the measures;

and each of the three following periods referred to above (1), i.e.:-

- 2. the period from 9 August 1971 up to the introduction of direct rule;

- 3. the period from the introduction of direct rule up to the detention of the first Loyalist suspects in February 1973;

- 4. the period from February 1973 onwards.

Although there are important differences between these three periods both in the manner in which the powers were applied and in the nature of the security situation, the situation was developing gradually. The events which divide the periods, namely the introduction of direct rule and the detention of the first Loyalists, form nevertheless convenient indicators of changes in the application of the powers of detention and internment.

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(1) See p. 152

1. The introduction of the measures on 9 August 1971

The introduction of detention and internment on 9 August 1971 cannot, for present purposes, be looked at in isolation either from the prevailing emergency situation or from the background to that situation. The dominant feature of the security situation at the time was undoubtedly the bombing campaign of the I.R.A. This organisation had launched campaigns of bombing and killing in the past with the object of overthrowing the Unionist Government in Northern Ireland and establishing a Republic consisting of the whole of Ireland. It had been present in the background or otherwise throughout the existence of Northern Ireland as a semi-autonomous province and was the traditional enemy of the established order there. Powers of detention and internment had been used against it, and apparently exclusively against it, in the past. There can be no doubt that the Special Powers Act and the Regulations under it had been passed with the IRA in mind and that they had been kept in existence primarily because of a belief in the continuance of the IRA threat. Detention and internment were introduced in 1971 to deal with the current IRA campaign.

The emergency in 1971, however, had its origins as much in the resistance of Loyalist extremists to demands by the Catholic community for reform as in any Republican activity. The IRA, re-emerging after a period of near non-existence used the situation of violent inter-communal disturbances which developed in the late 1960s for their own ends and were able to gain support through it and mount their largest terrorist campaign in Northern Ireland since the partition of Ireland. However, this campaign only started in earnest in 1970, at a time when feelings amongst both communities had already been whipped up to high levels by extremists on both sides and when widespread distruction had already been caused by rioters on both sides. The only serious high-explosive bombing incidents to have occurred up to the end of 1969 had been the work of Loyalists. In 1969 the destruction by petrol bombs of many Catholic-owned or occupied licensed premises in different areas of Belfast had indicated some degree of organisation amongst Loyalist extremists. The first member of the security forces to have been killed during the emergency, and the only one to have been killed up to the beginning of 1970, had been killed in 1969 by a shot fired from a Protestant crowd during rioting. In the first four months of 1970 Loyalist terrorists appear to have been responsible for a number of explosions more or less equal to the number caused by the IRA, although the bombs used by the IRA may have been larger.

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The situation was thus one in which members of both the sides involved in the communal disturbances resorted to serious acts of violence and terrorism, initially on a roughly comparable scale. However, by August 1971 the situation had changed completely. The background of communal strife continued much as before but serious terrorist activity by Protestants had declined, whilst bombing and killing by the IRA had reached an unprecedented level. A number of people, mainly members of the security forces, had been killed by the IRA and many more injured. Their bombing campaign had caused great destruction to property and disruption to the lives of ordinary people. Loyalist terrorist activity, dangerous though it was at times, was sporadic and on a far smaller scale than IRA activity. There is, for example, no indication that Loyalist bombing or shooting caused any deaths either in 1970 or in the period up to 9 August 1971, apart from that of Mrs. McKeague who was killed on 8 May 1971. Loyalist activity was also apparently much less organised than IRA activity. The acts of terrorism which can be attributed to Loyalists in 1970 and 1971 appear to have been the responsibility of small groups or possibly individuals acting alone. There is no evidence to suggest that these activities formed part of a planned campaign of terrorism in the sense that IRA activity undoubtedly did.

From the beginning of the present emergency, the authorities in Northern Ireland and the United Kingdom Government had been trying by various means to restore peace. Many steps had been taken to remove the underlying causes of the disorders through political reforms. At the same time the security forces had been engaged in attempting to detect terrorists and bring them before the courts and in coping with terrorists and inter-communal riots in the streets. Nevertheless the measures taken had not been successful and internment was introduced.

It has already been observed that the nature of the emergency had changed greatly between the early part of 1970 and the middle of 1971, by which time the outstanding feature of the situation was no longer the inter-communal disturbances on the streets, serious though these continued to be, but the highly organised, politically motivated campaign of terrorism carried on by the IRA. The hope was that the internment of those responsible for this campaign would at least reduce the level of serious violence. It is quite clear that the prime aim of the authorities at all levels was to defeat the IRA and that internment was consciously and deliberately introduced with a view to achieving that end. The IRA campaign was the factor in the security situation which led to its introduction and it does not appear that it had been seriously considered as a means of dealing with the emergency as a whole at any time prior to 1971. If there had been no IRA campaign in 1971 there would have been no internment.

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IRA terrorists were not, however, even in 1971, the only persons responsible for acts of serious terrorism. There were, within the Loyalist ranks, persons who were prepared to and who had resorted to terrorism which, although not comparable to that of the IRA in its scale, effects or aim, was comparable in its nature. Loyalists had been responsible, in 1971 and earlier, for incidents of shooting and of bombing with both high explosive and petrol bombs. The sporadic occurrence of such acts both before and after internment confirms that terrorists on the Loyalist side remained at liberty at the time when internment was introduced. Although there is no evidence that the police knew the identities of any such persons at the time when internment was introduced, they would undoubtedly have known that such persons were at liberty. They would also have been aware that their activities were, in the main, directed not against the State or the security forces but against the Catholic community. It is clear from the evidence that they knew something of the identity of Loyalist extremists, who, whether or not they had been involved in acts such as bombing and shooting, were what has been described as "rabble rousers" and must have been at least suspected of having organised or encouraged violence against Catholics and the destruction of Catholic property in street disturbances and possibly also the intimidation of Catholics from their homes.

In the event a massive operation was mounted on 9 August 1971 for the purpose of arresting 452 persons in respect of whom there was intelligence of involvement with the IRA. This was preceded by the preparation by the police, in consultation with the army, of lists of persons who were to be arrested. Although the gathering of intelligence and preparation of lists had been proceeding for some time before, the operation itself was mounted in some haste and much of the intelligence on which it was based was faulty or incomplete. The vast majority of the potential arrestees were to be arrested with a view to their internment but it appears also that a few persons were to be arrested simply for the purpose of obtaining intelligence.

Following on the arrest operation, those arrested were interrogated with a view to establishing whether they should be interned or not and also with a view to gaining intelligence. A large number were released within a short time. The operation thus amounted in fact to a sweeping-up of IRA suspects with a view to gaining intelligence and finding out whether they should be interned or not. It was not in fact a selective operation against individuals, whatever may have been the intention, but an operation directed against the IRA as a whole. This arrest operation and the preparations for it formed an integral part of the steps taken by the authorities to apply the powers of detention and internment.

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The possibility of interning Loyalists was discussed, apparently in the Security Committee, before internment was introduced. The reasons given for not interning any Loyalists were that Loyalist activity was of minute proportions compared with that of the IRA and that there was insufficient intelligence available to justify the internment of any Loyalists. It is also clear that the authorities attached importance to the high degree of organisation behind the IRA campaign as compared with the lack of apparent organisation on the Loyalist side. It thus seems clear that insofar as the possibility of interning Loyalists was considered, it was considered on a selective and individual basis. Whilst on the one hand an operation was prepared and mounted to arrest all those believed to be involved with the terrorist organisation carrying out a campaign against the authorities, not only with a view to interning them but also with a view to gaining intelligence and checking existing intelligence, the possibility of mounting a similarly broad operation against extremists responsible for actions against the Catholic community, of whom the Loyalist terrorists responsible for bombings and shooting formed one part only, was not apparently considered. The preparation of the lists of potential arrestees was carried out on the basis that the operation was to be directed against the IRA. Insofar as consideration was given to the internment of Loyalists this was a secondary consideration, apparently prompted as much by a desire to avoid any appearance of discrimination, as by any feeling that the internment of Loyalists was in itself necessary.

The Commission considers, taking into account these factors and the whole circumstances surrounding the introduction of internment, that the authorities did in fact make a distinction between Republican extremists, whose activities were directed against the State, on the one hand and Loyalist extremists, whose activities were directed against the Catholic community, on the other. A completely different approach was used to each side. Against the former they mounted a wide-spread operation with a view both to internment and intelligence gathering, but internment of the latter was contemplated only as a secondary matter, on a selective basis and no steps were taken to mount against Loyalist extremists an operation in any way comparable with that mounted against the IRA.

The distinction in the attitude adopted by the authorities towards the two sides is perhaps most clearly illustrated in the following passage in the evidence of **G 1, which refers to the** grounds on which people were arrested in August 1971:

> "I have no doubt that there was a disposition on the part of the authorities to suspect that especially people known as advocating extreme republicanism, that is to say, the immediate effecting of it rather than talking about its desirability, were looked at with some suspicion. Are they or are they not mixed up with violence ? That would be a question which would come into people's minds. So there would be a disposition to regard them as material for suspicion at least ..." (1)

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(1) VR 11, p. 29.

The Commission considers it clear in the circumstances that, at least as a matter of practice, different criteria were applied to the Loyalist side in deciding whether anybody from it should be arrested with a view to internment.

The Commission is, however, of the opinion that the distinction made was justified. It is clear that the authorities were attempting to deal with the situation which existed in 1971 and were not concerned with events which had occurred in earlier years. In his announcement of the introduction of internment, the Northern Ireland Prime Minister, Mr. Faulkner, included the following remarks:

> "I will be making Internment Orders in respect of any of these men who constitute a serious and continuing threat to public order and safety ...
>
> The main target of the present operation is the Irish Republican Army which has been responsible for recent acts of terrorism and whose victims have included Roman Catholic and Protestant alike. They are the present threat; but we will not hesitate to take strong action against any other individuals or organisations who may present such a threat in the future."

It was the present threat and reality of serious terrorism which the authorities were attempting to cope with through internment and it is clear beyond doubt that this came almost exclusively from the IRA. There may have been, and indeed having regard to subsequent events there probably was, an underestimation of the danger from extremists on the Loyalist side, and this may be explicable in part by a traditional attitude in Northern Ireland that the IRA was and always had been the principal and continuing threat to the security of the State. Nevertheless, whatever may be said with the benefit of hindsight, or with the benefit of detachment from the situation, the actions of the authorities must be judged in the light of the situation as it would have appeared at the time. It must be remembered that even in January 1971 there had been an average of over one explosion every other day and in every single month of the year thereafter there was an average or at least one explosion every day. In July the average was over three explosions every day. Loyalists had probably caused less than five per cent of them. The extent of death, injury and destruction caused by the IRA was incomparably greater than that caused by the Loyalists. It should not be forgotten that quite apart from the deaths caused by the IRA, many people had been injured in their explosions. There is for example evidence that 82 people were injured by IRA explosions in May 1971. The security forces themselves were under attack from the IRA and nine members of the police or army had been killed during the year. Apart from the death of Mrs. McKeague, there is not only no evidence of any deaths having been caused by Loyalist

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terrorists, there is also no evidence of any injuries having been caused by Loyalist shooting or bombing during this period. Had there been any such evidence there can be no doubt that it would have been produced before the Commission. It is obvious that this situation would have been seen by any person responsible for controlling it as one in which the immediate threat to security came almost exclusively from the IRA. It should not be ignored either that the level of Loyalist activity in 1971 was considerably lower than it had been in the previous year.

It should also be noted that on the Republican side the IRA as an organisation presented a clear target against which the authorities could strike. Both wings of the IRA were responsible at the time for acts of violence and involvement with the IRA would in itself have provided strong grounds for suspecting that a person was involved in terrorist activities. There was no corresponding organisation on the Protestant side, and, whilst it could no doubt have been possible to have launched an arrest operation in Protestant extremist circles, there would clearly have been much greater difficulty in identifying persons involved in serious terrorism and a much greater danger of unnecessary use of the powers.

Evidence has been examined as to the alleged partiality of the RUC and in particular its Special Branch which was the chief instrument on the ground combatting the IRA organisation. Both the RUC and the army formed part of the establishment against which the IRA struck - in its view, in order to end British occupation.

There certainly was an element of inherent bias in the whole political system in Northern Ireland in favour of one community. However the matter with which the Commission is here concerned is the action taken in August 1971. At that time the main threat to the constitutional order could clearly be estimated to come from the IRA. Their actions were aimed at detaching Northern Ireland from the United Kingdom. The Loyalists wanted to preserve the existing constitutional order. In such a situation it is natural that security measures are first and foremost directed at those who want to change the constitutional system by force. That is a sufficient ground for the unilateral application of detention and internment even if some members of the authorities might have wished to act against members of the minority for other motives. The attitudes of the persons acting on behalf of the authorities may have been influenced by what was called the inherent bias in the system in Northern Ireland. It is difficult to say that a more impartial authority with the same responsibility for security could not have acted in the way they did.

The State could still become responsible if there had been sufficient evidence of discriminatory motives but in the circumstances the Commission is of the opinion that the distinction in the measures taken against the two sides cannot be attributed to a policy or practice of discrimination on the part of the authorities. In the steps they took to introduce the powers of detention and internment the authorities concentrated primarily on the IRA since they wished, first and foremost, to remove what they saw as the only significant source of serious terrorism at the time. The Commission considers that this was a legitimate aim and that, in the whole circumstances, the nature of the security situation at the time provided an objective and reasonable justification for the authorities' actions.

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2. The period from 9 August 1971 up to the introduction of direct rule

The Commission considers, for the same reasons, that the continued application of the powers of detention and internment exclusively against IRA suspects in the period up to the introduction of direct rule, cannot be attributed to a policy or practice of discrimination. There can again be no doubt that the security forces concentrated their activities mainly against the IRA and that there was a deliberate policy to continue rounding up IRA suspects with a view to their internment. There was no doubt also a tendency to continue to regard extreme Republicans as targets for suspicion but to pay less attention to extreme Loyalists. Acts of serious terrorism by Loyalist extremists remained at a low level throughout this period, however, whilst IRA violence had increased massively. The Commission is therefore of the opinion that the nature of the security situation continued to provide an objective and reasonable justification for the actions taken by the authorities.

The Commission is also of the opinion that there was, throughout the period up to the introduction of direct rule, a reasonable relationship of proportionality between the means employed by the authorities in applying the powers of detention and internment and the end which they sought to achieve by those means.

3. The period from the introduction of direct rule up to 5 February 1972

After the introduction of direct rule, there was, as has been established, a very considerable increase in acts of serious terrorism on the part of Loyalists. Loyalist extremist activity, including serious terrorism, also became more organised during this period. Powers of detention and internment were, however, applied only against IRA suspects up until 5 February 1973. As has already been observed, the application of the powers of detention and internment must be looked on as merely one of many means being employed to deal with the emergency. After direct rule was introduced, a new emphasis was placed on attempting to find a solution through political means. It is convenient therefore to look briefly and broadly at the policy which was being pursued by the respondent Government at the time, and in particular at the policy which they pursued with regard to the exercise of detention and internment.

On the political level there is no question but that the respondent Government's policy after direct rule was aimed at the establishment of an equitable form of government for Northern Ireland, acceptable to both communities and that they acted with the conscious aim of giving the Catholic community the opportunity to play a full part in public affairs and of persuading them to take that opportunity.

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At the same time they continued to attempt to cope with the security situation through military and other means. There was, however, a change of policy with regard to detention and internment. As part of the renewed emphasis on political means of solving the crisis it was decided to begin to phase out detention and internment insofar as the security situation permitted. This policy was not adopted as a result of any lessening in the seriousness of the security situation, which remained grave, but in the hope that it would itself lead to a defusing of the situation. It clearly involved accepting an element of risk and it also clearly involved a change in the criteria which were applied in deciding who should be detained or interned, or continue to be held under detention or internment orders.

Whilst no new internment orders under Regulation 12 were made after the introduction of direct rule, it appears that 107 detention orders under Regulation 11 (2) were made in the period up to 7 November 1972 and, after the Detention of Terrorists Order came into effect, a considerable number of interim custody and detention orders were made in the period up to 5 February 1973, all in respect of IRA suspects. The criteria which were applied in deciding whether these orders should be made or not clearly varied within the period under consideration. After the introduction of direct rule the army at least was given orders to adopt a low profile and to arrest only key terrorists. Following the failure of the attempt to achieve a cease-fire the numbers of new detention orders made under Regulation 11 increased from September 1972 onwards whilst the number of releases dropped. It thus appears that from about that time onwards the authorities again stepped up their operation of the power of detention under Regulation 11.

There was however no large-scale operation to re-detain or re-intern people. The powers of detention appear to have been exercised on a more selective basis since the introduction of direct rule, although the reliance placed on them varied. It is necessary therefore to recall what the criteria applied in deciding whether a person should be detained or interned, in principle were. In the first place only persons suspected of involvement in serious terrorism were detained and the powers of detention were apparently not in general used against persons suspected, for example, of lesser forms of violence in street disturbances. In the second place they were used only in cases where sufficient evidence was not available to justify prosecution in the ordinary courts. Thirdly, it was apparently the general practice that where a person had been tried in the ordinary courts and acquitted, he was not then detained on the basis that he was suspected of the offence in respect of which he had been acquitted, at least provided it had been possible to put before the court all the evidence on the basis of which the prosecution had been brought.

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Whatever the policy of the authorities, however, the fact remains that the powers of detention and internment were unilaterally applied during a period when Loyalist terrorism, particularly in the form of sectarian murders, but also in the form of bombing and other activities, had reached serious proportions and when, as is shown by the quantities of arms found in Loyalist hands, they were building up their weaponry. It is established that by about the middle of 1972 the police had knowledge of at least some of those involved in Loyalist terrorism, and that they found difficulty in using the ordinary processes of criminal prosecution. In addition it does not appear that any recommendations were put to the Secretary of State for the detention or internment of Loyalists until February 1973 when the first two interim custody orders in respect of Loyalists were made. It also appears that no detention papers relating to Protestants reached the Chief Constable before this time. The question therefore arises whether there was during this period a practice within the lower levels of the security forces of refraining from taking action with a view to the detention or internment of Loyalists on the basis of their political opinion.

The initiative for making recommendations for detention or internment orders in individual cases came from the Special Branch. In some cases arrests were made on their initiative and the arrestee passed immediately into their hands. In others, papers would be passed to them by the CID. In addition they would receive information from the army and CID. The Commission considers that it can be clearly inferred that there was some reluctance or hesitation either within the Special Branch or within those branches of the security forces responsible for referring cases or information to them, to take action with a view to the detention or internment of Loyalists during this period, whilst there was a tendency to take such action more readily in the case of IRA suspects.

However, such hesitation or reluctance does not of itself amount to discrimination on the ground of political opinion. It must be borne in mind that not only at the level of the Secretary of State but also at the lower levels of the security forces, the taking of decisions as to whether powers of detention should be resorted to in any given case involved the consideration of many different factors. Whilst the authorities might lay down criteria to be followed by the security forces, it is quite unrealistic to imagine that such decisions can be taken mechanically. Every case must necessarily be considered individually and involve the exercise of some degree of judgment on the part of the members of the security forces involved.

In the present case the Commission considers that there are many possible explanations for the different approach adopted by the security forces to the two sides during

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this period. In the first place there was, particularly up to at least about September 1972, a policy of phasing out internment. The security forces would clearly have concentrated on bringing suspects before the ordinary courts during this period and there is no reason to doubt that this remained their overriding priority thereafter. Secondly, whilst there were undoubtedly difficulties in obtaining evidence in cases involving Protestants, the police were able to enter Protestant areas both before and after Operation Motorman, with much greater ease than they could enter Catholic areas. In particular they were not subject to the same risk of attack in Protestant areas as in Catholic areas. It appears that in some cases they would continue with investigations, particularly in cases involving Protestants, in circumstances where they had sufficient intelligence available to justify recommending the detention of the persons concerned. If this was done, however, with a view to bringing these persons before the ordinary courts, it would in the opinion of the Commission be a legitimate reason to refrain, for a time at least, from taking action with a view to detention. One factor, for example, which the police apparently took into consideration in deciding whether an arrest should be made at a particular time or not, was the possibility that an over-hasty arrest would prejudice their chances of obtaining further evidence (1). Given that the police were largely excluded from Catholic areas and were, on the IRA side, still dealing with a more highly organised and larger campaign of terrorism than that which faced them from the Loyalist side, it would not be surprising if they had viewed their prospects of obtaining sufficient evidence to prosecute Loyalists, as better than their chances of obtaining such evidence against IRA suspects. Whether they were right or wrong in believing this, this was a question of appreciation which had to be judged at the time by the members of the security forces involved in each case. If there was a tendency to make greater efforts to bring Loyalists before the ordinary courts, this does not necessarily indicate an intention to discriminate in their favour in applying the powers of detention, but may equally indicate that the security forces believed they had greater prospects of means.

In addition it cannot be forgotten that detention and internment were looked on as weapons of last resort to be used primarily against organised terrorists who could not be dealt with by other means. In the minds of many members of the security forces this may have meant the IRA alone. It is clear from the evidence given by members of the security forces and others that there was a tendency to look on Loyalist terrorists as "criminals" or "hooligans" and on the IRA as the organised "terrorist" enemy. Although it is clear that acts of serious terrorism were committed by both sides from political motives, the security forces were in many ways justified in this belief. Extreme Loyalists were highly organised in bodies such as the UDA and these bodies undoubtedly included terrorist elements, but the UDA was not itself a body engaged at the time or since in carrying out a campaign of terrorism comparable to that of the IRA.

(1) See evidence VR 10 I p. 459.

Such evidence as there is suggests that the Loyalist organisations such as the UVF and UFF which were themselves engaged in serious terrorism, were at the time more amorphous than the IRA. This difference in the nature of the organisations on the two sides may well itself have led to a tendency within the security forces to make greater efforts to deal with Loyalist terrorists through the ordinary processes of criminal prosecution, and a belief, whether justified or not, that ordinary processes could cope with them. In this respect it is relevant to note that, whilst the RUC were generally able to operate in Protestant areas without fear of attack, they did not have access to many of the Catholic areas from which the IRA operated. It was thus easier for them to obtain information in Protestant areas.

It is also relevant to note that the higher authorities, in the Security Committee, recognised that the detention of Loyalists would lead to repercussions in the security situation. The risk of a severe outbreak of Protestant violence in response was clearly a very real one. It is true that the evidence is that when the first recommendation for the detention of Loyalists came up from the lower ranks it was acted on. However, it is safe to assume on the evidence that the risk of a Loyalist reaction also influenced persons lower down in the security forces. Such persons do not act in isolation from the surrounding situation and an explanation for the apparent reluctance or hesitation in acting to detain Loyalists may well have been that the individual officers concerned were afraid of taking action which could have had very far-reaching consequences, unless there was no possible alternative open.

Finally, since, as has been said, the exercise of the powers of detention and internment cannot be looked at in isolation from the other steps being taken by the authorities, it is relevant to look briefly at the other steps being taken by the security forces to deal with Loyalist terrorism during this period. In doing so it must be remembered that Loyalist terrorism was neither the only nor the main concern of the security forces. However horrifying Loyalist activities may have been, they were still on a far smaller scale than the activities of the IRA. Whilst some 76 deaths in the period from 1 April 1972 to 31 January 1973 are attributable to Loyalists this figure must be seen in the light of the total of 398 people killed during that period. The IRA was responsible for the deaths of the vast majority of the 120 members of the security forces killed and the vast majority of the explosions during this period, which numbered over 1,100. It is clear, however, that the authorities were taking action against both sides. Searches were being carried out and arms were being recovered from both sides. Charges were brought against persons from both sides. Thus 258 Protestants were charged with "terrorist type offences" between the beginning of July 1972 and the end of January 1973, 19 of them

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with murder, and 402 Catholics, 10 of whom were charged with murder. The figures for prosecutions and convictions are, of course, lower. Whilst the security forces clearly had the greatest difficulty in coping with Loyalist activities such as sectarian murders and intimidation, in the opinion of the Commission, it has not been shown that in their overall activities, they favoured one side as against the other.

For these reasons it is of the opinion that it has not been established that there was any practice of discrimination contrary to Art. 14 of the Convention during this period.

4. The period from 5 February 1973 onwards

It remains only to consider the period from 5 February 1973 onwards, during which time both Loyalists and Republicans were being detained and in which there was also serious terrorist activity from both sides, although the bulk of such activity was still perpetrated by the IRA. Again one should look both at the policy of the Government and the practice of the security forces.

It is true that the powers of detention were used against many more Republicans than Loyalists. The figures before the Commission thus indicate that in the period from 1 February 1973 up to the end of October 1974 interim custody orders were made in respect of 99 Protestants as against 626 Catholics and at all times many more Catholics than Protestants were actually held. It must, however, be borne in mind that during the same period the IRA were still responsible for many times more deaths and explosions than Loyalist terrorists and action was being taken against both sides through the ordinary processes of law. Thus in the period from February 1973 to the end of December 1974 a total of 1537 Catholics were charged with "terrorist type offences" as opposed to a total of 1135 Protestants. Searches were being conducted and arms were being recovered from both sides.

In these circumstances the Commission is of the opinion that the policy of the respondent Government with regard to the exercise of the powers of detention was non-discriminatory and that the evidence before it does not disclose that any distinction was made in the application of the powers of detention and internment as between Republicans and Loyalists during the period from 5 February 1973 onwards.

The further question whether the derogation under Art. 15 covered and could cover also a breach of Art. 14 (see pp. 95-96 and 204), in other words, whether the emergency could justify a discrimination which would otherwise in itself be contrary to the Convention, therefore does not require examination in the present case.

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CONCLUSION

The Commission is of the opinion, by a unanimous vote, that the facts found in relation to the relevant periods do not disclose that the powers of detention and internment have been applied with discrimination, on any ground, contrary to Art. 14.

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PART TWO

T R E A T M E N T O F D E T A I N E E S

(Issues under Article 3 of the Convention)

INTRODUCTION

1. The substance of the application concerning Art. 3 of the Convention

In their original submissions of 15 December 1971 the applicant Government submitted that, on 9 August 1971 and afterwards, a large number of persons were taken into custody by security forces of the respondent Government in accordance with the provisions of the Civil Authorities (Special Powers) Act (Northern Ireland) of 1922, the Statutory Rules, Regulations and Orders made thereunder. These persons were detained in varying numbers in different centres, namely Palace Barracks, Girdwood Park and Ballykinler and to a lesser extent in Magilligan and elsewhere. Some persons were released without any charge having been preferred against them, but subsequently further persons were taken into custody and detained in Palace Barracks and elsewhere.

Referring to affidavits and statements of a number of persons so detained, to reports by medical doctors and other medical specialists, and to a report and supplementary report of a Committee of Inquiry appointed by the Home Secretary of the respondent Government (known as the "Compton Report"), the applicant Government alleged that these persons were subjected to treatment in breach of Art. 3 carried out by the security forces of the respondent Government. Furthermore, such treatment allegedly constituted an administrative practice of the respondent Government in breach of Art. 3, "and a continued series of executive acts, exposing a section or sections of the entire population within its jurisdiction in Northern Ireland to torture or inhuman or degrading treatment or punishment."

2. The Issues under Art. 3

In its decision on the admissibility of the application, dated 1 October 1972, the Commission distinguished on the one hand, between the five interrogation techniques, referred to in the Compton and Parker Reports and consisting of hooding, noise, wall-standing, deprivation of sleep, and bread and water diet, and on the other hand alleged forms of ill-treatment other than these techniques.

As regards the five techniques, the Commission noted that they had been authorised by the respondent Government to be employed as an aid to the interrogation of persons taken into custody under the relevant provisions of the emergency legislation. It concluded that there could therefore be no doubt that the employment of these interrogation techniques constituted an "administrative practice" but reserved to an examination on the merits the question whether or not the practice was in breach of Art. 3 of the Convention.

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As regards the allegations of other forms of ill-treatment, namely that physical violence had been applied by the security forces in Northern Ireland to certain persons in the course of their interrogation and otherwise, and that certain other persons had been subjected to special exercises and other forms of distressing treatment while being held in custody, the Commission noted that the facts alleged by the applicant Government were not admitted by the respondent Government. The Commission therefore retained for an examination on the merits the applicant Government's allegations that the treatment of persons in custody, in particular the methods of their interrogation, constituted an administrative practice in breach of Art. 3 of the Convention.

The general points at issue in the present case under Art. 3 can therefore be stated as follows:

1. Whether or not the employment of the five interrogation techniques constitutes treatment in breach of Art. 3 of the Convention.

2. Whether or not persons in custody have otherwise been subjected by the security forces to torture or inhuman or degrading treatment or punishment within the meaning of Art. 3 and, if so, whether or not such treatment constitutes an administrative practice in breach of that provision.

3. The evidence adduced by the parties

The applicant Government have submitted written evidence in respect of altogether 228 cases of alleged ill-treatment. This evidence consists either of statements from the alleged victims themselves and/or statements or medical certificates relating to alleged victims. In addition the applicant Government have filed reports by altogether four psychiatrists, containing either general observations or observations relating to particular persons, copies of the Compton Report, the Further Compton Report and the Salmon Report, the judgments in the case of W.J. Moore v. R. Shillington and Ministry of Defence, dated 3 January 1972 and 18 February 1972, as well as copies of various newspaper articles.

The applicant Government have summarised and analysed the cases submitted by them as evidence both as to the times and the places at which the alleged ill-treatment occurred, and as to whether or not it occurred in the course of interrogation by the security forces.

Thus 74 cases refer to incidents where there was no formal interrogation; 18 of these cases concern incidents at Ballykinler (1) on 9 August 1971 and allegedly relate to interrogations, but the remaining 56 cases do not involve interrogation (2).

As regards the 154 cases involving interrogation the following analysis has been submitted by the applicant Government:

With regard to the times at which the alleged ill-treatment took place the applicant Government have submitted 8 cases concerning incidents on 9 August 1971 (3), 95 cases during the period from August 1971 to February 1972 (4), 30 cases during the period from April 1972 to November 1972 (5) and 21 cases during the period from February 1973 to January 1974.

With regard to the places at which the alleged ill-treatment took place the applicant Government have submitted 8 cases relating to the unknown interrogation centre (6), 45 cases concerning incidents in Palace Barracks, Holywood (7), 36 cases in Girdwood Park (8), and 65 cases in miscellaneous places including Black Mountain Military Post, Black Road Army Post, Victoria Police Station, Broadway Military Post, Newry Barracks, Springfield Road Barracks, Andersonstown Barracks, Albert Street Barracks, Hastings Street, Tennant Street, Flax Street, Milhouse Street, Musgrave Park Barracks, Castlereagh, Ballykelly and Fort Monagh (9).

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(1) For example, the "illustrative" case of T.3.

(2) For example, the "illustrative" cases of T.7 and T.11.

(3) For example, the "illustrative" cases of T.13 and T.6.

(4) For example, the "illustrative" cases of T.1, T.12, T.8, T.2, T.15, T.9, T.14, T.4, T.16 and T.11.

(5) For example, the "illustrative" case of T.5.

(6) For example, the "illustrative" cases of T.13 and T.6.

(7) For example, the "illustrative" cases of T.12, T.8, T.2, T.15, T.9, T.14, T.1, T.4 and T.10.

(8) For example, the "illustrative" case of T.16.

(9) For example, the "illustrative" cases of T.7, T.11 and T.5.

The respondent Government have not submitted written evidence in relation to the above cases. On the other hand, in support of their contention that there never was, and never has been, within their jurisdiction any administrative practice in breach of Art. 3 of the Convention, the respondent Government have submitted copies of the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968, the Prosecution of Offences (Northern Ireland) Order 1972, the Statement by the Prime Minister in the House of Commons on 2 March 1972, the Parker Report, various RUC and Military Instructions, Directives and Orders, and lists of persons having instituted proceedings against the Crown and of persons charged with, or convicted of, security offences.

The Commission heard altogether 100 witnesses in relation to the allegations under Art. 3 and during the hearings of witnesses before delegates of the Commission both parties have filed various documents in respect of the cases examined by the Commission. Reference to such documents will be made below.

4. The course of the Commission's investigation and procedural issues dealt with.

In the course of the Commission's investigation of the facts in accordance with Art. 28 (a) of the Convention a considerable number of procedural questions arose which called for rulings by the Commission or its delegates conducting the investigation. The Commission therefore has considered it appropriate to set out in some detail the course of its investigation into the facts of this aspect of the case.

The Commission declared the application admissible on 1 October 1972. Having received written observations on its merits from the applicant Government on 29 November 1972 and from the respondent Government on 15 March 1973, after an extension of the time-limit from 1 February 1973, the Commission considered on 6 April 1973 the way in which it would accomplish its task under Art. 28 (a) of the Convention.

The Commission decided to hear the oral submissions of the parties on the merits and to decide, at that hearing, as to the calling of witnesses and obtaining other evidence under Art. 3 of the Convention. However, in the meanwhile and in order to save time, the Commission invited the applicant Government, as a first step, to submit before 1 May 1973 the names of 15 representative cases of alleged ill-treatment

and, in respect of each case, the names of witnesses whom they proposed that the Commission should hear, as well as a description of any other evidence which the Commission should obtain. The Commission further decided that the list of these 15 cases and the names of the corresponding witnesses should be communicated to the respondent Government who should be invited themselves to propose, if possible before 28 May 1973, the names of any other witnesses or a description of any other evidence in respect of these cases. The parties were further informed that, from a practical point of view, it would be preferable to hear witnesses at the Commission's seat at Strasbourg, or possibly at the Council of Europe Office in Paris, and that the Governments should therefore as far as possible, propose witnesses who were not in custody. All witnesses were to be called by the Commission proprio motu, in accordance with Rule 54, paras. 1 and 5, of its Rules of Procedure then in force (1), and were to be heard by three delegate members of the Commission, pursuant to Rule 51 of the Rules of Procedure then in force (2). These hearings would, in principle, take place in the presence of the parties. The Commission, reserved the right to call further witnesses or evidence, including independent medical evidence, at a later stage.

Subsequently, at the request of the applicant Government, the time-limit for the submission of the list of 15 representative cases was extended until 16 May 1973, and on 14 May 1973 the applicant Government submitted a list of 20 cases and witnesses. They explained that on careful examination of the evidence submitted they had found it impossible to select any lesser number of cases as being representative. They also reserved the right to propose the hearing of further evidence where it appeared necessary in the light of the evidence tendered on behalf of the respondent Government or otherwise.

This list was communicated to the respondent Government on 21 May 1973 who were invited to propose, before 14 June 1973 the names of any other witnesses and to indicate any other evidence in respect of these cases.

On 31 May and 1 June 1973 the Commission considered further details with regard to the procedure to be adopted in the above case. It noted that the applicant Government had not fully complied with the request formulated on 6 April 1973 in that they had submitted 20 instead of 15 cases, and that no particulars had been given as to the points or facts regarding which the witnesses should be heard. It therefore decided that the applicant Government should again be requested to state, in as precise terms as possible and not later than 14 June 1973, the principal facts on which each witness nominated in the list of 14 May 1973 should be heard and which, in their submission, would show that there was in Northern Ireland an administrative practice contrary to Art. 3 for which the respondent Government were responsible. At the same time the respondent Government should be reminded

(1) Rule 30.1 of the (Revised) Rules of Procedure of 13.12.1974

(2) Rule 30.2 of the (Revised) Rules of Procedure of 13.12.1974

of the Commission's request to submit their list of witnesses, on whose evidence they relied, by 14 June 1973. Furthermore, the respondent Government should indicate, in equally precise terms and with regard to each witness, the principal facts on which such witness should be heard and which, in the respondent Government's submission, would serve to contradict the allegations of an administrative practice in breach of Art. 3. The Commission finally considered that this information should be submitted to it before it heard the arguments of the parties on the merits of the allegations under Art. 3; otherwise it would find it impracticable, in the circumstances in which it works, to proceed with the issue under Art. 3 at the hearing which had been fixed to open on 10 July 1973.

The Commission's decisions were communicated to the parties on 1 June 1973. In a letter dated 12 June 1973 from their Agent the respondent Government maintained that, save with regard to the five techniques, the applicant Government had not advanced any facts which went to the question of any administrative practice, their submissions being based on inferences which they sought to draw from certain allegations of ill-treatment. The respondent Government denied that these allegations were a basis for any such inference or that there was any such practice. Furthermore, insofar as the procedure adopted by the Commission related to particular cases under Art. 3, the respondent Government repeated their doubts and reservations previously expressed both as to the selection of cases as a means of determining the issue of an administrative practice and as to the method of selecting such cases. They requested the opportunity to make submissions, following the July hearing, on questions of procedure including matters relating to the hearing of witnesses. The respondent Government finally indicated that, in the circumstances of Northern Ireland, they must give special consideration to the safety of witnesses who are concerned in combatting terrorism and that such considerations necessarily extended to the identification of witnesses.

On 13 June 1973 the applicant Government submitted to the Commission a note on evidence under Art. 3 and a synopsis of the facts alleged.

On 22 June 1973 the respondent Government requested the Commission to grant an adjournment of the July hearing in view of the elections, on 28 June 1973, to the Northern Ireland Assembly pursuant to the Northern Ireland Assembly Act 1973. In a letter of 28 June 1973 from their Agent, the applicant Government stated that they would not object to the adjournment sought in view of the critical and wholly exceptional political situation then existing in Northern Ireland. In the light of these statements the Acting President of the Commission decided to adjourn until the autumn the hearing fixed to begin on 10 July 1973.

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On 9, 11 and 13 July 1973 the Commission again discussed the future procedure to be adopted and fixed 2 October 1973 as the new opening date for the hearing on the merits of the case. In regard to the issues under Art. 3 the Commission noted that the applicant Government had now complied with the request made by the Commission on 1 June 1973 to indicate the principal facts on which each witness nominated in the list of 14 May 1973 should be heard. However, the Commission decided to inform the parties that, for the reasons indicated in the Secretary's letter of 1 June 1973, it would not hear at the October hearing the parties' arguments on the merits of the allegations concerned unless it received from the respondent Government the list of witnesses and information requested in that letter. Both parties were informed of the Commission's decisions on 17 July 1973.

Also on 17 July 1973 the Agent of the applicant Government addressed a letter to the Commission in which he noted that the respondent Government had not yet submitted their list of witnesses and copies of the statements of the evidence to be given by them. He maintained that this placed the respondent Government in a more favourable position and he expressed his Government's anxiety to have the list and copies of the statements as soon as possible. He submitted that, if the respondent Government continued to fail to comply with the Commission's directions in this respect, the proper course to take was to proceed with the inquiry into the facts and to disallow the production by the respondent Government of any witness whose name, and a summary of whose evidence, had not been supplied to the Commission within a reasonable time prior to the hearing.

The Commission considered this letter on 19 July 1973 and instructed the Secretary to remind the Agent of the applicant Government that it would not take any decision as regards the hearing of witnesses on the issues under Art. 3 until after the October hearing; furthermore, that the Commission reserved the right to call, at any appropriate stage, any witness whose evidence it considered necessary in order to accomplish its task under Art. 28 of the Convention. Both parties were so informed on 24 July 1973.

In a letter of 25 September 1973 the Agent of the respondent Government informed the Commission that his Government were anxious that, at the appropriate stage, witnesses on their behalf should give evidence to the Commission and one list of 73 such witnesses, relating to matters of practice and to 13 of the illustrative cases selected by the applicant Government, had already been prepared provisionally. He anticipated that a further list, or lists, would be prepared which would include a medical witness or witnesses. However, he recalled that he had already drawn attention to the necessity of special

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considerations being given to the safety of witnesses who are concerned in combatting terrorism and that such consideration extended to their identification. The respondent Government had certain proposals to put to the Commission with a view to agreeing procedures for hearing such witnesses. As soon as such procedures were agreed, the Government would be in a position to indicate the matters with which the first list of witnesses would be available to give evidence.

In a letter of 28 September 1973 the respondent Government submitted an outline of evidence indicating code numbers of witnesses and the subject-matter on which they were to give evidence. At the same time the respondent Government proposed the following procedures for the purpose of ensuring the safety of witnesses from the security forces: (1) the identities of members of the security forces who give evidence should not be revealed but they should be known by identifying letters and numbers; (2) members of the security forces who give evidence should be screened from the view of all but the members of the Commission, and of the Secretariat concerned in the case; (3) there should be such arrangements as to the place of hearing, the entrances thereto, waiting rooms etc., as will not prejudice the security of such witnesses.

On 1 October 1973 the Commission decided that the October hearing should be confined to the issues under Arts. 5, 6, 14 and 15 of the Convention. It took this decision in the light of previous decisions taken as regards material which the parties had been requested to provide in connection with the taking of evidence under Art. 3. Whilst taking into account their reasons the Commission noted that the respondent Government had provided inadequate material. The Commission also considered that, during the same session measures should be adopted for the taking of evidence under Art. 3 and it decided that the evidence should be taken before the next session in December 1973.

The hearing opened on 2 October 1973 and at the beginning Sir Peter Rawlinson, then Attorney-General, addressed the Commission on behalf of the respondent Government as regards the procedure to be followed with regard to the issues under Art. 3 of the Convention. He requested that the Commission should invite the parties to a hearing on these issues in December before taking evidence from witnesses. After having heard the submissions in reply by Mr. Declan Costello, Attorney-General, on behalf of the applicant Government, the Commission decided to abide by its previous decision and to discuss with the parties after this hearing the ways and means to be adopted for the hearing of witnesses. The Commission emphasised that after the taking of evidence, every opportunity would be given to the parties of presenting their submissions on the merits.

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After further submissions from the parties on the procedure to be adopted for the taking of evidence from witnesses, the Commission decided, on 5 October 1973, that it would proceed through delegates to hear the applicant Government's witnesses in the presence of the parties in Strasbourg and as far as possible before its session beginning on 13 December 1973. In view of the respondent Government's undertaking to supply, within two weeks, the particulars of evidence to be given by the witnesses proposed by them, the Commission would, at its December session, hear the parties on the merits of Art. 3 as had been originally proposed for the present session.

The Commission resumed its deliberations on questions of procedure on 12 October 1973 and decided that the above-mentioned hearing of the applicant Government's witnesses under Art. 3 should take place from 26 November to 1 December 1973 before the Commission's delegates at the Human Rights Building in Strasbourg. It was agreed that, in principle, all the 20 representative cases proposed by the applicant Government should as far as possible be heard. However, it would not be possible, at this stage, to hear any witnesses in custody. The Commission also took various other decisions regarding the evidence to be obtained at this stage and the corresponding procedure.

On 16 October 1973 the respondent Government filed with the Commission their list of witnesses with the details of the evidence to be given by each witness.

On 29 October 1973 the Commission summoned altogether 19 witnesses, including 11 witnesses whose cases had been proposed by the applicant Government as being illustrative of the complaints made by them under Art. 3, to appear at the hearing fixed for 26 November to 1 December 1973. Subsequently, on 30 October 1973, the delegates appointed by the Commission to take part in that hearing further decided, at the request of the applicant Government, that two Professors of Psychiatry should also be summoned to give evidence at the forthcoming hearing.

On 13 November 1973 the Agent of the applicant Government addressed a letter to the Commission indicating that it was not possible to take oral evidence in three of the cases proposed in their list of 13 June 1973 as the case witnesses concerned were not prepared to give such evidence. His Government therefore wished to substitute the cases of three other persons in respect of whose allegations written evidence had already been submitted. This letter was communicated to the Agent of the respondent Government on 20 November 1973 who replied on 29 November objecting to the proposal to substitute an illustrative case by another case on the ground that it was not open to the applicant Government to seek to alter the cases they had themselves selected because certain witnesses were unwilling to give oral evidence.

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The hearing of the applicant Government's witnesses under Art. 3 opened on 26 November 1973 and lasted until 1 December 1973. During four and a half days, three delegates of the Commission (1) heard the evidence of 13 witnesses, who had been proposed by the applicant Government, in six of the "illustrative" cases. The delegates heard five case-witnesses themselves as well as medical and other evidence in relation to all six cases. The delegates also heard psychiatric evidence. The hearing was suspended on 28 and part of 29 November 1973 due to the unavoidable absence from Strasbourg of the Principal Delegate.

At the beginning of the hearing various procedural matters were discussed with the parties. In particular, the delegates ruled that the case-witnesses should not be asked whether or not they were, or had been, members of the IRA as this was irrelevant for the issue under Art. 3. Counsel for the respondent Government took exception to this ruling as he considered the case-witnesses' membership of the IRA to be relevant for assessing their credibility. Furthermore, the applicant Government informed the delegates that one of the case-witnesses who had been summoned for this hearing, was unable to come due to illness. They proposed to hear the relevant witnesses in relation to one of the substitute "illustrative" cases who were in Strasbourg ready to give evidence. The respondent Government objected to that procedure and the delegates ruled that, apart from the whole question of substituting "illustrative" cases which was a matter for the Commission to decide, they were not in a position to hear this case-witness and the supporting witness proposed in his case at the present hearing.

At the end of the hearing the delegates drew up their first interim report which they put before the Commission during its 109th session beginning on 11 December 1973. At that session the Commission considered the question whether or not to accept the withdrawal by the applicant Government of three of their original 20 "illustrative" cases and to allow their replacement by three other cases. The Commission decided to adjourn its decision on this question until the evidence relating to the remaining seventeen cases had been heard. In the meanwhile, the Commission decided to ask, through the applicant Government, the three witnesses, who were apparently not prepared to give evidence, to give written explanations as to the reasons for their reluctance to appear before the Commission. The applicant Government should also indicate what was the special significance of the evidence proposed as regards these three cases. The Commission further decided that delegates should hear the respondent Government's witnesses as proposed in their list of 10 October 1973 at a time and place to be fixed in consultation with the parties,

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(1) . MM. Ermacora, Opsahl and Nørgaard.

and that these delegates were authorised to decide, after consulting the parties, whether or not it was necessary to hear any particular witnesses proposed by either party. The Commission further decided that the delegates could hear such witnesses as might be proposed by the respondent Government in any subsequent list, or could obtain any other evidence which they may consider necessary in order to complete their investigations in the present 17 cases, and could make proposals to the Commission for the obtaining of any further evidence under Art. 3.

The Commission also accepted that, in view of the safety measures required for witnesses from the security forces to which the respondent Government had previously referred, the identity of all such witnesses should be disclosed to the delegates and the Commission's Secretary only.

Furthermore, at the 109th session, the Commission heard, on 12 and 13 December 1973, the submissions of the parties on the merits of the allegations under Art. 3 (1). During the hearing the Commission put three questions to the respondent Government which the Government undertook to answer in writing after consulting the competent authorities. The replies were subsequently submitted in a letter from the Agent of the respondent Government dated 21 December 1973.

In a letter dated 23 January 1974 the Agent of the applicant Government supplied the information requested by the Commission in relation to the "special significance" of the evidence proposed as regards the three substitute cases. In the same letter the applicant Government requested that the Commission should reconsider its decision relating to the disclosure of the identity of the security witnesses proposed by the respondent Government.

In two further letters from their Agent, dated 25 January 1974, the applicant Government submitted (1) that the answers to the Commission's questions supplied by the respondent Government in their letter of 21 December 1973 were insufficient and that the Commission should seek more detailed information and (2) that all medical reports and other documentary evidence in relation to the 20 "illustrative" cases, which was in the respondent Government's possession, should be made available without delay.

It had been intended to hold from 4 to 9 February 1974 a second hearing of those of the applicant Government witnesses under Art. 3 who were not in detention. This hearing was to be followed by a hearing from 25 February to 2 March 1974 of the witnesses whom the respondent Government had proposed. However, the hearing fixed for 4 to 9 February 1974 was cancelled owing to the respondent

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(1) These submissions are summarised below, pp. 245-271

Government's difficulties to arrange for their representation by counsel during that period and the delegates decided to hold instead a two weeks' hearing from 25 February to 9 March 1974 of those witnesses whose evidence was to be obtained at the above two hearings in February.

As regards the applicant Government's witnesses, the hearing took place, as planned, from 25 February to 2 March 1974. During that time delegates of the Commission (1) heard altogether 13 witnesses relating to eight of the "illustrative" cases proposed by the applicant Government. Apart from the case-witnesses themselves, two doctors gave evidence concerning six of the cases. Psychiatric evidence was also heard in relation to one case at the respondent Government's request and, at the applicant Government's request, two Professors of Psychiatry gave evidence of a general nature relating to the effects of ill-treatment.

As regards the second part of this hearing, during which it was intended to hear the witnesses proposed by the respondent Government in relation to the above eight cases, it had been clear since early in 1974, that the Human Rights Building in Strasbourg was not acceptable to the respondent Government from the security point of view. In fact, on 21 January 1974 a security expert from the United Kingdom Ministry of Defence had visited the Human Rights Building and in a letter dated 13 February 1974, the respondent Government regretted that they could not ask the members of the security forces to appear before the Commission at the Human Rights Building in order to give evidence. Apart from the Building itself, its surroundings and the accommodations available in Strasbourg failed to meet certain security requirements specified in the Government's above letter. These related to the means of arrival of the witnesses at the venue, to living accommodation, to movement in and out of the Building in which the hearings are held, to movement within the Building and to the Commission Room itself. Moreover, the Government considered that, apart from the political difficulties of holding a hearing in the United Kingdom at that time, security reasons prevented them from providing a venue in the United Kingdom. The Government added that they were anxious to do everything appropriate to facilitate the hearing of these witnesses and would be content for the hearing to take place at any other location which would be convenient to the Commission provided it met the criteria set out above.

Extensive efforts were then made by the Secretary to the Commission to find, in consultation with the respondent Government, an alternative venue for the hearing. As no place for the second week of the hearing had been found by 22 February 1974, the Principal Delegate provisionally decided to cancel that part of the hearing. During the hearing it soon became clear that no practical solution was

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(1) MM. Opsahl, Nørgaard, Frowein and Daver

possible in the immediate future and the delegates therefore decided on 26 February to adjourn the second week of the hearing. Subsequently, they provisionally fixed 6 May (or possibly 2 May) to 11 May 1974 as the new dates for this hearing and invited the respondent Government to submit before 28 March 1974 proposals as to the locality where the hearings should take place. The delegates took the view, having regard to Art. 28 (a) of the Convention, that it was primarily for the respondent Government to make specific proposals with regard to the place of the hearing particularly as it was they who, for security reasons, found themselves unable to accept the Human Rights Building or to make available a locality in the United Kingdom. The delegates and the Commission's Secretary would, of course, co-operate as far as possible with the respondent Government in this task. It was then for the delegates to take a final decision, after consulting the applicant Government, whether any locality proposed was acceptable.

In a letter dated 22 March 1974 from their Agent, the applicant Government recalled a number of procedural points which they had raised with the delegates and which they now wished to have considered by the Commission. These points concerned the availability for them of full and detailed statements of the evidence to be given by the witnesses proposed by the respondent Government, the identity and visibility of these witnesses, and the full disclosure by the respondent Government of all medical reports and other documentary evidence available to them in connection with the cases already heard.

The Agent of the respondent Government, in a letter dated 28 March 1974, undertook to provide certain evidence which had been requested by the delegates in relation to the witnesses examined in February 1974. He also stated that the security witnesses proposed by his Government could be seen by leading counsel who was cross-examining them, but that their identity could not be disclosed to anyone other than the Commission's delegates and the Secretary.

The Commission considered on 29 March 1974 the second interim report of the delegates concerning the hearing of witnesses under Art. 3 and in this connection the question of the forthcoming hearings. It confirmed 2 May 1974 as the opening date for the hearing of the respondent Government's witnesses under Art. 3 of the Convention which had originally been fixed for 4 to 9 March. The Commission decided that these proceedings should not be any further delayed. While fully appreciating the respondent Government's concern for the security of their witnesses and other participants in the hearing, it expected the respondent Government to make proposals to the delegates as to a locality or alternative localities, which were acceptable to the Government from a

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security point of view and which could then, subject to the applicant Government's agreement and to certain administrative conditions being satisfactory to the delegates and the Commission's Secretary, be fixed by the delegates as the locality for the hearing.

The Commission confirmed that their delegates were prepared to accept any reasonable locality but it considered that it would obviously be more appropriate for such hearings to take place in Strasbourg or in the United Kingdom.

However, in this connection, the Commission had been informed that an informal approach had been made by the delegates to the Norwegian Government and that discussions had then taken place between representatives of the respondent Government and of the Norwegian Government; also that on 29 March 1974, the Secretary to the Commission made, on behalf of the Commission, a formal request to the Norwegian Government to grant the necessary facilities. This request was accepted orally and confirmed by letter of 18 April 1974 from the Director-General of the Legal Department of the Norwegian Ministry of Foreign Affairs.

During the subsequent period from 4 to 10 April 1974 representatives of the respondent Government and of the Commission's Secretariat inspected, together with one of the delegates and representatives of the Norwegian Government, a number of localities in Norway. It was finally agreed that the military air base at Sola, near Stavanger, was the most suitable locality for the hearings to take place.

In the meanwhile, on 4 April 1974, the Commission continued its consideration of various questions of procedure in the light of the parties' letters of 22 and 28 March 1974. It accepted the procedure finally proposed by the respondent Government regarding the visibility of the witnesses by the delegates and the members of the Secretariat assisting the delegates, as well as by leading counsel of the applicant Government. On the other hand, although confirming its previous decision regarding the disclosure of the witnesses' names to the Commission and its Secretary only, the Commission decided that, at the hearing the delegates should ascertain from each witness whose name had not already been disclosed to the applicant Government, whether or not he was now prepared to disclose his name. If not, the delegates should ask him in the absence of the parties, for the reasons for his refusal and invite the applicant Government to state why the witness's name was important for the particular evidence to be given. The delegates should then hear the evidence concerned and the plenary Commission would subsequently appreciate the probative value of the evidence given by a witness whose name had not been disclosed to the applicant Government.

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As regards written proofs of the evidence to be given by the respondent Government's witnesses, the Commission decided that the respondent Government should be requested to produce such proofs at least one week beforehand in order that the delegates and the representatives of the applicant Government might have adequate notice thereof. The Commission further confirmed that it would hear the applicant Government's witnesses who were in detention and decided that 15 June 1974 should be fixed as the time-limit for the submission of any further written material relating to the allegations made in the present case, including documentary evidence in relation to the cases investigated under Art. 3 of the Convention. This did not, however, preclude the Commission itself if it found it necessary from requesting further evidence or other material at any time. The Commission finally decided to hear the applicant Government's witnesses under Art. 14 of the Convention at a hearing fixed to take place from 22 to 24 or 25 July 1974. These decisions were communicated to the parties in a letter dated 16 April 1974.

The hearing of the respondent Government's witnesses at Sola Military Air Base began on 2 May 1974 and terminated on 11 May 1974. Delegates of the Commission (1) heard altogether 23 persons some of whom gave evidence in regard to more than one case. Two witnesses were unable to appear for health reasons and two further witnesses were also not available. The delegates asked the respondent Government to file medical certificates or, otherwise, a statement giving the reasons for the witness's failure to appear. One witness was withdrawn for security reasons and the delegates accepted the withdrawal.

At the beginning of and during the hearing a number of procedural questions were raised by the parties relating to the identity and visibility of the witnesses, the proofs of evidence, and the confidential character of the transcript.

As regards the disclosure of witnesses' names, the respondent Government strongly objected to the procedure decided by the Commission on 4 April 1974 according to which the delegates should ascertain from those witnesses, whose names had not already been disclosed to the applicant Government, whether they were now prepared to give their names and, if not, to ask them in the absence of the parties for the reasons for their refusal. The respondent Government recalled their previous submission that the witnesses proposed by them could not be obliged to appear before the Commission and that they had only accepted on condition that their identity would not be revealed to anybody but the delegates and the Secretary. The Government now stated that,

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(1) MM. Daver, Opsahl, Nørgaard and Frowein

apart from the witnesses' own wishes in this respect, the Government themselves had a duty to protect the security of their servants and, in particular, to preserve their identity. The witnesses had therefore been instructed that, if asked, they should refuse to disclose their names or anything that might lead to their identification. The name would be given, however, in certain circumstances provided that the particular witness had so agreed. The delegates, after having heard the applicant Government who submitted that the Commission's previous decision should be maintained, decided not to put the intended questions to the witnesses. They explained that the Commission's decision had been taken on the assumption that it was entirely the witnesses' own decision only to appear before them if their identity was not disclosed. The proposed procedure was useless now in view of the Government's instructions to the witnesses that they should not reveal their identity, and would not be conducive to the proper purpose of the hearing which was to obtain the fullest and freest evidence possible from each witness. However, the delegates reserved the position of the Commission regarding the whole attitude of the respondent Government on this point of procedure and also as regards the appreciation of evidence given in these circumstances.

As regards the visibility of the witnesses, the applicant Government had requested at the outset of the hearing that both leading counsel should be able to see the witnesses in addition to the delegates, the Secretariat, and the respondent Government's representatives. The delegates stated that they expected the respondent Government to comply with this procedure which did not seem inconsistent with the security conditions required. The Agent of the respondent Government agreed after having had further consultations with various authorities in the United Kingdom.

As regards the proofs of evidence, the respondent Government had not submitted such proofs a week before the hearing as had been requested by the Commission on 4 April 1974. At the opening of the hearing the Agent of the respondent Government apologised for the delay in providing the delegates with the proofs in advance. As regards the applicant Government, the respondent Government maintained their earlier position, namely that proofs would only be produced when the witness concerned appeared to give evidence and these proofs would have to be returned after the cross-examination had been completed. The applicant Government protested strongly against this attitude and stressed that their preparation and conduct of cross-examination of the witnesses would be seriously impeded if they only received the proofs one by one and not until immediately before the witness concerned gave evidence. The delegates noted the apologies given but found it difficult to understand why the proofs had not been made available a week beforehand. They then asked the respondent Government

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to make available to the applicant Governmmant at the same time all proofs relating to one case, or one group of closely related cases, before the appearance of the first witness in that case or group of cases. If the applicant Government needed extra time to prepare their cross-examination, it would be granted. The applicant Government subsequently received the proofs in accordance with the delegates' ruling and the question of an adjournment never in fact arose.

As regards the confidential character of the transcript, the applicant Government objected to what had become clear in the course of the hearing, namely that each witness against whom allegations under Art. 3 had been made, had been given an opportunity by the respondent Government to read the transcript of the evidence previously given before the Commission's delegates by the particular witness or witnesses concerned. The applicant Government considered that this was a serious breach of the confidential nature of the proceedings as guaranteed by the Convention and the Rules of Procedure of the Commission. The respondent Government replied that there should be certain exceptions to the principle of confidentiality particularly where, as in the present case, allegations were made as to an administrative practice in breach of Art. 3. The Government had to act through their officers and agents and any Minister of the Crown or officer or agent of the respondent Government who needed to see the transcript in order that the Government could properly prepare their case, might do so, although this was limited to that part of the transcript which concerned him. The witnesses should be in the same position so that they might deal with the allegations against them. The respondent Government also objected strongly to the suggestion by the applicant Government that the fact that their witnesses had seen the relevant parts of the transcript of previous hearings in some way "tarnished" their evidence and made it less reliable. The delegates were then required to make a ruling in order that the hearing could continue. They decided that, insofar as they had the competence to make the necessary procedural rulings, the procedure followed by the respondent Government was, in the circumstances, consistent with the Convention and the Rules of Procedure having regard to the status of these witnesses, the character of the evidence to be given and the relevance of the substance of these parts of the transcript to that evidence.

At the end of the hearing the delegates, in consultation with the parties, fixed 10 to 15 June 1974 as the dates for the next hearing which should also take place at the Sola Air Base. This decision was confirmed after the Norwegian Government had again authorised the use of the base during the period concerned. At the request of the applicant Government, whose leading counsel would only be available as from 12 June 1974 onwards, the opening date of the hearing was subsequently changed to 12 June 1974.

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On 22 May and 28 May 1974 the applicant and the respondent Government respectively made further written submissions on the procedural issues which had arisen during the hearing from 2 to 11 May, particularly regarding the disclosure of witnesses' names, the proofs of evidence and the confidential character of the transcript.

During its session in May 1974, the Commission considered these various points in connection with the third interim report of the delegates under Art. 3 and, on 31 May 1974, decided that the respondent Government should once more be requested to make the proofs of evidence available to the delegates and the applicant Government not less than one week in advance, and that otherwise the delegates' rulings should be confirmed. The Commission, having regard to the nature and contents of the proofs so far submitted, was not convinced that they could not, subject to any practical difficulties in preparing them in time, be submitted without threat to security one week in advance of the hearing, as requested by the Commission. As to the non-disclosure of the witnesses' identity, the Commission stated that it would, in its appreciation of the evidence, have to consider in due course the possible effects of such non-disclosure to the applicant Government. Finally, as regards the transcript, the Commission regretted that the respondent Government did not consult the Commission or its delegates before showing the verbatim record to the persons proposed as witnesses, as the possible effect of such a procedure on the value of the evidence given could then have been considered in advance. However, the Commission accepted that there was a need, as conceded by the applicant Government, to inform the witnesses of the substance of the evidence given, in particular of any specific allegations made against them, provided that any advance disclosure of such information was, in principle, limited by the purposes of expediting the hearing and of preserving the independence of the evidence to be heard.

These decisions were communicated to the parties by letter of 31 May 1974 from the Commission's Secretary.

With letters dated 5 and 7 June 1974 the respondent Government filed with the Commission the proofs of evidence which had been completed by then. The Government specified that these proofs were delivered for the use of the delegates only and were not to be communicated to the applicant Government.

The hearing of the respondent Government's witnesses continued at Sola Military Air Base on 12 to 15 June 1974. During that time delegates of the Commission (1) heard altogether 17 persons some of whom again gave evidence relating to more than one case. Two persons, who had been expected to give evidence at the previous hearing in May 1974 but had not been available, gave evidence at this hearing.

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(1) MM. Ermacora, Daver, Opsahl and Jörundsson

At the opening of the hearing the Attorney-General of the applicant Government again strongly objected to the late transmission of the proofs of evidence which they had only received a day before. This, in their submission, constituted a breach of the Commission's decision and of the respondent Government's obligations under the Convention. The Agent of the respondent Government replied that, with due respect to the Commission, this was a security matter upon which they themselves could be the only judges. The delegates then recalled the Commission's decision of 31 May and stressed that the Commission had not accepted the argument that for security reasons the proofs could not be submitted to the applicant Government one week beforehand. The delegates noted, that by submitting all the proofs to the applicant Government before the hearing, the respondent Government had nevertheless gone slightly further than had been required by the delegates in their previous ruling on 2 May 1974 on this point. They decided that the witnesses examined that day on behalf of the respondent Government should not be cross-examined on behalf of the applicant Government until the following day.

In the course of the hearing an issue arose as to the acceptance by the Commission of affidavit evidence offered by the respondent Government instead of hearing witnesses previously proposed by them. The applicant Government objected to such procedure unless these witnesses concerned could establish by means of affidavits that they were unable to attend the hearing. The respondent Government maintained that the affidavits were put before the Commission de bene esse so far as they contained material as to fact and submitted that they were entitled to bring their evidence before the Commission in this way. The delegates ruled that it was for the Commission to decide whether or not the affidavits should be accepted as evidence and to evaluate in due course any possible effects of the respondent Government's failure to produce these witnesses.

At the end of the hearing, on 15 June 1974, the delegates informed the parties that they wished to hear the medical orderly who attended two of the case witnesses concerned, that they wished the respondent Government to submit information as to the exact time of arrival at Crumlin Road Prison of four of the case-witnesses concerned, and that they wished the respondent Government to consider again the possibility of submitting to the Commission photocopies of the records of the interrogation by the police in the cases of three of the witnesses concerned.

On 26 June 1974 the Agent of the applicant Government wrote a letter to the Commission suggesting that the Commission, at its next session, give consideration to calling the substitute witnesses previously proposed by them and hear these witnesses at the July hearing of the delegates;

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furthermore, that arrangements should be made at the earliest possible date for the hearing of those witnesses proposed by the applicant Government who were still in custody, and of those witnesses proposed by the respondent Government whose testimony had not yet been taken.

This letter was communicated to the respondent Government on 3 July 1974 who replied on 15 July 1974 stating that, in their submission, any selection of substitute cases should be made by the Commission and not the applicant Government.

The Commission considered these matters at its 112th session in July 1974. On 15 July 1974 it discussed the fourth interim report by the Commission's delegates regarding the hearing of witnesses under Art. 3 and took note of the respondent Government's failure to submit, one week before the hearing, proofs of evidence to the delegates and to the applicant Government as requested by the Commission. The Commission also noted the reasons given by the respondent Government for this failure. It finally took note of the delegates' decision to hear witnesses in custody, if necessary, without the parties being present, and it adjourned consideration of the question whether the affidavits submitted by the respondent Government in respect of certain witnesses should be accepted as evidence.

On 16 July 1974, the Commission discussed generally questions on evidence, including the existence and nature of a concept of admissibility of evidence in the Commission's proceedings and, in particular, the admissibility of anonymous affidavits or other anonymous evidence. In this connection the Commission decided that the delegates should accept such documents but that any evaluation of such evidence should be reserved to the Commission when it came to formulate its opinion on the merits of the allegations made (1).

The Commission continued its discussion of the procedural questions on 18 July 1974 and then confirmed that the delegates had been authorised to call any witness or witnesses or obtain any further evidence which they considered necessary in order to accomplish the Commission's task under Art. 28 (a) of the Convention, irrespective of the time-limit for the submission of written material by the parties. It further recalled that all witnesses in the case were called ex officio by the Commission or its delegates and that the Commission reserved the right to call further witnesses whether or not they were proposed by the parties. These decisions were communicated to the parties on 19 July 1974.

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(1) In the light of this decision of principle the delegates, in October 1974, accepted as evidence the affidavits submitted by the respondent Government and informed the parties accordingly.

In a letter dated 20 July 1974 the Agent of the respondent Government informed the Commission as to the requests for evidence made by the delegates on 15 June 1974. He indicated that the medical orderly, who attended two of the case witnesses, was available to the Commission as a witness, that the precise time of arrival of detainees at Crumlin Road Prison did not appear in the register of the prison and that this information was therefore not available, and that the interrogation records could not be submitted to the Commission as they constituted, in the view of the respondent Government and as a matter of principle, a class of documents which it would be injurious to the public interest to disclose.

In the meanwhile, the Commission's Secretary, acting in pursuance of the delegates' instructions, had urged the respondent Government to make proposals for the hearing of the applicant Government's witnesses who were still in custody. The Agent of the respondent Government had replied that this matter was still under consideration by various governmental authorities but that two of the persons in custody had now been released and could therefore be summoned to give evidence. Attempts were then made to include the evidence of these witnesses at the hearing fixed for July 1974. On 22 to 25 July 1974 delegates of the Commission heard witnesses proposed by the applicant Government in relation to Art. 14 of the Convention, but it was not possible, for lack of time, to hear any witnesses under Art. 3 at this hearing.

In a letter dated 29 August 1974, the Agent of the respondent Government informed the Commission that his Government regretted that they were unable to make proposals with regard to the hearing of two witnesses who were then still in custody. They submitted that the absence of these witnesses in no way inhibited the Commission from pursuing its enquiry and suggested that two other cases be selected as representative cases in substitution for them.

This letter was communicated to the Agent of the applicant Government who replied on 19 September 1974 that the exclusion of the two cases involving the witnesses still in custody would rob the selection made by them of its representative character. His Government were not satisfied that any problems or difficulties regarding the hearing of these two witnesses were insuperable and the Commission should insist that the respondent Government complied with the requirements of Art. 28 (a) by making the appropriate arrangements without further delay. In this connection the applicant Government also made general allegations as to the attitude of the respondent Government at all stages of the present case which, in their submission, resulted in the requests, decisions and directions of the Commission and of its delegates being met by the respondent Government by (a) failure to comply, (b) seeking extension of time to permit compliance, and (c) inadequate compliance. Details of various incidents and of the practice adopted in each case were set out, in a tabulated list, in an appendix to the letter and

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the Commission was urged to bring to an end this attitude to the cases now being dealt with and which, it was submitted, was not in accordance with the obligations imposed by the Convention on a State which was a party to it. This letter, with enclosure, was communicated to the respondent Government on 20 September 1974.

During its 113th session, on 8 October 1974, the Commission considered the future procedure in the case. The Commission confirmed that the delegates should complete the taking of evidence under Art. 3 in the 15 cases in which the case-witnesses were available, at hearings fixed to take place in Strasbourg from 28 to 30 October 1974 and at Sola Air Base from 13 to 25 January 1975. The Commission further decided to obtain oral evidence in one additional "illustrative" case and it selected one of the substitute "illustrative" cases proposed by the applicant Government in their letter of 13 November 1973. However, it was decided not to hear oral evidence in any further "illustrative" cases; in particular the Commission considered that, in the circumstances, it was not necessary to insist on taking oral evidence in the other "substitute" cases proposed by the applicant Government or in the cases of the two persons who were still in custody.

The Commission also discussed the question of the further evidence submitted by the applicant Government under Art. 3 and recalled that, in addition to the 20 "illustrative" cases and the three substitute "illustrative" cases, the case-file contained statements from, or medical certificates relating to a further 205 persons who had alleged treatment contrary to Art. 3 by the security forces in Northern Ireland. The Commission decided that, as a further step in the investigation of the issues under Art. 3, the respondent Government should be afforded the opportunity of submitting by 2 January 1975, any written comments which they might wish to make on 41 cases designated by the Commission. These were cases in which medical reports had been submitted. The Commission further decided that, in view of its future programme in the case, it would not be possible to extend the time limit which had been fixed for the submission of these comments.

The Commission also indicated its intention to finish the taking of evidence under Arts. 3 and 14 in January 1975 and to hear during a session fixed to take place from 13 to 21 March 1975 the parties' oral submissions on this evidence as well as on the written statements of persons alleging treatment contrary to Art. 3 which were contained in the case file and which had not been dealt with otherwise. As to the remainder, and particularly in regard to the applicant Government's letter of 19 September 1974, the Commission took note of the matters raised in this communication, confirmed its

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intention to terminate its investigation of the case as soon as possible, and in the meanwhile expressed its hope for the parties' co-operation in carrying out its tasks under Art. 28 of the Convention.

These decisions were communicated to the parties on 11 October 1974, and on 25 October 1974 the Agent of the respondent Government confirmed by letter that his Government had taken note of the said decisions and would make their arrangements on the basis of the dates proposed by the Commission. They assumed, nevertheless, that those dates would be adjusted if this should prove necessary in order to allow sufficient time for the hearing of all evidence which they wished to call and for the preparation of submissions to the plenary Commission. The Agent also stated that his Government wished to avail themselves of the opportunity to submit written comments on the 41 cases selected by the Commission. In a second letter of 25 October 1974, the respondent Government made proposals as to additional witnesses for hearing by the delegates at Sola Military Air Base in January 1975, and submitted the details of their evidence.

On 28 and 29 October 1974 delegates of the Commission (1) heard the evidence proposed by the applicant Government in three further "illustrative" cases, including the additional "illustrative" case which the Commission had selected on 8 October 1974. This involved the hearing of altogether six witnesses bringing the total number of witnesses heard under Art. 3 of the Convention to 73 persons some of which had given evidence in more than one "illustrative" case.

During this hearing the parties made submissions on the further evidence to be obtained by the Commission regarding Art. 3 and referred to the Commission's decisions of 8 October 1974 and the respondent Government's proposals in their letter of 25 October 1974. The delegates deliberated on 31 October 1974 and their decisions on evidence were communicated to the parties on 1 November 1974.

On 12 December 1974 the Commission considered the delegates' fifth interim report regarding the hearing of witnesses under Art. 3 and a note, prepared by the rapporteur, on the future programme in this case. The Commission confirmed that it would hear the parties' oral submissions on the evidence under Arts. 3 and 14 at its session beginning on 13 March 1975. In the meanwhile it noted that delegates of the Commission would hear from 13 to 25 January 1975 at Sola Air Base in Norway the witnesses proposed by the respondent Government in accordance with the delegates' decision of 31 October 1974. These hearings had again been authorised by the Norwegian Government in a communication received on 31 October 1974.

(1) MM. Ermacora, Opsahl and Jörundsson

In a letter dated 13 December 1974 the Agent of the respondent Government completed his Government's proposals for evidence to be obtained at the forthcoming hearing, and at a meeting on 16 December 1974 the delegates finalised the list of witnesses who should be summoned to give evidence at that hearing. These decisions were communicated to the parties on 19 December 1974.

On 2 January 1975 the Agent of the applicant Government addressed a letter to the Commission in which he noted that the respondent Government had once more failed to comply with the time limits decided upon by the delegates specifically with regard to the details of certain evidence requested in the Secretary's letter of 1 November 1974. He continued that his Government were greatly concerned that the persistent attitude of the respondent Government to which reference had previously been made, had been maintained. His Government urged the Commission to take steps to bring to an end this attitude to the conduct of the case which had consistently hampered the representatives of the applicant Government in their presentation of the case and continued to do so. Furthermore, it was understood that the respondent Government were not in a position to furnish the observations on the 41 cases set out in the Annex to the Secretary's letter of 11 October 1974 within the time limit prescribed. As the Commission had indicated that it would not be possible to extend this time limit without disrupting the Commission's future programme in this case, his Government assumed that any observations submitted by the respondent Government at a later date would not be accepted.

In a letter dated 10 January 1975 from their Agent the respondent Government submitted the comments on the said 41 cases. At the opening of the hearing at Sola Air Base, on 13 January 1975, the Attorney General of the applicant Government submitted that these comments should not be accepted by the delegates as a document in the case but that the matter should be left for argument before the Commission in March. The Agent of the respondent Government apologised for the delay and associated himself with the remarks of the Attorney General as to how the matter should be dealt with.

The delegates then heard nine witnesses (1) who had been called to give evidence in relation to the "general" practice of the security forces in dealing with the security situation in Northern Ireland at the relevant time and particularly with the persons arrested on 9 August 1971. The delegates further heard 18 witnesses who gave evidence in relation to 10 of the "illustrative" cases which have been investigated by the Commission as examples of the allegations under Art. 3.

This hearing which ended on 25 January 1975, concluded the taking of evidence under Art. 3 in the course of which altogether 100 persons were heard in relation to the allegations under this provision.

From 14 to 19 March 1975 the Commission heard the final submissions and the conclusions of the parties on the evidence which its delegates had obtained during the hearings of witnesses.

(1) MM. Ermacora, Kellberg, Daver, Opsahl, Nørgaard Frowein and Jørundsson

I. SUMMARY OF THE SUBMISSIONS OF THE PARTIES

A. Original submissions on the merits

1. The applicant Government (VR 2, pp.1-22, 49-60)

a) General

At the hearing on 12 December 1973, the applicant Government first referred to the Commission's decision on admissibility regarding Art. 3 (1) which was as follows:

> "The Commission therefore retains for an examination of the merits of the applicant Government's allegations that, the treatment of persons in custody, in particular the methods of interrogation of such persons, constitutes an administrative practice in breach of Article 3 of the Convention."

On this basis, the applicant Government asked the Commission to consider the facts in the light of the definitions of ill-treatment set out in the Greek case, and submitted that the facts would establish that there had been breaches of Art. 3 as it is defined in the jurisprudence of the Commission.

The applicant Government first pointed out that in that case (2) the Commission had defined treatment contrary to Art. 3 in the following way:

> "It is plain that there may be treatment to which all these descriptions apply, for all torture must be inhuman and degrading treatment, and inhuman treatment also degrading. The notion of inhuman treatment covers at least such treatment as deliberately causes severe suffering, mental or physical, which in the particular situation is unjustifiable."
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> The word 'torture' is often used to describe inhuman treatment, which has a purpose, such as the obtaining of information or confessions, or the infliction of punishment, and it is generally an aggravated form of inhuman treatment. Treatment or punishment of an individual may be said to be degrading if it grossly humiliates him before others or drives him to act against his will or conscience. In this Report, the expression 'torture or ill-treatment', will be used, for the sake of brevity, to describe generally acts prohibited by Article 3."

As to the concept of non-physical torture the applicant Government inter alia referred to the following passage (3):

> "The notion of non-physical torture is here used to cover infliction of mental suffering by creating a state of anguish and stress by means other than bodily assault. Many

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(1) Cf. Annex II
(2) The Greek Case, Report, Vol. II, part I, p.1.
(3) ibid., p. 365.

witnesses before the Sub-Commission have spoken of the effects of prolonged isolation and the impact of threats to themselves or their families. Descriptions have also been given of psychological attacks on a detainee's personal feelings or his or her feelings for others."

b) The applicant Government's evidence of ill-treatment

The applicant Government submitted (still at the hearing on 12 December 1973) that in relation to the evidence they had filed, and of which they gave an analysis, there had been virtually no contradictory evidence yet put in by the respondent Government.

(i) The five techniques

The applicant Government began by referring to the Parker Report (1) which was concerned with what has been referred to as the five techniques of interrogation in depth. There was a Majority Report and a Minority Report.

The applicant Government first cited paragraph 2 of the Majority Report which reads:

"We also read our terms of reference as calling upon us to enquire quite generally into the interrogation and custody of persons suspected of terrorism in such circumstances in the future, and not specifically in connection with Northern Ireland. In particular, we are not called upon to consider afresh matters already dealt with in the Compton Report. Further, while in our view the use of some if not all the techniques in question would constitute criminal assaults and might also give rise to civil proceedings under English law, we refrain from expressing any view in respect of the position in Northern Ireland in deference to the courts there, before whom we understand proceedings which raise this issue are pending."

The applicant Government stated that there was in fact no difference between English law as applied in Great Britain and Wales and Scotland and English law as applied in Northern Ireland, and the five techniques in aid of interrogation amounted under the laws of the United Kingdom to criminal assaults.

The applicant Government then referred to the following paragraphs of the Minority Report, insofar as they relate to facts, in order to show that there would appear to be accepted facts concerning what happened to the 14 detainees who were subjected to the five techniques:

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(1) Annex 6 (2) to the respondent Government observations of 2 May 1972 on admissibility.

"4. The first Compton Report considered the cases of 11 out of 12 men who had been submitted to 'interrogation in depth' at an interrogation centre in Northern Ireland from 11 to 17 August 1971 and the second Compton Report considered the case of one of two men who had been so interrogated from 11 to 18 October.

5. Their conclusions were that the procedures consisted of:

(a) Keeping the detainees' heads covered by a black hood except when being interrogated or in a room by themselves and that this constituted physical ill-treatment.

(b) Submitting the detainees to continuous and monotonous noise of a volume calculated to isolate them from communication and that this was a form of physical ill-treatment.

(c) Depriving the detainees of sleep during the early days of the operation and that this constituted physical ill-treatment

(d) Depriving the detainees of food and water other than one round of bread and one pint of water at six-hourly intervals and that this constituted physical ill-treatment for men who were being exhausted by other means at the same time.

(e) Making the detainees stand against a wall in a required posture (facing wall, legs apart, with hands raised up against wall) except for periodical lowering of the arms to restore circulation, and that detainees attempting to rest or sleep by propping their heads against the wall were prevented from doing so, and that, if a detainee collapsed on the floor, he was picked up by the armpits and placed against the wall to resume the required posture and that the action taken to enforce this posture constituted ill-treatment.

They found that the 11 men were at the wall for periods totalling 9, 9, 13, 14, 15, 20, 23, 29, 30, 40 and 43 1/2 hours. The second Compton Report shows that the man the subject of that report was at the wall for periods totalling 35 hours.

6. I have thought it essential to state what the procedures referred to in the Compton Reports were because they were never published or even written down anywhere. We have been told that these procedures of interrogation in depth, namely hooding, a noise machine, wall-standing

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and deprivation of diet and sleep, were never committed to writing in any directive, order, syllabus or training manual. They had been for some time orally taught for use in emergency conditions, in Colonial-type situations, at an army intelligence centre in England. They had been used in Aden, although surprisingly, it does not appear from the report of Mr. Roderic Bowen, Q.C., on Interrogation in Aden that he ever discovered that these interrogation procedures were used there. Officers and men of the English Intelligence Centre held a seminar on the procedures in Northern Ireland in April 1971 to teach orally the procedures to members of the Royal Ulster Constabulary; officers from the English Intelligence Centre were present in the control room of the interrogation centre in Northern Ireland throughout the periods covered by the Compton Reports.

7. We are not a court of appeal from the Compton Committee and I accept their conclusions subject to the following points:

(a) While records were kept of the movements of the detainees for 11th, 12th and 13th August, the records for most of them were discontinued some time on 14th or 15th and for four on 16th August, so that the figures of wall-standing in the first Compton Report only relate to the dates for which there were records, wall-standing being discontinued thereafter.

(b) The report does not indicate for how long any detainee was standing continuously at the wall. We have seen copies of the partial records. They show that, subject to breaks for bread and water and for toilet visits, some detainees were standing continuously at the wall for periods of 6, 6, 7, 7, 7, 7, 7, 8, 9, 9, 9, 9, 9, 9, 9, 9, 9, 9, 9, 10, 10, 10, 11, 12, 13, 15 and 16 hours.

(c) The first Compton Report states in paragraph 68 'Weight. The records kept by the doctor for each detainee on entering and leaving the centre all show loss of weight during the time spent there.' We have ascertained that, as there was no weighing machine when the 11 men arrived, the recorded entry weights were mere estimates made by the doctor looking at the man. On the assumed weights there were losses up to 1 stone 2 lbs. in six days.

(d) In paragraph 105 of the first Compton Report the Committee say 'We consider that brutality is an inhuman or savage form of cruelty, and that cruelty implies a disposition to inflict suffering, coupled with indifference to, or pleasure in, the victim's pain.' Lest by silence I should be thought to have

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accepted this remarkable definition, I must say that I cannot agree with it. Under this definition, which some of our witnesses thought came from the Inquisition, if an interrogator believed, to his great regret, that it was necessary for him to cut off the fingers of a detainee one by one to get the required information out of him for the sole purpose of saving life, this would not be cruel and, because not cruel, not brutal."

The applicant Government submitted that the admitted facts concerning the five techniques amounted to a breach of Article 3.

(ii) Cases of alleged ill-treatment

At the hearing on 12 - 13 December 1973 the applicant Government stated that they had filed with the Commission a total of 153 cases of complaint (1) which they alleged were breaches of Art. 3 in the course of interrogaton. They had also filed a further 62 cases which concerned complaints of ill-treatment not in the course of interrogaton.

They explained that this evidence comprised signed statements in some cases and in other cases affidavit evidence and submitted that in some instances the evidence was corroborated by medical evidence and in other cases by other evidence. In addition the applicant Government had submitted medical reports on the psychological effects of what was alleged to have occurred in some of these cases.

A special interrogation centre

The applicant Government referred to statements by 8 (2) persons arrested on 9 August 1971 and subsequently subjected to the five techniques during interrogation. The applicant Government explained that the interrogation centre, where these persons allegedly were ill-treated, had not been located with certainty.

Palace Barracks

Further the applicant Government stated that they had submitted statements referring to 24 persons (3) which they described as cases of interrogation at Palace Military Barracks,

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(1) The applicant Government explained that two of the persons concerned alleged ill-treatment in more than one place

(2) Part 1 of Appendix 4 to the applicant Government's original application of 15 December 1971

(3) Part 2 of Appendix 4 to the applicant Government's original application of 15 December 1971.

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Holywood during the period 9 August to 19 November 1971. They had also referred to another 19 (1) persons indicating the same place and the period 20 September 1971 to 4 February 1972. These cases were also cases of interrogation.

Girdwood Park

The applicant Government referred to Girdwood Park Army Barracks in Belfast and stated that they had submitted statements from 31 (2) persons who alleged that they had been ill-treated in the course of interrogation in these barracks. Their cases concerned the period 9 August to 2 November 1971. Referring then to the period 2 November 1971 to 25 January 1972 the applicant Government submitted that they had filed statements relating to 4 (3) further cases of alleged ill-treatment during interrogation at Girdwood Park.

Ballykinler

The applicant Government stated that they filed statements relating to 18 (4) cases of alleged ill-treatment at Ballykinler Army Camp. These cases related to interrogation on 9 August 1971 and subsequently.

Other places

The applicant Government then referred to a number of miscellaneous places. They submitted that the first part of their evidence related to a group of 11 (5) cases of ill-treatment in the time 10 August to 16 November 1971; one in Hastings Street, 3 in Tennant Street, 2 in Andersonstown Barracks, 3 in Springfield Road Barracks, 2 in Flax Street and 1 in Holywood Barracks. The cases in this group were all of ill-treatment during interrogation, except for two.

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(1) The Addendum to Appendix 4, in the applicant Government's supplementary application of 22 February 1972

(2) Appendix 5 to the applicant Government's original application of 15 December 1971

(3) Addendum to Appendix 5, in the applicant Government's supplementary application of 22 February 1972.

(4) Appendix 6 to the applicant Government's original application of 15 December 1971

(5) Appendix 7 to the applicant Government's original application of 15 December 1971.

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The applicant Government next stated that they had filed a second group of statements relating to 8 (1) persons, who had alleged ill-treatment in the course of interrogation between 2 November 1971 and 20 January 1972, 1 in Girdwood Barracks, 1 in Springfield Barracks, 3 in Holywood Barracks, 1 in Albert Street Barracks, 1 in Mulhouse Street, 1 in the army billet at Power Station.

There was further a third group of statements and medical reports concerning 4 persons who alleged having been interrogated at Broadway Military Barracks. The applicant Government then referred to medical reports concerning others (2) who had been interrogated in Newry. This material had been submitted to show in particular that the alleged ill-treatment had not been discontinued and the applicant Government explained that these cases related to the period 20 April to 1 May 1972.

The applicant Government next referred to a fourth group of statements which provided evidence of alleged breaches of Art. 3 in respect of 23 (3) persons who had been arrested between 1 May 1972 and 7 November 1972: 1 in Holywood, 11 in Black Mountain Military Post, 1 at Castlereagh, 6 at Black Road Army Post, 1 at Andersonstown Barracks, 1 at Musgrave Park Barracks, 5 at Victoria Police Station, 1 at Hastings Street, and 1 at Ballykelly. The applicant Government stated that these were all cases of ill-treatment during interrogation.

The applicant Government referred to a fifth group of 30 (4) cases. These were mostly cases where there had not been any formal interrogation or arrest. These cases related to the period 3 February 1972 to 16 November 1972.

The applicant Government finally referred to a sixth group of statements concerning alleged breaches of Art. 3 in respect of persons remanded in custody in Maze Prison, Long Kesh. The statements referred to 30 (5) persons and related to acts between April 1972 and 20 September 1972.

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(1) Addendum to Appendix 7, in the applicant Government's supplementary application of 22 February 1972

(2) Addendum 2 to Appendix 7 annexed to the applicant Government's observations of 29 May 1972 in reply.

(3) Appendix 17, in the applicant Government's observations of 29 November 1972 on the merits

(4) Appendix 18; and

(5) Appendix 19, both annexed to the applicant Government's observations of 29 November 1972 on the merits

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In the applicant Government's summary concerning these cases it was pointed out that the geographical situation where ill-treatment allegedly had occurred referred to 20 different places throughout Northern Ireland but with the bulk of the claims of ill-treatment concentrated in Holywood, Girdwood, Ballykinler and Black Mountain.

(iii) Moore v. Shillington

The applicant Government also referred to the judgment of Judge Conaghan in the case of Moore v. Shillington and the Ministry of Defence(1). They explained that it concerned a successful claim for damages brought by a person who had alleged he was the victim of ill-treatment at the hands of the security forces in Ballykinler.

The applicant Government drew the Commission's attention to the description in the judgment of certain exercises and the judge's finding that these exercises had not happened in a haphazard manner and that superior officers must have been involved in working them out. The judge had observed that a complainant may not have made out to a doctor all the complaints he later made. The applicant Government suggested that this observation could be adopted and applied by the Commission.

The applicant Government submitted that this judgment would assist the Commission to a considerable extent in evaluating the Compton Report and also in deciding whether what had occurred amounted to an administrative practice.

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(1) Appendix 16 annexed to the applicant Government's observations of 29 May 1972 in reply.

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(iv) Terrorism

Referring to the respondent Government's submission that the acts of ill-treatment of which complaint had been made in these proceedings were acts against captured terrorists, the applicant Government submitted that there was no evidence to suggest this. They explained that these were acts committed against persons whom presumably the security forces had suspected of breaches of law.

The applicant Government also contested the respondent Government's submission that these acts had occurred in the heat of the moment at times when terrorist organisations had committed highly reprehensible crimes. According to the applicant Government the true picture was, that persons had been picked up in the ordinary activities of the security forces, sometimes in the early hours of the morning, for interrogation; in some cases the acts complained of were not connected with interrogation.

The applicant Government submitted that there was no evidence in this case at the present time (1) which would justify an inference that all or any of the complainants were members of the IRA or terrorists, as it in their opinion had been suggested by the respondent Government. They further pointed out that it could not be said that they were bringing their application on behalf of anybody.

Whether or not the witnesses were members of the IRA was, in the applicant Government's further submission, irrelevant, because a State signatory to the Convention was not entitled to break Art. 3 because it was dealing with a member of a terrorist organisation. The object of the Convention was to ensure that Governments do not employ methods against its opponents which were contrary to the Convention.

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(1) December 1973

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a) The concept of an administrative practice

The applicant Government submitted that the allegations made in this case were allegations of an administrative practice in breach of Art. 3 of the Convention based on the legal concept of an administrative practice within the meaning of the jurisprudence of the Commission.

The applicant Government quoted the following parts of the Commission's opinion in the Greek Case (1):

"24. The Convention does not in terms speak of administrative practices incompatible with it, but the notion is closely linked with the principle of the exhaustion of domestic remedies. The rule in Article 26 is based on the assumption, borne out by Article 13, that for a breach of a Convention provision there is a remedy available in the domestic system of law and administration, even if the provision is not directly incorporated in domestic law, and that that remedy is effective.

25. Where, however, there is a practice of non-observance of certain Convention provisions, the remedies prescribed will of necessity be side-stepped or rendered inadequate. Thus, if there was an administrative practice of torture or ill-treatment, judicial remedies prescribed would tend to be rendered ineffective by the difficulty of securing probative evidence, and administrative enquiries would either be not instituted, or, if they were, would be likely to be half-hearted and incomplete. It may be noted here that, in its decisions on the admissibility of allegations under Article 3, the Commission found that evidence of an administrative practice of torture or ill-treatment, contrary to Article 3, had not at that stage yet been produced. It therefore found that remedies were ineffective on grounds other than the existence of an administrative practice.

26. In the first place, acts prohibited by Article 3 of the Convention will engage the responsibility of a Contracting State only if they are committed by persons exercising public authority; further, it must be presumed that they are contrary to domestic law. Breaches of Article 3 are therefore governmental acts which are essentially irregular and abnormal, and if expressly mentioned at all, they will be so only by the most secret instructions. It follows that since in the present case torture and ill-treatment is alleged to occur in places under the control of police or military authorities, evidence tending to show the truth or falsity of such allegations lies peculiarly within the knowledge or control of these authorities; and, further, that it would defeat the purpose of Article 3 to insist

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(1) The Greek Case. Report, Vol. II, part 1, page 12

that an administrative practice is established only if there are standing instructions to apply torture or ill-treatment, for the proof of the existence of such instructions would be virtually impossible, given the secrecy with which they would be surrounded.

27. In the second place, it must be observed that it would obviously not be proper to describe as an administrative practice acts of torture or ill-treatment which were isolated in time and place, and after proof, duly punished. On the other hand, it would be unreasonable and again defeat the purpose of Article 3 to maintain that an administrative practice is not established unless and until every political detainee, or at least a majority, are subjected to torture or ill-treatment.

28. These various considerations lead to the conclusion that two elements are necessary to the existence of an administrative practice of torture or ill-treatment; repetition of acts, and offical tolerance.

By repetition of acts is meant a substantial number of acts of torture or ill-treatment which are the expression of a general situation. The pattern of such acts may be either, on the one hand, that they occurred in the same place, that they were attributed to the agents of the same police or military authority, or that the victims belonged to the same political category; or on the other hand, that they occurred in several places or at the hands of distinct authorities, or were inflicted on persons of varying political affiliations.

29. By official tolerance is meant that, though acts of torture or ill-treatment are plainly illegal, they are tolerated in the sense that the superiors of those immediately responsible though cognisant of such acts, take no action to punish them or prevent their repetition; or that higher authority, in face of numerous allegations, manifests indifference by refusing any adequate investigation of their truth or falsity, or that in judicial proceedings, a fair hearing of such complaints is denied.

30. The task of the Commission is to determine whether Article 3 has been violated in individual cases and also whether or not there is or has been an administrative practice of torture or ill-treatment in Greece since April 1967. For these purposes, it must first examine the case of each alleged victim, as though it were dealing with individual applications. It must therefore maintain a certain standard of proof, which is that in each case the allegations of torture or ill-treatment, as breaches of Article 3 of the Convention, must be proved beyond reasonable doubt. A reasonable doubt means not a

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doubt based on a merely theoretical possibility or raised in order to avoid a disagreeable conclusion, but a doubt for which reasons can be given drawn from the facts presented.

31. There are certain inherent difficulties in the proof of allegations of torture or ill-treatment. First, a victim or a witness able to corroborate his story might hesitate to describe or reveal all that has happened to him for fear of reprisals upon himself or his family. Secondly, acts of torture or ill-treatment by agents of the police or armed services would be carried out as far as possible without witnesses and perhaps without knowledge of higher authority. Thirdly, where allegations of torture or ill-treatment are made, the authorities, whether the police or armed services or the ministries concerned, must inevitably feel that they have a collective reputation to defend, a feeling which would be all the stronger in those authorities that had no knowledge of the activities of the agents against whom the allegations were made. In consequence, there may be reluctance of higher authority to admit or allow enquiries to be made into facts which might show that the allegations are true. Lastly, physical traces of torture or ill-treatment may with lapse of time become unrecognisable, even by medical experts, particularly where the form of torture itself leaves little external marks."

With regard to the present application the applicant Government made it clear that the allegations were not made personally against any member of the United Kingdom Government, but were based on the legal concept of an administrative practice: the alleged acts were not isolated in time or in place and had not been duly punished. Therefore, the two elements referred to in the Greek Case occurred in this case.

(i) Repetition of acts

The applicant Government submitted that the facts disclosed a repetition of acts and they first referred to the number of complaints which had been formulated in written statements and in evidence under oath. They explained that the discrepancy between the number of complaints filed in this case and the number of actual complaints recorded would not affect the situation because it would be irrelevant if the Commission considered that the evidence already filed was sufficient to justify a finding under Art. 3. Further, in the Greek Case the number of incidents had not been any greater than it was in this case. Moreover the applicant Government considered that there might be a great deal more complaints than are lodged officially because of the lack of confidence among people, as shown in the Moore Case. They further explained that in the political situation that existed in Northern Ireland there was considerable intimidation which would also influence the number of complaints.

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Secondly the applicant Government referred to the fact that the complaints related to similar forms of ill-treatment used against prisoners in several different places when they had been held by the security forces.

Thirdly they referred to the fact that the incidents complained of had happened over a prolonged period of time. According to the applicant Government the evidence clearly showed that sophisticated methods and equipment were used in breach of Art. 3.

The applicant Government concluded that these facts expressed a general situation and showed a pattern in the evidence within the terms of the reasoning in the Greek Case.

(ii) Official tolerance

The applicant Government submitted that there had been official tolerance of these acts of ill-treatment in the way it had been expressed in the Greek Case.

They argued that the acts of which complaint had been made were plainly illegal and tolerated in the sense that the superiors of those responsible though cognisant of them, took no action to punish them or prevent their repetition. According to the applicant Government this was the official tolerance that was predominant in this case.

The applicant Government stated that they were aware, however, that it was claimed on behalf of the respondent Government that, in the words of the Greek Case, "higher authorities" had been investigating these allegations and that accordingly official tolerance was not established. But in the applicant Government's submission the Commission had in its definition of official tolerance suggested a number of alternative ingredients.

(iii) The level of tolerance

Further the applicant Government considered that the allegations which had been made by individuals were of such a character and continued over such a length of time and in such circumstances that they could not possibly have occurred without the knowledge of superior officers of the individual men concerned. They submitted that it had been clearly established in the Moore Case that such acts had been performed with the knowledge of superior officers.

Referring to the respondent Government's submission that in order to establish official toleration there must be condonation or toleration of the acts by somebody in a position to act for the Government or with the Government's approval, the applicant Government submitted that this suggestion was

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directly contrary to the views expressed in the Greek Case. The applicant Government underlined the words "the superiors of those immediately responsible".

(iv) Prosecution

The small number of prosecutions was further, in the applicant Government's submission, evidence of an administrative practice because the failure to prosecute members of the security forces had not arisen from any failure of the administration of justice, but meant that the security forces had not told the truth to those who administer justice and it also meant that superior officers of the men who had committed the acts, which were complained of, must have connived at these acts. The applicant Government submitted that this connivance was toleration.

The applicant Government referred to the case of T.6 as an illustrative example. They explained that apart from having been a victim of the five techniques T.6 had alleged that he had been badly beaten by the security forces. But no charge had been brought against anyone, presumably for lack of evidence, denials, connivance and tolerance.

Referring then to the respondent Government's submission that men might stick together and that it might prove impossible to make adequate investigations and bring criminal charges, the applicant Government submitted that this was exactly the situation in the Greek Case.

(v) Investigation

The applicant Government submitted that there was a further consequence that derived from the Greek Case and arose in this case. The concept of tolerance which results in an administrative practice also involved the failure to conduct proper enquiries. It was true that in relation to the five techniques the respondent Government established committees; first the Compton Committee and subsequently the Parker Committee. But apart from that, the applicant Government submitted, there had been no public enquiry into the other acts of ill-treatment of which complaint had been made.

(vi) Orders and regulations

The applicant Government did not contest the arguments put forward by the respondent Government that military orders and regulations existed and that orders and regulations existed in the police force forbidding ill-treatment. They submitted that these orders and regulations had been ignored and disobeyed. These had not stopped the use of the five techniques and their existence, as in the Greek Case, had not prohibited a finding by the Commission of an administrative practice.

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(vii) Complaints procedures

As to the respondent Government's claim that there were complaints' procedures in existence in the security forces to deal with allegations of ill-treatment, the applicant Government submitted that there might well be such procedures but whether they existed or not was irrelevant because, if the facts alleged in this case were true, these procedures would be totally inadequate. The applicant Government referred to the T.6 Case and submitted that this case showed that the complaints' procedure had had little efficiency.

d) Exhaustion of domestic remedies

The applicant Government next referred to the submission of the respondent Government that domestic remedies had not been exhausted. They pointed out that this argument had been considered in great detail at the admissibility stage and that the allegations which had been made had been declared admissible. In their opinion it would therefore not be open to the respondent Government to re-argue this point and not be proper for the Commission to review its decision on admissibility.

The applicant Government also referred to the Greek Case and submitted that if an administrative practice of ill-treatment was established this would tend to make the judicial remedies ineffective and that would be why the exhaustion of domestic remedies rule did not apply any longer. People were, they explained, in fact unable to prove their case.

With regard to the respondent Government's reference to the fact that a number of people had been paid damages and that a number of claims had been settled, as an argument that domestic remedies were effective, the applicant Government submitted that all that those facts proved was that some people had been able to get damages. If there was an administrative practice, as the applicant Government alleged, there was a very strong inference that a great many people had not been able to get damages.

e) Revocation of measures

Finally the applicant Government referred to the respondent Government's submission that the five techniques in aid of interrogation in depth had been discontinued and that the Commission should not therefore express an opinion on the legal issues they raise.

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The applicant Government referred to the T.6 case and stated that the allegations they had made covered interrogation in depth which included the five techniques and other acts of ill-treatment. They had further made allegations of ill-treatment which were not directly associated with interrogation but which nonetheless they claimed form part of an administrative practice. Therefore the applicant Government submitted that it would be very illogical to stop any consideration of these allegations because the respondent Government had claimed that it had discontinued some of its measures.

Further the applicant Government referred to the debate in the House of Commons of 2 March 1972 and in particular to a statement by the Prime Minister (1). They submitted that this showed that the position of the United Kingdom in relation to the five techniques was that they did not consider that their use involved any breach of the Convention but that they admitted that under United Kingdom law they were illegal. The applicant Government considered that this statement also showed that if a Government, after the most careful consideration, felt these techniques should be reemployed, they could come to the House of Commons to get sanction.

The applicant Government referred to the Cyprus Case and submitted that, even if the Commission would come to the conclusion that the five techniques had been discontinued and would not be reintroduced, it was nonetheless an important function of the Commission to express an opinion on these techniques, as to whether or not a breach of the Convention had occurred, and if necessary make proposals under Art. 31.

2. The respondent Government (VR 2; pp.22-48, 60-69)

a) General

In their written observations on the merits the respondent Government had made the following reply to the main allegation under Art. 3:

> "(i) The United Kingdom Government do not admit any of the particular allegations of ill-treatment made by the applicant Government, or that any particular act alleged is attributable to, or the responsibility of, the United Kingdom Government.

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(1) Annex 6 (1) to the respondent Government's observations of 2 May 1972 on admissibility.

In any event,

(ii) (a) As to the allegations other than those concerning the five techniques referred to in the Compton Report, the United Kingdom Government deny that the United Kingdom Government or any other authority responsible for security in Northern Ireland has authorised any treatment of persons in custody which could amount to treatment contrary to Article 3; and

(b) insofar as instances of ill-treatment may have occurred, the United Kingdom Government maintain that, so far from tolerating them, they have taken all reasonable steps to prevent their recurrence.

(iii) So far as concerns the five techniques referred to in the Compton Report, the United Kingdom Government deny that the techniques, as applied in Northern Ireland, constituted ill-treatment contrary to Article 3 or that the use of these techniques constituted an administrative practice contrary to Article 3; without prejudice to such denial, they maintain that, in any event, as these techniques have now ceased to be applied, the question whether their use constituted an administrative practice contrary to Article 3 no longer arises.

The United Kingdom Government accordingly maintain that the allegation of an administrative practice is ill-founded. Further

(iv) The United Kingdom Government submit that any treatment of the nature alleged would, if capable of constituting a breach of Article 3 of the Convention, constitute a wrong in domestic law for which remedies exist in the law of Northern Ireland. This is so with regard to certain allegations of assault, whether or not they constitute a breach of Article 3 of the Convention. Such remedies are capable of being pursued and are being pursued, by persons referred to in the application. The applicant Government has not shown that they have been exhausted".(pp. 41-43)

Having regard to the terms in which the allegations of an administrative practice in violation of Art. 3 were held admissible the respondent Government also summarised their submissions under Art. 3 as follows:

"(a) In current practice interrogation in depth means asking extensive and searching questions on subjects specially selected as likely to be able to provide useful information. It does not of itself give rise to any question of a possible violation of Art. 3.

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(b) The five techniques having been discontinued, the appropriate course for the Commission with regard to them, consistent with its decision in the First Cyprus Case and with the principle which ought to be applied, is to note the discontinuance without expressing any opinion on the legal issues.

(c) There has been no official toleration of any practice or act involving a violation of Art. 3 and thus no administrative practice to that effect".(pp. 63-64)

It was submitted in consequence that the application in this respect was ill-founded.

The respondent Government further submitted that "the issue of the applicability of the domestic remedies' rule remains open and that the application in this respect should be determined on the basis that there has been a failure to exhaust domestic remedies".

During the oral hearing on the merits on 12 and 13 December 1973 the respondent Government maintained that they rejected the applicant Government's accusations and commenced by describing the situation in Northern Ireland.

b) Terrorism

Northern Ireland was a province in which there are active military operations. In certain areas constant firing and explosions were to be heard. This, as it was stated, armed attack on a state was coupled to intimidation on a wide scale. The respondent Government referred in this respect to reprisals taken by the IRA against those who side with the forces of law and order. With regard to these reprisals they stated that they had filed (1) illustrative photographs of exploded houses and cars and killed soldiers.

The respondent Government explained that this atmosphere was therefore not comparable to what occurs when there is an oppressive regime arresting political opponents and torturing them to make them abandon their political beliefs. (Later the respondent Government refuted the comparison with the Greek Case, where the Commission had according to the respondent Government found that the measures taken by the Greek Government had impaired the ability of courts to render justice impartially. Further there had been no adequate enquiries and the emergency had related to political demonstrations and strikes.) The respondent Government submitted that in Northern Ireland there was a miniscule section of the population organised with sophisticated weapons as military formations which were quite ruthless in their execution of violence

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(1) Exhibit II attached to the respondent Government's observations of 13 March 1973 on the merits.

and that this was what aroused intense anger in the bulk of the population and particularly in the forces and the police who were the prime targets.

The respondent Government stated at the hearing on the merits that 240 soldiers had been killed and 394 injured; 41 police constables killed and 505 injured and 454 civilians killed and 7,624 injured.

c) The allegation of a practice

(i) Administrative practice and acts of ill-treatment

The respondent Government submitted that the burden on the applicant Government in bringing these charges as has been accepted by them, is that they "must show that there is an administrative practice and it is not proved by acts of ill-treatment having been carried out against persons in custody.

The respondent Government submitted that even if in the face of provocation some suspected terrorists had been roughly handled when they were in custody to an extent which would amount to ill-treatment; this had been done by individuals and by groups, but did not in itself amount to an administrative practice.

(ii) Repetition of acts

The respondent Government submitted that the situation which had arisen in Northern Ireland inevitably led to incidents of immediate retaliation against captured individuals and in many places. The fact that there are many incidents in different places was in the respondent Government's submission wholly consistent with an upsurge by individuals or by groups.

The respondent Government stated at the hearing on the merits that there had been some 230 complaints, spread over 15 months against 18000 - 29000 soldiers and 4000 policemen. There had been 6000 people arrested in respect of serious offences. The respondent Government asked, if there was an administrative practice of torture in Northern Ireland, would there then have been only 230 complaints?

Further the respondent Government observed that the applicant Government had produced a total of 180 cases, of which 127 were before January 1972, which included the deep interrogation cases. From August to November 1972 there were some 53 cases, 30 of which related to one incident in the Maze prison. The Commission was considering 20 illustrative cases selected by the applicant Government. The respondent Government submitted that if the Commission was going to investigate only 20 cases then the applicant Government could only rely on these cases. It was further argued that it was not admissible to include the material which had been submitted since the decision on admissibility.

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The respondent Government submitted that the amount of complaints that have been made, in proportion to the amount of troubles, arrests, and forces operating had been very small and among those the amount of genuine ones was even smaller because these persons, the IRA in particular, established a campaign to discredit the security forces. The respondent Government referred in this respect to an occasion when the IRA had forged a Red Cross press release and to the case of a leading member of the provisional IRA whose alleged injuries of ill-treatment turned out to be a bad crop of boils.

(iii) Official tolerance

The respondent Government submitted that it was an administrative practice only if it could be proved that the Government tolerated and condoned such treatment, took no steps to seek the prevention of it or took no action to punish those whom they knew had been guilty of such conduct.

The respondent Government denied that the alleged ill-treatment had been tolerated by superiors who had been cognisant of the acts of ill-treatment but had done nothing to punish or prevent them.

The respondent Government submitted that instructions had been issued and that every complaint had been or was being investigated.

(iv) Level of tolerance

The respondent Government then referred to the level at which tolerance must be found and submitted with reference to the Commission's definition in the Greek Case that toleration, if established, must be by a superior of such rank as to be entitled to speak for the Government or at least he must be of such rank as to justify the inference that what he has done was with the Government's approval.

It would, in the respondent Government's submission, neither be fair nor reasonable to regard condonation by subordinate officers of acts forbidden by higher authorities as an administrative practice for which the Government is responsible and there was no evidence of such toleration. The case of Moore v. Shillington was in a very different position. The respondent Government explained that in Northern Ireland the Crown was liable for any wrongful act of soldiers or policemen in the course of their duty. Further, the plaintiff did not have to identify the individual.

(v) Investigation and prosecution

The respondent Government submitted that they had established a system of joint investigation with members of the RUC attached to the military police and army headquarters for liaison purposes.

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Prior to March 1972, when the United Kingdom resumed direct responsibility, the results of the investigation had been sent to the Chief Crown Solicitor of Northern Ireland who, in turn, submitted them to the then Attorney-General for Northern Ireland for his decision as to whether there should be prosecution against any member of the security forces.

At the hearing on the merits the respondent Government submitted that prosecutions were now the responsibility of a Director of Public Prosecutions although the Attorney-General was answerable to Parliament for him. Since March 1972 there had not been any parliamentary questions on the failure to prosecute.

The respondent Government submitted that the interrogation of suspects had to be conducted in accordance with the law and if any member of the security forces assaulted or otherwise mistreated anyone in custody he would be liable to immediate prosecution.

The respondent Government referred to the Attorney-General's directions of 15 June 1972 to the Director of Public Prosecutions (1) and submitted that they were being acted upon. Between the time that the office of Director was established and November 1973, there had been 682 complaints of assaults by the security forces which had been sent to him by the police for his consideration. He had given directions as to whether or not there should be prosecutions in 626 cases and 56 cases were still with the Director for his consideration and directions. In all, since August of 1971, 77 members of the security forces had been, or were being prosecuted for assault; 25 of these were for ill-treatment of persons being arrested, arrested persons, or persons in custody.

The respondent Government pointed out that the investigation of complaints and the consideration of reports took time. Further, some complaints could be described as flimsy and many did not contain all the necessary elements, particularly those of identification to give a reasonable prospect of conviction. Under English law there were considerable rights of protection against self incrimination and in the level of evidence which is required before a prosecution can be launched against accused persons. Referring to the applicant Government's submission that this procedure was inadequate the respondent Government admitted that it had happened not infrequently that a prosecution had become impossible because the men stuck together. But in the respondent Government's submission this

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(1) Annex 8 (b) to the respondent Government's observations of 13 March 1973 on the merits.

was not tolerance. Further, in other cases the allegations against officers could be found to be totally wrong. The Director also had to be alive to the danger of exaggeration and fabrication of complaints for political purposes.

(vi) Orders and regulations

The respondent Government rejected the applicant Government's submission that the Commission should give no weight to the existence of orders forbidding ill-treatment and that the existence of complaints' procedures were irrelevant. The respondent Government submitted that the Commission must take into account the existence and terms of these rules and regulations and complaints' procedures unless it were to consider that the whole thing was a sham.

The respondent Government referred to the special directives to the army and the police. They cited the RUC Code Regulation 1380 as follows (1):

"Prisoners in police custody are to be treated with the most humane consideration which their situation and safety will allow, and no harshness or unnecessary restraint is to be used towards them. On the other hand, as the escape of a prisoner may result in very serious consequences for the persons in charge of him, the utmost vigilance should be exercised to ensure that a prisoner does not escape while in police custody".

They also read the following provision from the RUC Discipline Regulation 629 (2):

"Any member commits an offence against discipline if he is guilty of:

(8) unlawful or unnecessary exercise of authority, that is to say, if he:

(c) uses any unnecessary violence or harshness to any prisoner or other person with whom he may be brought into contact in the execution of his duty or knowingly allows such violence to be used".

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(1) Annex 7 (1) to the respondent Government's observations of 13 March 1973 on the merits
(2) ibid.

The army directive on military interrogation, which was issued in February 1965 and amended in February 1967 (1) was referred to as follows:

"The following acts are prohibited -

i. violence to life and person, in particular mutilation, cruel treatment and torture;

ii. outrages upon personal dignity, in particular, humiliating and degrading treatment."

The respondent Government stated that each of these directives was in force before the present emergency commenced in Northern Ireland, but since the emergency those directives had been reiterated and reinforced by other specific instructions and directives which had been issued to the army and the police. The current army directive, which was issued in August 1972 (2) was cited as follows:

"7. Searching and sustained interrogation should be carried out in a disciplinary atmosphere, and it may in some circumstances be necessary for interrogation to be carried out by night. But no form of coercion is to be inflicted on persons being interrogated. Persons who refuse to answer questions are not to be threatened, insulted, or exposed to other forms of ill-treatment.

Techniques such as the following are prohibited -

a. any form of blindfold or hood;

b. the forcing of a subject to stand or to adopt any position of stress for long periods to induce physical exhaustion;

c. the use of noise producing equipment;

d. deliberate deprivation of sleep

e. the use of a restricted diet to weaken a subject's resistance.

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(1) Annex 7 (2) to the respondent Government's observations of 13 March 1973 on the merits.

(2) Annex 7 (3) ibid.

Proper arrangements should be made for the physical needs including food and drink, of all persons being interrogated. Female subjects must be in the care of female staff.

8. Medical examinations of subjects for interrogation are mandatory on admission to and discharge from an interrogation centre (including temporary transfers to or from a detention or other holding centre) and medical treatment is to be available as required. The medical officer or officers, who must be on call in the medical inspection room while interrogation is in progress, are to maintain a record of each person's weight as recorded on admission and discharge, with a comprehensive record of the subject's condition at each examination. All subjects in an interrogation centre are to be seen daily by a medical officer and asked if they have any complaints; any allegations of ill-treatment should be reported at once by the medical officer to the appropriate superior medical headquarters or senior responsible civil or military authority.

9. Comprehensive records, including those for periods of rest and times when food and drink is offered, are to be maintained of each subject's progress through the interrogation centre from the time of admittance to time of departure."

The respondent Government further referred to current army instructions issued to all brigades in respect of arrests as follows (1):

"Physical force should be applied only when necessary. Only such force as is reasonable in the circumstances may be used; it should never be excessive and care should be taken to avoid inflicting unnecessary injury. Restraints (bonds or handcuffs) may be applied in appropriate circumstances."

The respondent Government next submitted that on 26 April 1972 the police had been given a force order as follows (2):

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(1) Annex 7 (4) to the respondent Government's observations of 13 March 1973 on the merits.

(2) Annex 7 (5), ibid.

"It is emphasised that current instructions regarding the treatment of prisoners must always be complied with. Excessive force should not be used, nor unnecessary injury inflicted."

The respondent Government also submitted that in August 1972, as a result of a direction from the Government, both the police and the army had been issued further directives (1):

"It is recognised that persons arrested or detained in internal security operations are likely to be valuable sources of intelligence and that interrogation is often the only way of gaining it urgently. Prisoners, however, must be properly treated. Under no circumstances must there be resort to physical violence; blindfolds or hoods, standing or other positions of stress for long periods to induce exhaustion; noise equipment; deprivation of sleep; restricted diet to weaken resistance. In general, prisoners are at all times to be treated humanely. They must not be threatened, insulted, or subjected to torture or cruel inhuman or degrading treatment."

The respondent Government submitted that these directives had not only been formally issued. They had also been given to persons in command by individual senior officers.

Further, the respondent Government submitted that records were being taken, including those for periods of rest and time when food and drink is provided and the progress of the prisoner through interrogation. The introduction of medical inspection went back to about November 1971, when it was, according to the respondent Government, realised by the authorities that complaints of random acts of ill-treatment such as punching and kicking had not consisted entirely of false allegations made for propaganda purposes but that there had appeared to be cases where ill-treatment had in fact been sustained by people in custody.

These directives and procedures showed, in the respondent Government's submission, that there was an intense administrative effort directed to ensure that the persons in custody would not be subjected to ill-treatment.

The respondent Government then referred to the Attorney-General's following directive regarding the treatment of persons in custody (2);

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(1) Annex 7 (6), ibid.
(2) VR 2, p. 39

"I have told the police and the army that interrogation, whether under ordinary police powers or under the Special Powers Act, must only be conducted in accordance with law; which means that such interrogation shall only be conducted if the person interrogated is held under proper and reasonable conditions, with reasonable and proper opportunities for movement and with intervals for normal refreshment, meals and rest. I have warned that in no circumstances shall any person in custody be assaulted or intimidated and that if any person, whomsoever he may be were to assault a person in custody, he would be liable to immediate prosecution. I have moreover made it clear that if these instructions are broken and any form of physical ill-treatment is reported, the Director of Public Prosecutions will prosecute."

The respondent Government further referred to the record of a meeting in Belfast on 25 July 1972 between the Attorney-General and the General Officer Commanding in so far as it said: "The Attorney-General drew the distinction between normal arrest in which evidence was available against a malefactor for which he would stand trial: and arrest under the Special Powers Act which would be made on suspicion when he was engaged in terrorist activities and which would lead to interrogation. This was perfectly legal, provided that interrogation consisted of persistent and thorough questioning conducted in a reasonable and civilised manner, without the use of the abandoned techniques or anything like them." (1)

The respondent Government submitted that these instructions went beyond criticism under the terms of the Convention. They did not accept that these had been ignored or disobeyed although there might have been isolated cases since 1972. This did not, they submitted, create any evidence of an administrative practice and further, such isolated events were dealt with under the complaints procedure.

d) Civil remedies

The respondent Government submitted at the hearing in December 1973 on the merits, that there were before the courts in Northern Ireland many cases of persons making claims for money and settling claims. 167 persons had brought court proceedings for assault since internment began and 50 claims had been settled. Taking the 20 cases for the Commission's examination chosen as illustrative by the applicant Government, the respondent Government submitted that 12 out of these persons had brought civil proceedings in the courts and three of these cases had actually been settled.

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(1) VR 2, p. 40

In the respondent Government's submission this showed that there were effective remedies and that they were actively pursued and that there was no lack of of confidence as had been submitted by the applicant Government.

c) Revocation of Measures

The respondent Government distinguished between long and searching questioning which it considered legal and necessary in the circumstances and the five techniques which were found to be contrary to the law, and they submitted that it was only these techniques that involved the sophisticated apparatus as described by the applicant Government.

The respondent Government submitted that these techniques had been applied only during one week in August and one week in October 1971 and there had been 14 persons who had sustained that form of treatment.

The respondent Government referred to the following part of the Commission's decision in the First Cyprus Case(1) and submitted that it would apply to the present circumstances: "The conciliatory function of the Commission seems to be most faithfully accomplished if the Commission takes official note of this revocation without expressing an opinion of the legal issues in question. Indeed, such an expression of opinion, if unfavourable to the Government, might be taken to involve an abstract condemnation of measures which the Government has found it right not to maintain, and in a general way it would hardly serve the main function of the Commission, namely to assure the maximum enjoyment of the rights and freedoms guaranteed by the Convention if a Government would expose itself to such a condemnation even after having taken steps to remove causes of complaint."

The respondent Government stated that they adopted that statement in its entirety, and submitted that in the light of the clear policy statement by the United Kingdom Government the function of the Commission would best be served by taking official note of the discontinuance of the five techniques - without expressing any opinion on the legal issues raised by the techniques.

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(1) The First Cyprus Case, Report, p. 104

B. Conclusions on the Evidence

1. The Illustrative Cases

a) Cases relating to the unknown interrogation centre(s)

The cases of T.13 and T.6

(a) The applicant Government (VR 12 p. 13-19)

At the hearing in March 1975, the applicant Government listed the evidence before the Commission in the cases relating to the unidentified centre or centres in use in August and October 1971. They observed that important admissions had been made by the respondent Government in the course of the present proceedings. These admissions were that certain persons detained in the unidentified interrogation centre or centres were made to endure the so-called five techniques for the purposes of interrogation and that this constituted an administrative practice for which the respondent Government admitted responsibility. The applicant Government submitted that the task of the Commission in relation to this group of cases was confined to determining whether these methods should be regarded as torture or ill-treatment within the meaning of Art. 3 of the Convention.

However, in the submission of the applicant Government, the accounts given by T.6 and T.13 of what had happened to them described cruel treatment going well beyond anything which had hitherto been admitted by the respondent Government. Both men had described a position of great stress which they had to adopt when standing against the wall, very different from the position described in the Compton Report. Both had described painful force used against them while they were at the wall. The applicant Government also observed that T.6 had said that when given water he was not allowed time to drink it and it was spilt. T.13 had said he was left without water for so long that he thought he was going to die of thirst, and he had described hallucinations he had had at that stage. Both men claimed to have suffered extreme hardship from deprivation of toilet facilities.

Other features of T.6's case had been his claim to have been kicked and beaten and otherwise physically abused on several occasions, and his claim to have been handcuffed and hung on the wall with his toes just touching the ground.

T.13 had said that the hood was tightened on his neck on more than one occasion so that he could hardly breathe; that while hooded he was made to run along with his head down until his head banged into something hard; and that at another stage a lot of people started to beat him around the ribs and stomach with fists. He was also hit on the side of the head and lost consciousness for a few moments.

The applicant Government noted that a serious loss of weight had occurred in this case.

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The applicant Government drew attention to the medical evidence in the Compton Report that T.6 had been noted on leaving the centre as having bruising on the right shoulder and both legs; and on admission to Crumlin jail as having a black eye and contusions on his arms and chest. They submitted that no explanation had been given as to how he had come by these injuries other than that given by himself.

In relation to T.13 it had, according to the applicant Government, been put to him in cross-examination that blows to his hands while in the wall standing position were to improve his circulation. The applicant Government observed, however, that it was never suggested to him that his account of having run forcibly into a hard object while hooded, or his evidence about blows and kicks being aimed at him on another occasion while hooded, were untrue. Nor, in the applicant Government's submission, was any evidence to the contrary produced.

The applicant Government also submitted that further corroboration that force and violence had been used against prisoners at the interrogation centre or centres was to be found in the statements of T.17, T.18, T.19, T.20, T.21 and T.22.

With regard to the affidavit evidence in T.6's case of 9A and 9B, the applicant Government concluded that if the doctor's evidence was to be believed it would, inter alia, mean that T.6 refused to co-operate, that nothing was done about it and he was allowed to sit with his back against the wall and was not interfered with further. The applicant Government put the question: who was more likely to tell the truth about practices which had been described as illegal and not morally justifiable by Lord Gardiner. They suggested that the evidence of three persons who had refused to come before the Commission and allow themselves to be cross-examined should have little weight in rebuttal to the sworn testimony of witnesses who had had their evidence assessed in the normal manner.

The applicant Government then dealt with the conflict of opinion as to the seriousness of psychiatric after-effects of what was done to the prisoners in these cases. They observed that Dr. Lh. had admitted that in the cases of T.6 and T.13 he had found psychiatric symptoms, but described them as being minor and wearing off with the passage of time. Professors Daly and Bastiaans, on the other hand, had expressed the firm view that quite serious long-term sequelae were a probability in these and other cases where the persons were subjected to the practices now impugned by the applicant Government.

Finally, the applicant Government submitted that the severity of the treatment these men were made to endure had been reflected in the awards of damages made in the actions instituted by them in the Northern Ireland courts.

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(b) The respondent Government (VR 12 p.180, 187-195, 368, 390)

The respondent Government submitted that in respect of the cases of T.6 and T.13 there was no dispute that they were subjected to the five techniques. There was, however, a very great dispute over the catalogue of violence which T.6 alleged in addition to being subjected to these techniques. The respondent Government considered that his allegations were untrue and were a typical exaggeration of a false claim of violence. In the case of T.13 the respondent Government observed that he did not really allege anything like as serious violence as T.6.

With regard to 9A's affidavit the respondent Government considered that it certainly had a higher standing than paper statements, as far as evidential value was concerned, because it was a sworn affidavit. It had to be borne in mind however, that 9A had not been cross-examined.

The respondent Government then recalled that T.6 had said, in effect, that if nothing abnormal was recorded by the doctor about what was found on him when he got to prison then his allegations were untrue. To the respondent Government it was obvious from the balanced way in which Dr. M. had given his evidence that he always recorded what was found.

The respondent Government recalled that the photographer (9B) showed that T.6's left eye was black, and that the photograph had been taken after interrogation. They submitted that there was no evidence of any marks on his arms. Also, he had never asked for or complained to a senior officer or the doctor at the centre.

The respondent Government then noted that T.6 had made a complaint which the applicant Government had not pursued in their conclusions and which was refuted in 9A's affidavit that in effect this doctor had been brutal by saying, when he examined T.6 that if he needed to be dispatched he, the doctor, would be found at the country club. The respondent Government submitted that the doctor, far from being brutal and hard hearted, had in fact been rendering such assistance as he could.

Then the respondent Government found, for example, that in T.6's original statement of complaint there was no mention of water being thrown over him or of the "mythical" four men and the ill-treatment they meted out. The respondent Government also observed that T.6 had said to Professor Daly that "they were just doing their job", meaning the interrogators. In the respondent Government's submission that was an extraordinary thing to say if the man had been tortured and beaten, and they asked if T.6 was really saying that the men were interrogating him, he was objecting and nothing more happened.

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The respondent Government recalled that the Compton Committee had attributed the findings of 9A possibly to T.6's handling at the centre in the sense of moving him about. They submitted that nothing like the great catalogue of ill-treatment - which even Professor Bastiaans had agreed - could have happened without leaving marks all over T.6. Further, T.6's evidence that his face and legs were black was quite untrue. 9A had found nothing whatever which would in any way substantiate T.6's allegations of assault. Nor did the photographs of T.6 and Dr. M's examination indicate anything amounting to T.6's catalogue of injuries. This showed, in the respondent Government's submission, how little weight could be attached to T.6's account.

Finally, with regard to these cases, the respondent Government submitted that the Commission should not assume from the settlements in the cases of T.13 and T.6 that the large sums of money were in any way an admission of the assault, but much more likely would be in settlement of the five techniques having been used. One also had in T.13's case an initial wrongful arrest because the wrong form of words was used. It was pointed out that T.6 had received less than T.13 who did not allege any serious physical brutality.

The respondent Government also explained that their position concerning the five techniques was that it was not an issue that the use of the five techniques constituted an administrative practice. How it had arisen was therefore not of any importance. The respondent Government did not admit that the five techniques were acts which were violations of the Convention by public servants. In any event the techniques were officially abandoned at as early a stage as possible having regard to the enquiries by the Compton and Parker Committees. The respondent Government acknowledged that the techniques were contrary to domestic law. Finally it was not the intention of the respondent Government to employ those techniques again. Therefore, as in the Cyprus case, it was not necessary for the Commission to go into the question of whether or not the techniques were violations of Art. 3. It was sufficient to take note of the fact that the respondent Government had accepted that the techniques resulted from an administrative practice and that the respondent Government had abandoned them.

The respondent Government also explained their reasons for advising their witnesses of the security forces not to answer questions on matters concerning the use of the techniques, and the seminar referred to in the Parker Report. They said it was the concern for the safety of the witnesses involved. For the same reasons they had insisted on particular procedures for hearing their evidence. As the issue of whether or not there was a practice had been determined by their admission, the respondent Government submitted that the fact that the delegates were inhibited from fully examining this part of the case was not material to the issue.

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(o) The applicant Government in reply (VR 12 p. 424-426, 445-450, 452,490)

The applicant Government noted that the respondent Government in their pleadings on the merits of the application had phrased their attitude towards the five techniques differently. They had said(1): So far as concerns the five techniques referred to in the Compton Report the United Kingdom Government deny that the techniques, as applied in Northern Ireland, constituted ill-treatment contrary to Art. 3 or that the use of these techniques constituted an administrative practice contrary to Art. 3.

Even accepting the description of the five techniques in the Compton Report without any evidence apart from that they constitute torture and ill-treatment inhuman and degrading treatment within the meaning of Art. 3, the applicant Government repeated that the Commission had evidence in the cases of T.6 and T.13 of what happened going well beyond what was described in the Compton Report.

The applicant Government stated that this attitude of the respondent Government was of some relevance when the discontinuance argument is considered. With regard to the statement of the Prime Minister in the House of Commons, that interrogation in depth would continue but these techniques would not be used, the applicant Government observed that the Prime Minister had then contemplated the possibility that although it had been admitted that the techniques were against the law, there would have to be legislation brought in to authorise them if a future Government would decide that additional techniques were required for interrogation.

Further, in the applicant Government's submission, there was evidence that although it was stated that the techniques had ceased - and it appeared to the applicant Government that as described in the Compton Report they had - one or other of the techniques had been used on some of the victims in the present application. The applicant Government also recalled that an outraged public opinion resulted in the establishment of the Compton Committee and as that committee was sitting two further men were subjected to the five techniques in October 1971.

It was, further, not absolutely accurate to say that the techniques had been abandoned. The applicant Government pointed out that they were still in use in the British army who trained resisting them.

Finally the function of the Commission to ensure the observance of the engagements undertaken by the parties to the Convention meant that if a revoked measure was not adjudicated on

(1) Counter Memorial, pp. 42-57

it could subsequently be re-introduced, and the Commission would be powerless to carry out its functions. Furthermore, the Commission was required under Art. 31 to state its opinion. This applied to all complaints not concluded by a friendly settlement as in the Cyprus case.

With regard to the credibility of the case witnesses the applicant Government first submitted that the exposure of unlettered people to cross-examination by trained lawyers of the eminence of counsels in the respondent Government was a very severe test, and it was easy to arouse disbelief in their evidence by making them look stupid. The applicant Government therefore asked the Commission to look at the evidence of the witnesses as a whole and not to judge them by a single question taken in isolation.

When considering the cases of T.13 and T.6 the first task of the Commission was to ask whether T.13 and T.6 were subjected not merely to the five techniques but also to what the applicant Government would call conventional brutality.

The applicant Government recalled in this respect the Commission's finding in its decision on the admissibility where it said that the allegations of ill-treatment contrary to Art. 3 must be examined as a whole and the other forms of ill-treatment alleged cannot be considered in isolation from the five previously authorised techniques.

The applicant Government noted that the Commission were asked to believe that T.6 grossly exaggerated everything that happened to him. The applicant Government pointed out that T.6, when describing the treatment he received at the hands of the four men, had given a picture of conventional brutality and not a degree of brutality that one would expect to produce very severe bodily marks.

Further, one had to bear in mind that T.6 had been kept in the centre for the best part of a week and he could not know when or during what period these things happened to him.

As examples of the testing examination of T.6 the applicant Government referred to his cross-examination where it was suggested to him that the marks found on him did not bear out his evidence. In particular the applicant Government submitted that the suggestions as they were put to T.6 were likely to shake him.

The applicant Government observed that on the document emanating from the centre there was a record of injuries to T.6. Further, Dr.M. had entered up different injuries. The applicant Government suggested that if one added the two together it was not a bad catalogue of injuries on a person coming from a centre where the Commission was told there were five techniques used but no physical brutality.

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The applicant Government recalled that the Compton Commission had dealt with the matter of T.6's black eye. They said the security forces had told them that he did not have a black eye when he was leaving the centre, and the prison doctor told them that T.6 had had it when he arrived. They therefore concluded that the black eye must have been caused by accident in transit.

Considering the evidence of the respondent Government that the photographer had showed that T.6 had had a black eye on the photograph taken allegedly before T.6 left the centre the applicant Government submitted that the Compton Commission was given different evidence from the Human Rights Commission and that the Human Rights Commission now was told that the Compton findings were nonsense. The applicant Government remarked that, that was the kind of administrative enquiry put forward by the respondent Government as an adequate investigation.

With regard to the submission of the respondent Government that T.6's evidence that his face and legs were black was untrue, the applicant Government observed that the findings were that T.6 had had a black area around the left eye and bruises on his legs. The applicant Government asked how the doctor recorded that T.6 had bruises if they were not discovered.

The applicant Government also asked the Commission to consider the evidence of conventional brutality given by T.13 which the applicant Government suggested was left unchallenged because T.13, as he gave his evidence, was reliving his experience at the centre. The applicant Government remarked that all the Commission was now told was that T.13's complaints of physical violence were not as serious as those of T.6, It was also pointed out that T. 13 had been an unresisting victim but nevertheless had been beaten with fists around the stomach and made to run hooded with his head down until his head crashed into something and that he got a blow to the head and remembered nothing for some minutes after it.

The applicant Government turned to the affidavit of 9A. They noted that he said that he visited the centre from time to time, that T.6's evidence must be false because he never saw any of the alleged events happening to him. The applicant Government asked did 9A ever see things happening to T.13 and did he visit the centre often enough to be able to contradict T.13, and if so, why had he not done that.

The applicant Government pointed out that the Commission had been made to consider the allegations of brutality in isolation from the five techniques because the evidence had been withheld by the respondent Government. The Commission did not know how many techniques were taught at the seminar in April or what they were. The question arose whether when the men beat T.13 in the manner he described and T.6 in the manner the applicant Government invited the Commission to accept, they had been taught to do that as well.

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With regard to the actions for damages the applicant Government submitted that the plaintiffs went to court to get monetary relief and would be maniacs not to accept an offer out of court of as much money as they thought they would get by pursuing their cases. Further, no self-respecting government faced with allegations of the present kind would give out money to a person they believed to be a fraud defaming their security forces, because they would lose the confidence of the forces.

If there was an IRA propaganda campaign the applicant Government asked why did the United Kingdom Government not fight the cases and expose the plaintiff as a person manufacturing false charges against the security forces. The reason, according to the applicant Government, was that the respondent Government had fought the case of Moore, and the judge had believed Moore's witnesses and affidavit and rejected as untrue the army witnesses.

(d) The respondent Government in reply (VR Ix p. 490)

The respondent Government submitted that it was not right to suggest that the five techniques were still being taught in the British army. It was not the use of them that was taught but the way to resist them when other people used them.

Secondly, the respondent Government objected to the suggestion by the applicant Government that in the Cyprus case the revocation of the measures by the British authorities was made in the course of a friendly settlement. It was something that happened at the same time but not as part of the friendly settlement. In any event the respondent Government also asked whether it was really to be suggested that they were to be in a worse position in this case because they did not wait for the stage of a friendly settlement and freely revoked the measures at a much earlier stage.

b) Cases relating to Palace Barracks, Holywood

(i) The Cases of T.2, T.12, T.15 and T.8

(a) The applicant Government (VR 12 pp.19-31)

The applicant Government first drew attention to various aspects of the evidence in relation to all four cases. They drew attention, in particular, to the similarity of the allegations made and the respondent Government's denial of them.

In relation to the case of T.2 they submitted that T.2's evidence of having been interviewed by a man who had identified himself as /PO 4E/ and another detective from Omagh was borne out to some extent by the evidence of PO 4E, who had confirmed that his name was that given by T.2 and whose appearance had matched the description T.2 had given.

They submitted that it should be borne in mind in assessing the truth or falsity of the very conflicting stories of the police witnesses and T.2 himself, that if T.2's story was true he had definitely identified PO 4E and his companion as persons who had assaulted him. PO 4E had said that he had been accompanied by a CID man from Omagh but none of the respondent Government's witnesses had identified himself as such. All those who had admitted taking part in T.2's interrogation had described themselves as Special Branch men at the time, with the exception of PO 4E. The CID man from Omagh was directly implicated by T.2, however.

They pointed out that PO 4E had only been asked about T.2's case after coming to Stavanger on 2 May 1974, 2 1/2 years after the event.

In relation to the case of T.12 the applicant Government drew the Commission's attention to the fact that PO 4C (17A) was the only police officer who had admitted to having interviewed T.12. They pointed out that his evidence conflicted with that of other Special Branch men in the same party, in that he had said that he took his orders as to who he was to interview neither from the officer in charge of Holywood, nor from PO 4A, who had led the party from Tyrone, but from another officer whose identity or rank he had refused to disclose.

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They pointed out that T.12 was the only one of the four men who was said to have given any useful information. It was, they submitted, incredible that, if this was so and he had volunteered the information at his first interview, there should have been no follow-up interrogations for the rest of the day but that he should have been left to himself until he (allegedly) sent for PO 4B (17C) the following morning to give further information. PO 4B himself had confirmed this view of the situation (VR 5 I p.169).

PO 4B's story was also inherently improbable. If true it meant that T.12 had, with no prompting or persuasion, sent for him to give information which could expose him to grave danger as an informer. He had not been able to suggest any reason why T.12 should have sent for him, whom he had never known before, rather than one of the RUC men from his own area. PO 4B had said that he had never bothered to send for T.12's file to see what, if any, information he had already given. He had not spoken of having made any entry himself on T.12's file, although in relation to the case of T.2 he had said that he was meticulous in entering on the files a note of every interview he had.

In relation to the case of T.15 the applicant Government drew attention to the fact that PO 4C (2B) had been unable to explain why nobody should have interviewed T.15 before 1.20 p.m. although he had thought that the whole party of police from Tyrone, comprising five or six Special Branch men and three or four CID men could have been there by 11.00 a.m.

In this case, as in the T.2 case, PO 4E (2E) had claimed to have interviewed T.15 with a CID man from Omagh, but no other witness was a CID man from Omagh. In this respect the applicant Government observed that the evidence was that a minimum of seven (PO 4A, VR 5 II, p.277) and maximum of ten (PO 4C, VR 10 II, p.1339) police officers had travelled from Tyrone, whereas evidence had only been heard from five such persons. No evidence had been given as to what the remainder of the party had been doing in Palace Barracks. They submitted that this must give rise to a suspicion that all the persons concerned in the interrogation had not been produced despite the assurances by PO 4C (VR 10 II, p.1386) and PO 17B (VR 6, p.74).

In relation to the case of T.8 the applicant Government observed that T.8 had claimed to have recognised a photograph of PO 4B (14A) as one of the people who had assaulted him and that he had given a fairly accurate description of him.

They drew attention to the conflict of testimony between PO 12C who had said that he had interviewed T.8 from 3.15 to 3.45 p.m. with PO 4F (12D), who had confirmed that he had interviewed T.8 before lunch with PO 4A (12A) and after lunch with PO 12C, and that of PO 4C (12E) who had said that he had interviewed T.8 from 11.50 a.m. to 12.15 p.m. and 3.15 p.m. to 3.45 p.m. along with another officer whose

identity he could not remember. They observed that PO 4C (12E) had been unable to explain how the conflict as to the time of the afternoon interview had arisen.

The applicant Government also observed that PO 12C had said that he got instructions to interview T.8 from PO 17B (12B) whereas PO 4F (12D) had said that PO 4A (12A) was the only person giving instructions as to who was to be interviewed. This evidence was to be contrasted with that of PO 4C (12E) who had said that he took his orders from some other officer.

It seemed, in the applicant Government's submission, remarkable that no interview of T.8 was alleged to have taken place after 3.45 p.m. on 20 September whereas he had not been moved from Palace Barracks until 2.30 p.m. the following day.

In relation to all four cases, the applicant Government briefly described the findings of Dr. M., and Dr. I, who had examined the men on 23 September. They drew attention to the discrepancy which, they said, existed between the injuries observed by medical witnesses in these and other cases shortly after the complainants had been admitted to Crumlin Road prison and the entries in the prison medical records relating to their condition on arrival there. If the Commission were satisfied that the injuries seen by the doctors were sustained prior to admission to the prison, it was, they submitted, clear that the prison medical records were grossly inadequate. Dr. M's attitude to his duties was, they submitted, reflected in his evidence that he never concerned himself with the manner in which injuries had been sustained. No inference should accordingly be drawn where injuries were not recorded on admission. When they were recorded the true picture was usually much more serious than the records disclosed.

No other suggested explanation for their injuries had been put to the men in cross-examination nor had there been any evidence to suggest that they had sustained them other than in the way they had described. The men had undergone a medical examination and had been photographed at Cookstown on the way to Holywood. Other than the photograph showing an injury to T.2's nose, there had been no evidence about this medical examination and it should therefore be inferred that the men had been unharmed at that stage.

The applicant Government also drew attention to the offers which the four men had apparently received in settlement of their civil claims for damages.

The applicant Government submitted that the final conclusion in these cases must be either that the complainants had conspired together to swear a tissue of lies about what had

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happened to them or that a massive conspiracy had been mounted to conceal the truth, involving not only the RUC men who had travelled from Tyrone, but also those in charge in Palace Barracks - PO 17B, PO 4B, the uniformed RUC men and anybody else there on 20 September 1971. Witness after witness had confirmed in these and other cases that such assaults could not have taken place without the knowledge of those in charge.

They submitted that the evidence of the complainants should be preferred to that of the RUC witnesses firstly because the manner in which they had given their evidence established them as truthful witnesses; secondly the injuries found after their arrival at the prison did not admit of any other reasonable explanation than that given by the men, nor was there any evidence to support any other explanation; thirdly if their story were mere propaganda it was surprising that the respondent Government had done so little to clear their name. Substantial offers of settlement had been made instead and the inference was irresistible that the respondent Government itself had no confidence in the truth of the story told by the members of the Security Forces implicated; fourthly the evidence put forward by the respondent Government had been shown to be unreliable and unsatisfactory for the reasons indicated.

(b) The respondent Government (VR 12, pp. 180, 209-214)

The respondent Government accepted that having regard to the recent nature of the injuries to the case witnesses, these appeared, at first sight, to be cases which the Commission might find proved. They submitted that there were nevertheless some very strange circumstances about them which might cause at least certain doubts.

They referred to the allegations of the case witnesses and certain aspects of the evidence.

Concerning the case of T.2 the respondent Government observed that he was the only person at least of the case witnesses in the illustrative cases, to complain of having been prodded with a cattle prod at Holywood. It was, they suggested, extraordinarily interesting, bearing in mind that there was no electronic equipment whatever at Holywood, that if the prod was used on him he was apparently the only person to suffer the experience. They suggested that this might be the sort of invention a farmer who was familiar with a cattle prod might make up.

T.2 had said that considerable violence had been done to him over a great deal of his body but had not complained to the doctor at Crumlin Road, had never asked about complaining

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about the RUC and had agreed, like all the others, that his signature on the no-complaints form was his normal one. T.2 had said that the prison doctor was completely wrong about his condition on arrival at Crumlin Road and had said that he had marks on his eye and ear which were not noticed. He had argued however that he was, so far as he could see, an ordinary decent doctor. He had noticed no marks on the others on the way to Crumlin Road.

In relation to the case of T.12 the respondent Government observed that it had been shown in cross-examination that his story of having been offered money, in virtually impossible circumstances, to shoot a soldier had not been mentioned in his statement of November 1971, and neither had there been any mention of wall standing, being forced to eat vomit or, other matters. He had said that the reason for this was that he had been afraid of being sent back to Holywood but at the time he had been detained in prison under the Act and the order said so

T.12 had admitted to previous convictions for shop-breaking and larceny, obstructing the police and disorderly behaviour and had agreed that he had not been believed on oath in the past by courts and had no love for the police.

He had said that he had thought that the no-complaints form r only to food and yet had agreed that there was nothing on it to in this. His evidence had to be compared with the evidence on the other side. Two days after the events he had apparently told Dr.I, not his full story, but that he had been struck with fists on the sides and abdomen. The Statement of Claim in his civil action showed that he was claiming damages for bruising on the chest wall and right shoulder and for breathing difficulties. Nevertheless he had agreed that no medical treatment had apparently been thought necessary for him on his entry into prison, other than for his right knee about which, oddly enough, he did not complain.

T.12 had also agreed that he had told Professor Daly that soldiers had forced him to eat vomit whereas that allegation had been transferred to PO 4B (17C) in his evidence.

With reference to T.12's evidence as to the condition of the other three men on arrival at Crumlin Road the respondent Government observed that it was of interest that none of the four men had mentioned any serious injuries on the face.

In relation to T.15 the respondent Government observed that he too had signed the no-complaints form with his normal signature, thinking that it related to complaints about the particular hut only, but that he had gone on to agree that he had not asked how he could complain about treatment elsewhere.

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They further observed that he had said that the prison doctor had seen the marks on his face and would have seen his bruises if he had been doing his job properly, whereas the entry in the committal book showed that the doctor had examined him for possible heart trouble and detected no abnormality. They also referred to T.15's evidence that he had seen a mark on T. 2's face and his evidence that if there had been any bleeding he would have seen it.

In relation to the case of T.8 the respondent Government observed that his evidence was that he had not been examined by the doctor, whereas Dr. M.'s account was available. In addition they suggested that if his evidence to the effect that he had only been asked about dances and social activities were to be believed, anything could be believed. It had emerged, however, from the evidence about the proceedings before the Commissioner considering his internment that the allegation on the basis of which he had been interned was that he, T.2 and T.15 had been involved in training with rifles and that he and T.2 had blown up a telephone exchange.

The respondent Government also observed that T.8 had changed his account of his reasons for signing the no-complaints form. He had first said that he had not read it because he had been told it had nothing to do with that department, yet he had not asked how he could complain about the relevant department. He had then said that he had been given to understand that it related to food and, when it had been pointed out to him that there had been nothing on the form to indicate this, had then said that he had signed it because he was glad to get out. When it had been pointed out that he was going into detention his evidence had become completely nonsensical and he had started saying that he thought he might be going home under detention. Nevertheless he had been put forward as a witness of truth to be believed.

(c) The applicant Government in reply (Vol 12, pp. 452-459)

In relation to the case T.2, the applicant Government observed that T.2 had not said that he had complained to the prison doctor of marks on his eye and ear. Moreover, an injury to his eye had been recorded in the prison record.

In relation to T.12, they observed that he had not admitted telling lies on oath before, but merely that he had been convicted of crimes and disbelieved on oath. They also pointed out that, in addition to the evidence about ointment for his knee, T.12 had said that the prison doctor had said that he should be given Panadols which he had not received.

In relation to T.8, the applicant Government referred to T.8's evidence that he had been asked about a Republican Dance and accused of being in the IRA. They also

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referred to the evidence of PO 12C and PO 12D to the effect that T.6 had been asked about the dance. They submitted that this showed that T.6's evidence which had been held up to ridicule, coincided with that of the Special Branch men. They suggested that his reasons for signing that no-complaints form were, if looked at closely, perfectly coherent. They observed that a lot of witnesses had been asked why they had refused to sign these forms but suggested that anybody who had been ill-treated by the police would hesitate to complain to them about it at the end of the ill-treatment. They also observed that the respondent Government had appeared to suggest that the service of a detention order would in some way protect a person from the Security Forces. They referred to the evidence of T.13 that a hood had been put on him after service of the detention order as showing that it did not.

They submitted that allowances should be made for the fact that the case-witnesses were ignorant countrymen who had been dealt with severely by an experienced Queen's Counsel, although, they submitted, they had not emerged from these tests with any lack of credit. They suggested that the important feature of these cases was the fact that the four men had been found on the very day of their discharge to Crumlin Road Prison to have marked and noticeable signs of injury on them. When they had been given a proper and full examination later on, the injuries had been found to be quite extensive and serious and there was no explanation for them.

(ii) The Cases of T.9 and T.14

(a) The applicant Government (VR 12 p..31-41).

The applicant Government briefly outlined the events of these two cases, and first summarised T.14's allegations of ill-treatment. They mentioned the medical report of the Royal Victoria Hospital which referred to "massive bruising" of both legs.

Against the respondent Government's contention that T.14's story was a complete fabrication the applicant Government pointed at the evidence of the arrest party (19E and 19F) like that of the MP on duty in the reception office at Palace Barracks (13E) as not being without importance. These witnesses had in the applicant Government's submission been able to confirm that neither of the men had had bandaging on their legs, but that their whole demeanour had been normal. Yet on the following day when they were received into Crumlin Jail Dr. M. had found such injuries on T.14 that he had to be carried to the hospital wing and thereafter could only get around for some time on crutches or in a wheelchair. The applicant Government submitted that the explanation for this "remarkable transformation" was given by T.14. himself.

They drew attention to the fact that no suggestion of any alternative explanation for T.14's condition had been put forward. His interrogators had confined themselves to denying that he was subjected to any form of torture or ill-treatment.

The applicant Government suggested that the evidence of the army and police witnesses was unsatisfactory and unreliable and they pointed at a row of inconsistencies in the evidence. T.14 and Dr. M. had said that T.14's legs had been bandaged after admission to Crumlin Jail (the Monday evening). Then the army and police witnesses gave conflicting evidence. A special Branch officer (19D) said that he saw bandages on T.14's legs on the Sunday and the medical orderlies said that bandages were applied on Monday in Palace Barracks. The military policeman (13C) on duty when T.9 and T.14 were discharged from Palace Barracks said they were quite normal when leaving. This evidence could not be reconciled with Dr.M's description of T.14's condition on reception at Crumlin Jail.

The police evidence was further to the effect that T.14 and T.9 were admitted to Palace Barracks at 2.00 a.m. They said that T.9 was first interviewed at 4.50 a.m. and T.14 not until 12.10 p.m. In the applicant Government's

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submission T.14's own evidence that his interrogations began not long after admission was inherently more probable and derived support from the evidence of 19A who claimed to have taken part in the interview commencing at 12.10 p.m. He said that it had been an ordinary interview and his impression had been that a previous interview had taken place at which someone had taken T.14's particulars and filled in the proforma.

The applicant Government pointed at the inconsistency in the evidence of 19A and 19D with regard to their interview with T.14. 19D had said that he had recognised T.14 and T.14 had recognised him. 19A however had been definite that at the first interview T.14 had not given any sign of recognition of 19D. Further, 19C had said that on Monday (16 October) at 11.15 a.m. he had gone to see 19D who was interviewing T.14 about an arms dump. 19D had, however, denied that T.14 had given him the location of an arms dump.

With regard to T.9's case the applicant Government noted that, as in T.14's case, the evidence tendered by the respondent Government was directed towards showing that his story was totally false.

The applicant Government made the point that it had been claimed (by 19C/19D/19E) that everyone who took part in the interrogation of T.9 and T.14 was produced before the delegates, save the officer who had emigrated to New Zealand. They noted that no witness had been called to give evidence as to the true circumstances under which T.9 sang for the security forces in Palace Barracks.

The applicant Government remarked that 19I was put forward as the first person to interview T.9 in the early morning of 17 October and T.9 had denied involvement with the IRA. They found it remarkable that T.9 had then been left until 5.00 p.m. with no further interrogation. They noted that 19G had regarded T.9 as a "stage I[illegible]" and that 19G had said that any assaults or violence would "most certainly" have been overheard by officers in other rooms in the Barracks. The applicant Government also attached weight to the evidence of 19H. He had said that T.9 had not implicated himself at all until the interview (the 4th) between 5.15 and 5.30 p.m. on the Sunday night when T.9 was said to have given information about offering to supply T.14 with guns. The witness had, however, not been able to explain why T.9 should deny stoutly all day that he was involved in any IRA activities and suddenly volunteer such information without any pressure being applied.

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The applicant Government also pointed at certain contradictions in the testimonies of the security witnesses. First, T.9 among others had spoken about hearing the sound of gunfire after being threatened with revolvers, and 13G had said that noise of gunfire could be heard within the barracks from a rifle range 500 yards away. 13H, however, said he had never heard rifle fire in the background in Palace Barracks. With regard to the above-mentioned interview conducted by 13H at which also 13J had been present, it was noted that, according to 13J, T.9 said nothing about gunrunning. The same contradiction emerged in the evidence of 13K and 13L who had jointly carried out the last two interviews with T.9. 13K had said that T.9 gave no useful information and did not incriminate himself. 13L, on the other hand, said that T.9 had admitted to having made the arms deal with T.14.

The applicant Government noted that statements of complaint were made immediately by T.9 and T.14 after arrival in Crumlin Jail. T.9 had been in the prison and T.14 in the hospital wing and they had had no means of communicating with each other. Yet their stories were remarkably similar in their description of the conditions under which they were detained in Palace Barracks, and of the treatment meted out to them while in custody.

As to the medical evidence in these cases the applicant Government observed that Dr. M.'s entry in the prison record book was dated on the very day the men were transferred to the prison and that Dr. M. had thought he would have been sent for specially by the medical orderlies because of T.14's condition. It was further pointed out that Dr. M. had said that his own use of the word "severe" describing the bruising in T.14's case was a "very vast difference to 'bruising'". Apart from the evidence that two medical orderlies had helped T.14 to the hospital wing, the applicant Government also drew attention to the evidence of T.35. She had seen T.14 on 22 October who was sitting on the side of the bed in great pain not being able to move. With regard to Dr. S's findings of swelling and bruising on T.14's arms the applicant Government remarked that Dr. M.'s suggestion that this might have been caused by the medical orderlies supporting T.14 into the hospital wing seemed quite unlikely when Dr. S found such marked signs of injury the following day. With particular regard to the deep discolouration seen by Dr. S on the inner aspect of T.14's legs, the applicant Government noted that T.14 had given a description of a Special Branch man making him stand spread-eagled against the wall, then questioning him while standing behind him and kicking him at the inside of his legs all the time.

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Concerning the medical evidence in T.9's case the applicant Government recalled that Dr. 9, apart from giving evidence as to his findings, also had stated that the injuries he found were consistent with T.9's story and that in four days marks or bruises could fade considerably and tend to disappear.

The applicant Government finally noted that other medical witnesses - Drs. I, Lh. and K. - confirmed that it was possible severely to treat people in a manner that would leave no bruising.

The applicant Government observed that T.14's and T.9's actions for damages for assault, battery and unlawful imprisonment had been settled on terms that they were awarded:- T.14 £2,250 and T.9 £1,975.

In their final conclusions on these cases the applicant Government asked the Commission to bear the following matters in mind: 1) The defence story commenced with the inherent improbability that T.9 and T.14 were arrested by accident; 2) both men were normal in appearance, walked smartly and climbed into the "pig" without difficulty; 3) they were searched thoroughly and nothing unusual was detected save the elasto-plast bandage on T.9's heel; 4) they were sent under close custody to Crumlin Jail and on arrival were found to have very substantial marks of bodily bruising - and T.14 had to be helped to the hospital wing; 5) full medical examination within a matter of days disclosed massive injuries in T.9's case. It was completely consistent with their own account of how they came by these injuries and no suggestion had been made as to any other manner in which they could conceivably have come by their injuries; 6) in their actions for damages they were agreed substantial sums in circumstances in which, if the U.K. defence was to be believed, they were merely lending themselves to a lying IRA propaganda campaign against Palace Barracks and the RUC. 7) Dr. Lh.'s conclusions as to their truthfulness.

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(b) The respondent Government
(VR 12 p. 180, 197-203)

The respondent Government accepted so far as T.14 and T.9 were concerned that, having regard to the very recent nature of their serious injuries, they appeared at first sight to be cases which the Commission might find proved. There were, nevertheless, in the respondent Government's submissions strange circumstances about them which caused at least certain doubts.

On general issues of credibility T.9's story seemed to the respondent Government "extraordinary". The respondent Government tested his story on his statement that the account of how he received his injuries was just as truthful as his account of having met T.14 quite by accident in the bar on the particular night. It was pointed out that T.9 had travelled 120 miles for a social drink and landed in one of the hottest spots in Belfast, and again "most extraordinary" not intending to stay over the night he happened to have his toothbrush with him.

Also T.14 had, in the respondent Government's submission, said some very extraordinary things. T.14 had explained that he had given names to his interrogator at random from a book and that his story about knowing an arms dump was entirely made up. The respondent Government noted however that it had been pointed out to T.14 that in his statement to his solicitor he had said that he could not say anything about gun dumps because he knew nothing about them. The same type of inconsistency appeared with regard to his evidence that he had admitted to having committed various acts of violence, but only said these things under torture. The respondent Government compared this account with what he had stated to his solicitor and they noted that nothing was said there about having only admitted these acts under torture. The respondent Government then pointed to T.14's comment on the "extraordinary episode of T.9 cheerfully singing the well known song Santa Lucia after he was being beaten, held down and then applauded by his torturers". T.14 had said that it had not made sense and the respondent Government submitted that this was not an unreasonable comment for the Commission to accept. They further pointed out that T.14 gave evidence of shots being fired in the barracks, though apparently nobody came to find out what was going on. T.14 had also signed the "no-complaints form" when he left. The respondent Government noted that all the witnesses had given different accounts for signing that form. T.14's account had been that he thought the complaints only referred to the people at the table. The respondent Government observed that T.14, as the others, had not then gone on to ask how to lodge a complaint against the people who had beaten him up.

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As to T.9's injuries the respondent Government pointed out that no pinmarks had been found on his legs and that he was not sent to hospital as one might have expected if he had been beaten in the way alleged. The Government then drew attention to Dr. 9.'s examination of T. 9 some four days afterwards. They pointed out that the doctor had agreed that there was no injury to the back of T.9's head or to his genitals consistent with what one might expect. The doctor also said that the injuries could have been sustained in a fight, and according to the respondent Government it was not possible to control what happened in the cells of the prison.

The respondent Government then recalled that T.9 had claimed to have been beaten and kicked by 14-15 men. He had also said that he had made no exaggerations or additions to his statement that he had had difficulties in circulating as a result of his experience, and yet, in the respondent Government's observation, one sees that T.9 never went to visit his doctor in Dublin and that he resumed normal work. T.9 had further been one of the people who had talked about drugs being put in his tea, and the respondent Government recalled that Dr. Lh. gave evidence that there was no known drug which could produce the type of effect that T.9 had described which would be consistent with his story. The respondent Government further submitted that T.9 had kept adding fresh allegations of violence as he went along giving evidence. He had said that pins were stuck in his legs. Another aspect of T.9's case was that the two had signed the no-complaints form, and the respondent Government found his explanation interesting. He said he last thought he would not get out alive if he did not sign. The respondent Government observed, however, that the detention order had been served on him before he signed the form so he had known that he was going to be taken away to a place of detention. He had understood clearly that "no complaints" related to anything that had happened at Palace Barracks. He had also agreed that his signature looked like his normal one.

The respondent Government then compared T.9's account of the singing incident with what he said in his statement to his solicitor. They found that there was nothing in the statement about being tortured in order to sing. It was observed that T.9 had never made any complaint to the doctor at the centre. He had also denied making any admissions which the delegates heard about from the officers who interviewed him. Finally, the respondent Government compared T.9's present allegations with his complaints in his civil action and they found nothing about a chipped cup being forced into his mouth, food being forced into his face, or pins being stuck into his legs.

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With regard to the settlements in the civil actions brought by T.9 and T.14 the respondent Government submitted that the fact that damages had been awarded was not evidence of admission of the cases. Settlement could be reached for a number of reasons. One reason was that it could be cheaper to settle the case and avoid to increase expenses by bringing in a lot of witnesses, particularly in the County Court where the limit was £300. Another aspect of the matter was the probability that the plaintiff might succeed in his causes of action. Finally the fact that a settlement was reached meant that the plaintiff deprived himself of conclusive evidence as to his allegations in the present case.

(c) The applicant Government in reply (VR 12 p. 459-461)

The applicant Government observed that the Commission had been asked to evaluate the evidence on the basis that T.9 and T.14 were dangerous gunrunners. The applicant Government stated that the Commission had also been told that any denials and chance meetings are untenable. This seemed however to have been accepted by the witness 17B, the head man in Palace Barracks and the Commission would therefore have to choose between the final verdict on T.9 of the respondent Government and Inspector 17B. The applicant Government pointed out that this "dangerous gunrunner" had been kept in custody not as one might expect for a few years but for seven weeks. That seemed to fit in better with a "stage Irishman" coming to Belfast to entertain in the pubs and then the security forces treated him brutally and he had to be kept in for a while so that it will look as though they had some justification for what they did to him.

The applicant Government submitted with regard to Dr. 9's examination of T.9 that this had not taken place four days after his release from Palace Barracks but slightly less than three days. They also pointed out that Dr. 9. had said that one could think of hundreds of ways in which the injuries might have been caused, and that Dr. 9. had believed T.9's story because of his experience of having seen so many others. The applicant Government had then noted that the respondent Government appeared to be asking the Commission to disbelieve T.9 because of the contrast between what Dr. M. found and what was found later. In the applicant Government's assessment of the evidence one saw that Dr. M. found more injuries on T.9 than his own doctor, Dr. 9., found three days later, and Dr. 9. had thought that some of the bruising may have disappeared in the meantime.

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Finally, in reply to the suggestion that the men had lambasted one another in the prison, the applicant Government stated that, unless T.9 had pursued T.14 over to the prison hospital for the purpose, for which there was very little opportunity in this case, there was an inherent unlikelihood of that explanation. The applicant Government also submitted that, if any support for that kind of inference could be found, evidence about it would have been produced.

(iii) The case of T.1

(a) The applicant Government (VR 12, pp. 41-48)

The applicant Government first gave a summary of the relevant facts.

They also pointed out that various witnesses, some of minimal importance, such as the arresting soldiers in the case of T.14 and T.9 against whom no allegations of ill-treatment were made, had been produced by the respondent Government throughout the case, but that Major M. who had been clearly identified by T.1, and whose statement - if T.1's evidence were true - threw a very significant light on the whole attitude of the Army towards the minority at the time, had not been produced, nor any reason given why he should not have been produced.

They pointed also to T.15's case, in which special evidence had been called solely to meet his charges of harassment, whereas no such evidence had been called to refute what T.1 had said in this respect.

They pointed out that there had been no suggestion at any time by the respondent Government that the complainants should be given an opportunity to identify the persons against whom the charges were made, either for the purpose of the Strasbourg proceedings, or for civil or criminal or disciplinary proceedings at home.

They further pointed out that the three Special Branch men, PO 1B, 1C and 1D, who had given evidence that they were the only Special Branch men on duty in Palace Barracks in the early hours of the morning of Wednesday, 20 October 1971, when T.1 had been brought in for questioning, had all denied the allegations of ill-treatment by T.1, while PO 1B had said that at the end of his interview with T.1 he had asked him whether he had any complaints as to how he had been treated. This, they submitted, would have been an extraordinary thing to do when, according to the witness's own evidence, nothing unusual had happened beyond the ordinary question-and-answer interview.

They pointed to the difference between the witness PO 1B, who had said that Palace Barracks was a quiet place with no noises coming in from outside as a rule and that of PO 17B's *

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* PO 17B/12B/13G.

evidence in T.8's case, when he mentioned the nearby rifle range from which gunfire could be heard; other evidence that there was a football field nearby from which shouts and cries could be heard, and PO 4B's * evidence in T.2's case that there was constant noise of aircraft overhead.

They further observed that PO 1D had said that he was the first to interview T.1 (from 3 to 3.30 a.m.), that he had a personal discussion, but that he did not fill up any form about him, which evidence did not correspond with the general police evidence that a "pro forma" was filled up at the first interview of a person brought in for questioning

They submitted that none of the suggestions that false complaints had been made against the security forces because the complainant was an active IRA man, or that he had had a motive for taking part in a false propaganda campaign against the RUC or had given information to the police about the IRA and then invented the "torture" story to excuse what he had done held good in the case of T.1. They stressed that T.1 had been cleared of any guilty involvement in IRA activities and had not been charged or interned at any time - nor had it been suggested that he had given the police any useful information. In this connection they referred to the evidence of PO 1A that T.1 had told him quite a lot, which when he had been pressed had only shown harmless contact between T.1 and known IRA leaders arising out of threats made against T.1 by IRA men.

They pointed out that consequently there was no apparent motive put forward for T.1 to invent a lying story about torture or ill-treatment and pursue it to the lengths of a formal complaint against the police, a civil action for damages and participation in the proceedings brought in Strasbourg.

They further stressed that T.1's account of what had happened to him was corroborated by Dr. 4's findings, made only the next day after his release from Palace Barracks.

They then stated that no evidence whatever was given about the police investigation into his complaints, save T.1's own evidence that he had been told by the RUC that it had been investigated and nothing had happened - "he had not been beaten". They submitted that he was never given the opportunity to identify the men he said took part in the assaults, nor that the evidence of his doctor, Dr. 4, was sought, which would have made it clear that he had been the victim of a serious assault of some kind.

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* /PO 4B/2A/12G/17C/14A/

They further pointed to this case as an illustration of the total inadequacy and ineffectiveness of the complaints procedure.

They quoted a passage from page 43 of the Intimidation Report in connection with T.1's case and observed that the major number of complaints were found to be directed against certain units, which they suggested were chosen, as a matter of deliberate policy, to go in and deal with particular places regarded as trouble spots.

They further suggested that the evidence given in this report in relation to the New Barnsley area, near which T.1 lived, gave an explanation of what had happened to him and corroborated what he had said in relation to his conversation with Major M.

(b) The respondent Government (VR 12, pp. 207-209)

The respondent Government also first gave a summary of the relevant facts.

They mentioned the "extraordinary encounter", as T.1 himself had agreed, with the man who had not been satisfied with being connected with MI 5 or MI 6 counter-intelligence, but who announced to him in James Bond like fashion that he was MI 12, something T.1 had said that even he did not really believe and found a bit much. They further mentioned that in the statement made to his solicitor a month afterwards, there was nothing about this man posing as an agent of MI 12.

They also dealt with T.1's allegation that he had been punched and beaten and passed blood. They pointed out that in cross-examination T.1 had said that the injuries had a lasting effect, but that Dr. 4, his own doctor, had said the marks were superficial, that he had recovered in a week and that there were no after-effects. They further stated that Dr. 4 found no traces of blood and that there was nothing to suggest that he had passed blood in the short time before he had seen him.

What was, they submitted, more remarkable was that T. 1 had gone on to say that he had had a recurrence of his rectal bleeding, although the only visits he had ever paid to a doctor after that had not been for that at all, as might have been expected if he had had a recurrence of this very unpleasant condition, but for colds.

They said that T. 1 had agreed that his signature on the "no complaints" form was his normal signature although he had been beaten. When his account of his reasons for

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signing it had been tested, he had agreed that he had been told that he would be released before he had signed this form. They also pointed out that T.1 had said that signing the "no complaints" form had only meant that he had not been beaten by the RUC. There was no mention of this in his statement to his solicitor. They suggested that T.1 was possibly afraid of reprisals and of what he had said to the Special Branch. Though he had said nothing directly involving the IRA, he had given shelter to a man called S.

They also referred to the suggestion that the Report on Intimidation in Housing in some way corroborated T.1's account of harassment. They referred to a passage in the report describing "apparently arbitrary harassment in home and street ..." and suggested that if this meant that when soldiers were trying to root out members of the IRA from a district which was an IRA haven (as referred to in an earlier passage of the report), everyone in the district was likely to suffer inconvenience, it was no doubt true. No doubt it was also true that an experienced unit like a parachute unit would be chosen for such a district. They submitted that these words in their context were no justification at all for the suggestion that had been made that soldiers were sent into a district not to root out terrorists but to harass the inhabitants at large.

(c) The applicant Government in reply (VR 12, pp.462,463)

In relation to the respondent Government's comments on the medical evidence of Dr. 4 and T.1's allegations in this respect they referred to what T.1 had said at the hearings in Strasbourg from 25 February, (VR 4 I, pp, 90, 96). They stressed that T.1 had said not once but twice that he did go back to his doctor about the bleeding from the rectum. They also pointed out that Dr. 4 was not asked about subsequent visits but dealing with the physical injuries he said "T.1 recovered in about a week", which conclusion he could not have formed unless he had seen the man again after the first visit.

Referring to the 9 raids on his house after the events at Palace Barracks, they suggested that it was too much of a coincidence that T.1 was a man joining in presenting this claim before the Commission in Strasbourg. In this respect they referred to what Major M. had allegedly said to T.1 when he had complained about his treatment: "If we are tough enough with people like you, then you will turn on the IRA and we will defeat them in that manner".

(iv) The case of T.4

(a) The applicant Government (VR 12, pp. 49 to 52)

During the hearing of March 1975 the applicant Government first referred to the facts of the case and the allegation made by T.4

In addition, they stressed that Dr. 6 had taken photographs of T.4's injuries because of the profound impression they had made on him, that Dr. 2 too was horrified by what he found and had further photographs taken as a permanent record and that he felt there was a possible connection between the injuries inflicted on T.4 in November 1971 and a stomach haemorrhage suffered by him in 1973.

They underlined the different explanations of T.4's injuries, which were suggested to the witnesses by the respondent Government. Thus it had been suggested to T.4 and to Dr. 2 that he had received his injuries "perhaps by being hit by the bonnet of a car on one side and by the bumper on your knee, alternatively by a heavy fall on his side on some board flat or hard surface", and to Dr. 6: torture or ill-treatment inflicted by the IRA after his release from Palace Barracks.

They further referred to the evidence of Witness 7C, who had commenced by saying that the soldiers had orders to be polite - "if we go around throwing our weight around and using the power which military force could use, we are only going to turn those people who could be friendly towards us, against us". He conceded later that the soldiers sometimes swore out loud and used verbal abuse. There had been no army investigation into T.4's complaints, but he (7C) had made "several statements" about the case - presumably to police investigators.

They also referred to the evidence of PO 7A, that he interviewed T.4 in Palace Barracks "probably in the afternoon between 1.30 and 5 p.m." and to the evidence of Witness 7B that T.4 was not arrested until about 4 p.m., had to be taken to Musgrave Street Station, where he was kept for some time and then had to be taken to Palace Barracks (min. 25 to 30 minutes).

They submitted that PO 7A's estimate of the time of the interview was incorrect and concluded that the "failure to specify the exact time of the interview - bearing in mind the stated practice whereby such matters were carefully noted - must cast doubt on the reliability of his evidence".

The applicant Government summarise their final conclusions on T.4's case in the following way:

-1. He suffered a massive degree of bodily bruising - the colour photographs put in evidence tell their own tale in this respect.

-2. While he alleges brutal treatment against the soldiers who took him in to the Barracks, which, if his evidence is accepted, must have caused much of the bruising later found

all over his body, he also complained of torture and ill-treatment once he was in the custody of the RUC in Palace Barracks.

-3. The only alternative explanations suggested for T.4's injuries are too far-fetched to merit serious attention.

-4. If it is alleged that T.4 was an IRA man actively involved at that time in terrorist activities and now lending himself to an IRA propaganda campaign, one would expect all this to be put to him in cross-examination. No such case was made and no evidence was given to suggest that he was in fact involved with the IRA at that time. On the contrary, Special Branch officer PO 7A said he was quite satisfied that T.4 had no such involvement and he was accordingly released.

-5. T.4 says he was interrogated on at least three different occasions. The respondent Government have put forward Special Branch evidence to the effect that he was interviewed once and once only. If T.4's evidence is accepted as true, then it means that those who were in authority in Palace Barracks are deliberately withholding information about the later interviews and the officers who took part in them.

(b) The respondent Government (VR 12, pp. 204 to 207)

The respondent Government stressed that T.4 had not complained of his treatment either when he got to Musgrave Street Station, or when he got to Palace Barracks, or when he was leaving there, and that he had agreed in cross-examination that he was neat and tidy when he arrived in Palace Barracks. They submitted that his evidence that it had taken something like 20 minutes to go from Musgrave Station to Palace Barracks was utterly untenable.

They further submitted that Witness 7C, the officer who gave evidence that he had seen T.4 on the following day walking about quite normally and had spoken to him, appeared to be telling the truth because T.4 did not make any allegations against him. They considered this evidence to be crucial to the issue of credibility, as T.4 said he had spent about one hour, from 9.00 to 10.00 with Dr. 6 and he had been from about 11.00 to 13.00 in his solicitor's office.

The respondent Government also referred to the date on Dr. 6's medical report, which was typewritten 3 November on the copy submitted, whereas on Dr. 6's copy the typed figure of 2 or 4 August was changed by hand into a 3. They suggested that when he submitted his report somebody had spotted the mistake in the date and the solicitor had then said, " he (T.4) says he saw you on 3 November " and so Dr. 6 had put in the 3 afterwards.

They further pointed to the conflict between, on the one hand, Dr. 6 's evidence that he had prescribed a pain-killer and had told T.4 to come back in a few days time, but that he did not need hospital treatment, and, on the other hand, T.4's evidence, that "Dr. 6 said the bruises were very bad" and he would have to go to hospital.

They further relied on Dr. 2 's evidence, who had agreed that several strokes would have to be devastatingly heavy to cause these injuries, and that it would be very remarkable if six or seven people in a moving vehicle hitting and kicking him would have been able to land blows on that one side on which all his injuries were shown.

(c) The applicant Government in reply (VR 12, pp. 463-465)

The applicant Government made further submissions regarding T.4's evidence, that it took about 20 minutes to go from Musgrave Street Station to Palace Barracks.

They recalled his evidence that the soldiers had deliberately driven slowly so that they would have time to take it out on him and that T.4 had spoken of a distance between two or three miles. They quoted Witness 7B who said that the journey took 25 to 30 minutes (1).

They further quoted Witness 7E who replied in cross-examination to the question whether the beating described by T.4 could or could not easily have been done, having regard to his position with about seven other men in the back of that vehicle: "It could be easily done if someone wanted to do it, I presume", and later "But there were only five or six in the back".

That the injury would mainly be concentrated on one buttock, if a soldier sitting on one side of the Saracen were doing all the beating, was exactly what would happen, the applicant Government suggested.

The applicant Government submitted that the straight line, in which the heavy bruising ends was consistent with T.4's explanation, and they referred to the photographs which showed, that the back and the legs also suffered severe injuries. These were quite inconsistent with the suggested explanation of being hit by a motor vehicle, because they even extended into the scrotum.

As to the change of date in Dr. 6 's report they referred to his evidence in cross-examination, that he was quite positive he had seen T.4 on 3 November between 9.00 and 11.00 in the morning. They also referred to

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(1) According to the map of Belfast, the distance is about 4 miles (6 km)

Dr. 2's evidence, that he saw him the next day in hospital and ordered him to be kept there, that he had pictures taken of him, and that he had sent the report about T.4 back to Dr. 6.

The applicant Government submitted that none of that could have happened unless Dr. 6 had seen him the previous day because that had been the only opportunity for Dr. 6 to see him, and have him back in the afternoon, and have special photographs taken.

As to the army officer who said he had seen T.4 the next day after his arrest, they submitted it may have happened, but T.4 may have forgotten it. The two phrases: "How are you? I am surprised to see you", etc., could not be turned into a conversation and into stopping and having a talk, as was submitted by the respondent Government.

(v) The Case of T.10

(a) The applicant Government (VR 12 pp. 53-57)

The applicant Government first briefly reviewed the evidence in this case. They observed that the respondent Government's defence to his allegations had been one of total denial and that every effort had been made to discredit them.

They observed that PO 14I had had no recollection of T.10's having given the names of persons implicated in IRA activities although PO 14C, who had been with him, had said that he had done so. They suggested that PO 14D seemed to be identified by T.10 as the officer whose name he thought he knew, and if so was directly implicated by T.10 in part of the assault on him. He had said nothing to corroborate PO 14C's claim that he had raised with T.10 at subsequent interviews the names of IRA men given by him at his first interview. They said that the evidence of PO 14B had been that T.10 had given no information at his last interview, when he had been accompanied by PO 14C, and had not disclosed that he knew any persons in the IRA. They suggested that this conflicted with PO 14C's evidence that he had raised with T.10 at every subsequent interview the names he had given at the first interview.

The applicant Government observed that PO 14F and PO 14H, the RUC men detailed to see T. 10 about his complaints, had not heard about the matter until the late summer of 1972, and that PO 14H had been appointed to investigate the complaint around July 1972 whereas the complaint had been made shortly after T.10's arrest in November 1971. They observed that PO 14H had been unable to explain why nothing should have been done for this time and had said that T.10 could have been interviewed in Long Kesh at any time up to his release in August 1972.

They drew attention to the fact that there was the sworn testimony of T.10 that he had been attacked and beaten at Palace Barracks on 18 November 1971, together with uncontrovertible evidence that, on arrival in Crumlin Road Prison under police and army escort the following day, the prison doctor had noted signs of bleeding in the right ear, suggesting perforation of the ear-drum. Findings by T.10's own doctor on 20 November, the day after his transfer to Crumlin Road, had confirmed the existence of a perforated ear-drum caused recently and traumatically and he had also found bruising of the head, body and legs indicative of very severe assaults. T.10 had made his complaint immediately and instructed his solicitor to bring charges against PO 14A (4B)

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and had explained why he had withdrawn these charges. The account he had given to his doctor and solicitor at the time had been the same as the account given to the Commission's delegates.

The applicant Government suggested that in endeavouring to assess whether T.10 had been telling the truth or not, the Commission would derive help from its conclusions as to the truthfulness of PC 14A (4D) in other cases, as also from their conclusions in relation to PC 14D who had been heard in another case. They referred to the inconsistency between the evidence of PC 14D and the other Special Branch witnesses. They suggested that it was inherently improbable that if, as had been alleged, T.10 was an active IRA man, he would disclose the names of other IRA men. They recalled that evidence had been given on behalf of the respondent Government, that all IRA men were "indoctrinated in silence" (1). The fact that he was firmly believed by the Special Branch to be an active IRA man made it all the more likely firstly that they would think he deserved any treatment they could give him, no matter how brutal, and secondly that they would look on him as a person possessing valuable information which he must be persuaded to divulge during the short period of 48 hours for which he would be held for interrogation.

(3) The respondent Government (Vol. 12, pp. 130 & 222-225)

The respondent Government submitted that this was one of the cases which was either not proved or shown to be false. They observed that T.10 had just completed a sentence of 10 months' imprisonment for handling the proceeds of a bank robbery and that he had refused to comment when asked what the purpose of that robbery had been.

They pointed out that an injury to his right ear had been recorded although he had alleged that he had been hit on both ears. They observed that he had been described as an explosives officer of the IRA and said that it would have been put to the doctor, had he been able to give evidence, that damage or perforation to the ear-drum could be caused by the setting off of explosives.

T.10 had said in his evidence that a person named "M" had hit him more than PC 14A (4D, and yet he had summoned PC 14A (4D). No mention had been made of "M" in T.10's written statement and the summons against PC 14A (4D) had been withdrawn. In this connection the

(1) This apparently refers to the evidence of D.C.P. 1, Vol 10 H, p. 326

respondent Government drew attention to PO 14A (4B)'s evidence to the effect that he had been a butt for complaints by the IRA and to the chronology of T.10's complaint against him. They observed that T.10 had apparently been advised to proceed in November 1971, the summons had been issued on 9 February 1972 and on 21 February 1972, very shortly before the hearing was due, had been withdrawn. They observed that he had said that he feared harrassment although this had apparently not been the reason he had given to his solicitor for withdrawing the summons. He had been interned at the time. T.10 had signed the no-complaints form at Palace Barracks although he knew that he was going into detention. It was clear that there had been a full police investigation into his complaints but T.10 had not replied to any letters. The complaints had been dropped in May 1972 and he had never sued anyone.

(c) The applicant Government in reply (VR 12, pp.465-466)

The applicant Government suggested that there had been a conflict in the police evidence as to whether T.10 was an explosives officer of the IRA. PO 14A (4B) had said that he was, but PO 14D, who had interrogated T.10, had not been prepared to go so far although he had said that he thought he had been concerned in explosives. They observed that it had been said that if Dr. 7 had been able to give evidence it would have been suggested to him that the perforated ear-drum would have been caused by an explosion. This could have been put to Dr. M., who had given evidence in other cases. None of the Special Branch men had proffered this explanation for the injuries. PO 14A (4B) had said that he could give no explanation and PO 14D said that his explanation "would not be facts", although he had apparently not even had an opinion to offer. T.10 had also had other injuries which could not have been caused by setting off one of his own bombs close to himself, which would in any event have been a very negligent thing for an explosives officer to have done.

The applicant Government again drew attention to the apparent delay in the police investigation from November 1971 until July 1972 and to PO 14H's inability to explain it. They suggested that it was not surprising that T.10 should have been discouraged or dissuaded from pursuing his complaint against the security forces, on whose testimony he had been interned, at a time when he had just been released.

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c) Cases relating to Girdwood Park Barracks

(i) The case of T.16

(a) The applicant Government (VR 12, pp. 91-96 and 104-106)

The applicant Government first reviewed the evidence in this case. They observed that the respondent Government had proposed no witnesses to rebut T. 16's evidence and had accepted that his account was generally accurate.

They suggested that questions put to T.16 in cross-examination clearly indicated that statements had been taken from members of the arresting party and that their identities were known.

They submitted that there was a clear conflict of evidence between T.16 and 21A, the military doctor who had seen him at Girdwood, as to his condition at the time. Either 21A or T.16 was untruthful. It was clear from the respondent Government's own admissions that the injuries suffered by T. 16 had been received as he had described and must have been observed by the doctor, who was a commissioned officer. They submitted that his failure to take action in relation to obvious acts of brutality was further evidence of official tolerance establishing an administrative practice.

With particular reference to the question of administrative practice the applicant Government suggested that this case displayed many of the same features as the case of T. 11. Again the Commission was dealing not with the actions of one or two soldiers furtively assaulting someone and hoping never to be discovered, but with a mass assault on a public road by an arrest party including soldiers and military police. No blame could be or was attributed to the victim. It was simply a case of wanton army brutality against an elderly man, unresisting and in bad health. The person in command of the group of soldiers knew of the assault, and the military police whose function was to deal with wrong-doers in the army had not intervened but had themselves taken part in the assaults on T. 16 and his companion T. 23.

They suggested that the treatment of the two men on arrival at Girdwood demonstrated clearly the prevailing practices among the army and police in general, towards persons taken into custody. There had been nothing to distinguish them from other persons brought in at that time or to cause them to be singled out for special treatment. Their description of having been thrown out of the vehicle on arrival and of having been dragged by the hair on all fours into the barracks was a clear indication that those in command took no effective steps to protect prisonsers from savage and brutal treatment.

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The applicant Government asked why, if the evidence put forward as to the stringent discipline imposed in army and police circles in relation to the treatment of persons in custody presented a true picture, the soldiers who had attacked T.16 in the Falls Road and those who had dragged him and T.23 in such a brutal fashion into Girdwood had behaved as if indifferent to the danger of discovery.

They suggested that inside Girdwood there was the same picture of misconduct on a considerable scale. They suggested that it was impossible to conceive that the treatment of the two men there was a unique event taking place unknown to those in control. The official attitude was clearly displayed by the comment "There's a war on" made by the person interrogating T. 16 he had complained to him.

If T. 16's evidence were accepted, he had been brought before the army doctor in a deplorable condition showing all too clearly the marks and signs of a very savage beating. This would have been apparent to the doctor and everyone else in authority there.

The indifference of those in authority to T.16's complaint, which was another factor establishing official tolerance, emerged clearly from the history of his efforts to obtain an adequate investigation. He had complained immediately to the RUC and made a statement. All the evidence heard by the Commission's Delegates had been readily available to the authorities. He had never been given an opportunity to identify any of the persons who had assaulted him and the evidence indicated that the identity of some, if not all, of them was known. They drew attention to the fact that some three years after making his complaint he had received the first response, informing him that the army did not propose to bring charges against him and that when he had pressed the matter he had been informed that no action was going to be taken against the army.

(b) The respondent Government (VR 12, pp. 181 and 223-225)

The respondent Government did not, except on points of detail, dispute the general nature of T.16's allegations and suggested that it was a case of hasty and intemperate action by the troops. There was no doubt that the troops had acted wrongly and the respondent Government did not seek to justify the situation. In relation to the background they drew attention to the evidence that there had been firing in the neighbourhood and the evidence as to T.16's possession lawfully, of guns and ammunition and the radio aerial on his house. They suggested that this was a case where the troops had acted hastily and intemperately in dismissing his explanation that his gun licences were at the police station instead of checking there first. T.16 had agreed that the troops had been suspicious of his weapons and had

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thought that he had shot a mate of theirs. He had also agreed that not all of the troops had maltreated him.

Referring to the allegation that the army doctor had failed to do anything to help T.16 they suggested that he had obviously been grossly overworked at the time and referred to his evidence that he had himself gone out to obtain tablets for T.16's diabetes. They also referred to T.16's evidence that a sergeant had told him to let him know if he felt worse, and his evidence that he had been treated for his diabetes.

They observed that T.16 had agreed in cross-examination that he could not identify any of his assailants and suggested that it was probably not surprising in those circumstances that it had not been possible to initiate a prosecution. T.16 had commenced civil proceedings and the instructions of counsel for the respondent Government were that his action would certainly be settled. Counsel accepted that he had had statements from the troops involved before him when cross-examining T.16. They had not contained any admissions and he had used the material relating to events in the house and the conversation which had been put to T.16. The respondent Government suggested that it had been perfectly proper not to call these people to give their account since it was apparent that T.16, a perfectly respectable man, could not have come by his injuries in any other way.

It was, they suggested, impossible to make all men good however much proper orders and machinery were instituted. Violence begat violence and complaints would always go on as long as there was a mounting level of terror. Soldiers would lose their tempers. The occasional police officer would lose his temper out of anger, revenge, spite or other emotion. Unfortunately people would be assaulted and beaten up from time to time, but in proper instances they received compensation and the courts worked properly to see that they did. In the context of this case that did not amount to an administrative practice.

(c) The applicant Government in reply (VR 12 p. 469)

In reply the applicant Government suggested that it should be asked in this case, as in the T.11 and T.7 cases where brutal treatment was also admitted, what had happened afterwards. The answer, generally speaking, was nothing.

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d) Cases relating to Ballykinler

(i) The case of T.3

(a) The applicant Government (VR 12, pp. 71 to 85)

The applicant Government submitted that those arrested in August 1971 were drawn exclusively from the minority community, that the interrogation related to the activities and organisation of the IRA, and that its purpose was to help in determining whether the particular prisoner being interrogated should be interned or released and to compile information about terrorist activities and organisation of the IRA.

The applicant Government again invited the Commission to consider two questions:

1. Was T.3 subjected to torture or ill-treatment at the hands of the security forces of the respondent Government?

2. If so, did such torture or ill-treatment form part of an administrative practice for which the respondent Government must accept responsibility?

As regards the facts of this case they referred to T.3's evidence that there were some quite elderly men among the prisoners, some in poor physical shape. According to the applicant Government it was admitted that the prisoners were put through a series of exercises throughout the day, the controversy in this respect being as to whether such exercises were simply a desirable means of keeping the prisoners' circulation going, or part of a set policy of bullying the prisoners and making life intolerable for them in the camp.

They pointed out that, although the RUC were said to be ultimately responsible for policy decisions in the camp, no senior RUC officer who was on duty there at the time had been proposed as a witness and no explanation for the failure to put forward such evidence had been given. In particular no member of the Military Police or RUC who was on duty in the huts where T.3 and the other prisoners were in custody had been called to contradict what he said about the conditions which prevailed there.

They referred to Witness 5E as the only officer who claimed to have visited the huts as a matter of routine and who had conceded that the number of visits paid by him was not sufficient to enable him to contradict the truth of T.3's allegations of what went on inside. Furthermore, Witness 5C, a non-commissioned officer, had said, that he visited the huts

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during his time on duty but was off-duty for the whole of 9 August from 9.30 to midnight and was even away for some periods when he was on duty from 00.00 hours to 10.00 hours on the 10th.

They pointed to the difference between the evidence of Witness 5B, who confirmed that prisoners had to remain seated facing the wall as a security measure, and that of Witness 5C that they were allowed to sit with their backs to the wall at all stages.

They also pointed to inconsistencies in the evidence as to the reasons for ordering the prisoners to sit on the floor, in that Witness 5A said that they should not see the Special Branch men, whereas according to Witness 5C, it served to maintain discipline.

The applicant Government further referred to the evidence of Witness 5E that all detainees, while awaiting this examination, were kept out of doors on a patch of grass, with their arresting soldiers, and that T.3 never went into an accommodation hut before his medical examination which, according to the medical examination form, was not concluded before 19.55 hours. In their submission, if T.3's evidence, that he was in the hut from 10.00 hours was accepted, it followed that 5E was an unreliable witness, as it had not been suggested that T.3 had not been in the hut all day.

As to the report of the Compton Committee they submitted that it should be disregarded by the Commission save in so far as it contains recitals of admissions. They made reference to para. 159 of that Report which reads:

> "The evidence we took from the military police in charge of the Ballykinler huts, confirms that the exercises took place, that their nature and duration was much as described in the allegations" (the allegations being those contained in the written statements of T. 3 and four other complainants, of which the Committee had obtained copies) "and that they were done under some degree of compulsion."

They submitted that it conflicted in many important respects with the evidence given by the security forces in the present proceedings, who persisted in their denials that there had been any forced exercises or hardships caused to the detainees, and denied all knowledge of other matters of complaint, which had apparently been admitted before the Compton Committee.

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As to the case of Moore v. Shillington, the applicant Government submitted that it was clear from the plaintiff's affidavit that he had been in the same hut in which T.3 claims to have been detained, that the Court had been given the benefit of the evidence of the senior RUC officer responsible for policy decisions in the camp and of military police witnesses who had been on duty in the huts, and that the decision of the respondent Government not to propose these witnesses again in the present case and to tender the evidence of the medical officer on affidavit only was very significant in the light of the judge's findings that three of the military witnesses had given untruthful evidence and that the evidence of the medical officer was open to serious criticism.

They quoted from the judge's conclusions, that the manner in which the prisoners were treated was "deliberate, unlawful and harsh" and further:

> "I infer that authority for the procedures impugned, and their continuance, stemmed from a source higher than a Corporal, Staff Sergeant or Lieutenant ... Considering how uniformly the men were organised from their beds finally to Ballykinler, I have no reason to suppose that the manner in which they were treated in Ballykinler was not similarly preconceived and organised."

The applicant Government stressed that the judge awarded the maximum amount which, as a County Court Judge, he had jurisdiction to award, namely £300.

They submitted that the affidavit sworn by Moore, which was accepted in evidence and acted upon by the judge corroborates fully the account given by T.3 as to the allegations of torture and ill-treatment against detainees in Ballykinler in August 1971, and that it should be considered by the Commission.

They submitted that it was inconceivable that if the detainees were treated in the manner described all through the 9th and 10th August 1971 this could have happened without the knowledge of the RUC and army officers in charge of the camp.

They further mentioned that T.24, another of those held in Ballykinler whose statement of complaint is set out in full in Appendix 6 was awarded £5,000 damages by agreement, and that nine further persons, whose names appear in Appendix 6 (*) have been paid damages of £250 each in

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(*) Appendix 6 of the Application, submitted on 16 December 1971

proceedings brought by them alleging assault, physical ill-treatment and mental and physical suffering while in custody in Ballykinler.

As regards the question of administrative practice in T.3's case, the applicant Government contend that (a) there was an official administrative policy as to the manner in which persons arrested on 9 August 1971 (Operation Demetrius) were to be treated and as to the conditions under which they were to be kept in custody, or (b) there has been official tolerance of such procedures.

In support of their contention the applicant Government submitted that it would be consistent with the policy that was implemented in regard to prisoners arrested and interrogated from 11 to 17 August 1971 that it should be preceded by harsh and inhuman treatment from the moment of arrest. The Parker Report had emphasised the fact that, prior to August 1971, the security forces had been "in need of hard intelligence" and that "information obtained by the RUC by ordinary police interrogation had failed to provide anything but a general picture of the IRA organisation" (para. 19 of the Parker Report).

The same Report disclosed that a special seminar had been held in Northern Ireland in April 1971 at which members of the RUC had been taught the "five techniques" as aids to interrogation which were applied to a limited number of persons arrested on 9 August 1971.

Finally, it emerged from the Report that a special, unidentified centre was already established in time to receive these men from the named centres Magilligan, Girdwood and Ballykinler and, in the Government's submission, it was possible that the unidentified centre was actually one of these places.

The applicant Government further submitted that it was important for the Commission to know how the persons were chosen who were to undergo this special form of interrogation, and whether the conditions under which the persons arrested on 9 August 1971 were arrested and held in custody were regarded as important in helping to decide who should be chosen for further interrogation using special methods and practices and as forming part of the over-all scheme to subject certain persons to intensive interrogation while using methods not permitted in ordinary police interrogation.

Four persons out of a total of 89 prisoners at Ballykinler were later removed by helicopter to an unidentified interrogation centre, namely T.20, T.19, T.25 and T.26. The Commission should have been informed as to the overall plan which was adopted and implemented for selecting these f

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people and for subjecting them to special forms of treatment designed to break down their resistance to interrogation, as well as to the means chosen for this purpose. But no evidence was given to suggest that the treatment they were to receive from 11 to 17 August was to be "firm but kindly", although those in authority, including Mr. Faulkner and General Tuzo, had known beforehand of the methods that were to be used and had approved of this decision. Brigadier Kitson, the author of a book entitled "Low Intensity Operations" was at that time in command of the army in Belfast and he would probably have been in a position to give evidence in relation to the plans made for interrogating the detainees. He was not put forward as a witness, but P10, another Brigade Commander, gave evidence and professed total ignorance of these matters.

The applicant Government further relied on a lecture given by a Lieutenant Colonel in the Royal Army Medical Corps to army psychiatrists in 1969 and entitled "The Medical Aspects of Interrogation" which, in the Government's submission, foreshadowed in exact detail many of the procedures adopted in August 1971. The lecture described methods used by the Chinese and North Koreans against the UN troops between 1949 and 1953, which include the setting up of interrogation centres where prisoners will be subjected equally to physical and psychological stresses. The lecture also referred to the problem of coping with large numbers of prisoners and of selecting those who are most likely to possess and give information. This meant that prisoners had to be classified by personality on the basis of crude observations in the early days, perhaps with the help of an early quick interrogation, to see how they respond to physical and mental pressures. Subsequent interrogation methods described included the five techniques and other forms of violence. According to the lecturer, one of the reasons for such treatment was the knowledge of every interrogator that a prisoner who gives information in response to a beating will do so again when more is required.

In the applicant Government's submission, it was highly unlikely that the authorities in Northern Ireland used three-quarters of these practices in dealing with persons in custody, but would not also implement the other quarter, the important "lead-in" to the full treatment, which consisted of: (a) physical and psychological stresses imposed from the moment of arrest; (b) no relief from his captors if the prisoner is tired, hungry, fearful or demoralised; (c) inadequate food and rest, humiliation, deceit and threats; (d) isolation from other prisoners - not allowing them to speak to each other; (e) a harsh and hostile environment. That the conditions at Ballykinler were "harsh", "unlawful", "preconceived" was largely the finding made by the judge in Moore v. Shillington and was also supported by the evidence of Dr. Lh. at Sola in January 1975.

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Finally, if the Commission were unable to accept that the treatment of T. 3 and others at Ballykinler was the result of a deliberate policy by the authorities, then an administrative practice was, in the submission of the applicant Government, established by reason of the repetition of the acts complained of and of the official tolerance demonstrated by the authorities towards such treatment. Such official tolerance was shown by the inaction of those in positions of authority at Ballykinler who witnessed the harsh, painful and degrading conditions outlined in T.3's evidence.

(b) The respondent Government (VR 12, pp. 215 to 220)

The respondent Government, analysing the evidence given in relation to this case, submitted in substance that the incidents described by T. 3 in his oral evidence were either not true or grossly exaggerated. In this respect they stressed the following points of fact:

As to the man allegedly tied to a beam they referred to the evidence that there was no rope available in the camp and that such an operation would have required so many men that one hut would have been left entirely unguarded.

As regards the dog which was alleged to have growled at night, it was submitted that it had been so exhausted after tea that it had to be taken out of service and that no other dog had been available.

They further dealt with T.3's explanation of the fact that he had not included the incident of the man tied over a beam in his original statement in writing. They pointed out that he had made the statement to Fr. Faul before the alleged threat to his parents, and that he had changed this explanation into one of general fear of the RUC, although he had been quite prepared to say things to the discredit of the RUC, such as that he had been offered money for information on arms and ammunition.

The respondent Government further relied on T.3's signature on the medical examination form saying that he was in good health and had sustained no injury although in his evidence he had alleged that he had been subjected to violence earlier in the day. They referred to his inability to account for what looked like his signature and to the evidence of the handwriting expert, that the writing on the medical examination form was the same as that on the document signed by T.3. They submitted that this evidence had remained unchallenged by the applicant Government.

As to the exercises the respondent Government invited the Commission to come to the same conclusion as the Compton Commission, that these were exercises that could cause

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hardship but were not intended to degrade the detainees but rather the result of a lack of judgment on the part of the people concerned.

They also referred to the evidence of Witness 5 F, who had investigated T.3's complaint and who stated that T.3 had not wanted his case to be investigated.

As to the case of Moore v. Shillington the respondent Government emphasised that the plaintiff had been allowed to put in evidence an affidavit and was therefore never cross-examined. The judge in that case therefore had had no alternative but to come to the conclusion he did on the material before him.

They finally referred to the evidence of G.2 who had been taken around the huts and who would have been aware of any brutality, if it had been going on there.

(c) The applicant Government in reply (VR 12, pp. 466 to 469)

The applicant Government, replying to the respondent Government's submissions, emphasised the following points:

As to the dogs the applicant Government referred to the evidence of Witness 5B, that there had been a police guard dog and a farm up the hill with five sheepdogs.

As to the allegation that T.3 was prepared to say things to the discredit of the RUC, they made it clear that T.3's evidence referred to another detainee who had said what had happened to him, namely that he had been offered money for arms and ammunition.

As to the medical examination form, they submitted that perhaps he had signed it, because he was indeed in good health and had suffered no injuries, but had been manoeuvered into a position, where he eventually said that he did not sign it. But he may have forgotten about signing it.

They denied that T.3 said he did not want his complaints about Ballykinler to be followed up. All he did not want to be followed up was his allegations that the RUC had frightened his parents, because that would have exposed his elderly parents to the ordeal of coming to the police.

As four men were taken out of Ballykinler and were then subjected to the so-called "aids to interrogation", the applicant Government suggested that the process of "softening them up", as it was called by Dr. Lh., had started from the moment of arrest until physical and psychological pressures, as the author of "The Medical Aspects of Interrogation" had already warned the British Army.

They finally quoted the evidence of two army officers as being significant for the army's attitude to these matters.

e) Cases relating to various other places

(i) The case of T.7

(a) The applicant Government (VR 12, pp. 85-87, 107)

In the applicant Government's submission the case of T. 7 was a fairly straightforward case of army brutality, part of a pattern which is repeated in a number of cases, of ordinary, harmless working-class people suffering brutal treatment at the hands of army patrols, without any provocation or resistance on the part of the victim.

They referred to the evidence in this case, and underlined that no evidence was called by the respondent Government to challenge the accuracy of any of the evidence given by or on behalf of T.7.

As regards the question of administrative practice in relation to this case, the applicant Government emphasised that no information had been given by the respondent Government to show that proper disciplinary action had been taken against the wrongdoer or, that he had been prosecuted or that any action at all had been taken by the persons responsible to punish such acts or to prevent their repetition. Indeed, it had not been until 1973, i.e. two years after the incident that T.7 had been approached by the RUC for a statement about the occurrence, and it was suggested by the respondent Government that the wrongdoer had been "dealt with". However, prosecutions or disciplinary measures are not likely to be effective as a curb on wrongdoing if they are allowed to lie dormant for two years after the event.

(b) The respondent Government (VR 12, pp. 196)

The respondent Government described T.7's case as a genuine "accident de guerre" type of case, the sort of misunderstanding, an accident which can always arise in this situation.

They explianed that the assaulting soldier was brought before his Commanding Officer and was punished by a form of military discipline which is entered on his military record and can have serious consequences in his career. Having regard to the mitigation that was put forward that he had mistaken T.7 for a gunman, he was admonished.

On the other hand, it was not true that the same soldier had appeared later in T.7's presence and insulted him, as he had been detained in custody for 4 or 5 days upon being apprehended.

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The respondent Government submitted that there was not only no evidence of official tolerance, but that all the evidence went the other way, and that no complaint could be made of that case in the context of an Art. 3 allegation or of showing a pattern.

(c) The applicant Government in reply (VR 12 p. 469)

Referring again to the manner in which the wrong-doer in T.7's case had been 'dealt with' the applicant Government submitted that, after many appeals for information, the respondent Government had finally stated that the soldier concerned had been admonished. This had to be seen against T.7's evidence that this corporal some days later was gloating over the victim of his assault, and it was suggested that a simple reprimand was totally insufficient and inviting others to use the same kind of tactic.

(ii) The case of T.11

(a) The applicant Government (VR 12 pp. 87-91, 103-104)

The applicant Government first referred to the facts of this case and the allegations made by T.11. They pointed out that T.11's case was another clear-cut case of army brutality, where the central facts had not been disputed in any way.

They submitted that the respondent Government had proposed no witnesses whatever relating to the circumstances of T. 11's case save Witness 150 (Vol. 7, p. 626) who had been called solely for the purpose of attempting to rebut the charges of harassment and had said that there had been numerous security incidents in the Divis Flats area, leading to numerous searches and spot checks.

They mentioned that the methods of treatment against T.11 had been of a pattern similar to those suffered by T.29 in the same Army Barracks only a few weeks before T.11 was brought there.

As three of the cases - T.11, T.16 and T.5 - had some common features not shared by the T.7 case, they suggested that the question of administrative practice be considered first in relation to these three cases.

They pointed out that T.11's evidence which stood unchallenged, had implicated the entire body of soldiers present in the guardroom of Albert Street Barracks where he had been detained, including whoever had been in command there at the time. They submitted that nothing whatever about the case had suggested that what had happened to T.11 had been an isolated or exceptional occurrence or could have remained concealed from those in authority over the persons responsible and that in view of the place where the assault had occurred the large number of soldiers present, and the length of time over which the acts of violence continued, the inference had been that the men responsible had been confident they could act with impunity in inflicting torture and ill-treatment on prisoners in their custody.

From these facts they drew the conclusion that the superior officers of the men responsible had been cognisant of the acts complained of and had taken no steps to prevent their repetition. In this connection they pointed out that the response of the army and police to the official complaint lodged by T.11 and which he pursued by every means open to him, had manifested indifference by refusing any adequate investigation of its truth or falsity. They referred to the action of Lt. Col. Richard Freeman Wallace who had gone on the radio to tell listeners that T.11's allegations were false and had not happened in the manner he had described, which exemplified the attitude to the complaint.

They also mentioned that T.11 had never been given the opportunity to identify the soldiers who, he had said, had taken part in the assault on him, nor had any medical report ever been sought by the authorities from his doctor.

They stressed that the absence of adequate investigation had again been demonstrated by the fact that it was now over three years since he had suffered his injuries, that the truth of his allegations had now appeared to be conceded fully by the respondent Government, but that yet the delegates had been told that no decision had yet been taken in relation to his official complaint against the soldiers, and that all further information on the progress of the complaint had been refused.

They stated that all these circumstances had been indicative of official tolerance and condonation of acts of brutality on the part of the security forces, which attitude had to encourage the belief among members of the security forces that they could resort to brutal and inhuman practices against persons in their custody without being subject to any effective disciplinary action thereafter.

They thought the consequences had been reflected in the harassment of T.11 after he had made his complaint.

They stressed that T.11 had never been charged with any offence, nor had he been subjected to internment and that he had displayed considerable tenacity in following up his complaint, but that his experiences since he first lodged it had made it all too clear why victims of army and police brutality might hesitate to follow his example.

(b) The respondent Government (VR 12, pp. 214, 215)

The respondent Government made the following submissions on the evidence:

As to the action of Lt.-Col. Wallace they denied that it had been a cover-up, but said that General Tuzo had written to T.11 and had advised him "Complain to the RUC if you have a complaint to make, this is the machinery ..." and that T.11 had made the complaint.

As to the delay in the investigation procedure they stated that they did not know the reason for this and that there had been no evidence about it, but that it showed that the matters were still being investigated.

As to T.11's complaint that he was subjected to further harassment, which in their opinion was not really strictly relevant to the claim under Art. 3, they put forward

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that it had emerged in cross-examination that he lived in one of the hottest areas in the Divis Flats where there had been snipers, bombs, booby traps, soldiers killed and injured, as a result of which there had been frequent stops and searches.

They further submitted that T.11 had agreed that he had thought the soldiers who had interrogated him were privates; in their opinion one was obviously dealing here with soldiers of the lowest rank.

They pointed out that in this apparently justifiable claim, it had not been the fault of the officer if he had been given one account of the incident by his soldiers, and if he then had put that out, when, defying that account, the complainant had been invited to complain and had gone on with his complaint, quite justifiably, and then had received damages. They thought that it would be right in those circumstances, not to enter a defence to that case by calling evidence.

(c) The applicant Government in reply (VR 12, p. 469/470)

The applicant Government had serious doubts whether the cases of T.7, T.16 and T.11 which had been admitted by the respondent Government were the only indefensible ones, whether there were not more of the 230 cases in that category.

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(iii) The case of T.5

(a) The applicant Government (VR 12 pp. 96-102 and 106-107)

The applicant Government first reviewed the evidence in the case. In doing so they drew particular attention to the evidence of the intelligence officer 8A that suspects had been brought around army posts not only for identification purposes but also to frighten them off from IRA activity in the future. They also observed that 8A had said that he had called in the medical officer, 8B, after seeing the marks on T.5's back and that 8B had been baffled by them but had said that they could have been consistent with an IRA punishment. The evidence of 8B, they observed, had been that the examination had been a routine one. He had not said that he had been called in to look at the marks. He had also had the impression that the marks on the back were probably a few years old, or perhaps more and for this reason had not linked them with the possibility of IRA punishment. In this respect his evidence conflicted with that of 8A.

They submitted that the Company Sergeant Major's (CSM's) evidence that it would not have been the practice to let a parent accompany a young person such as T.5 on such a visit around army posts conflicted with that of 8A. They also pointed out that in answer to the delegates 8E had said that the sole reason for bringing T. 5 and others around the military posts had been for purposes of identification, not for the purpose of frightening them as well. In this respect he had clearly contradicted the evidence of 8A.

They observed that although 8E had said that the whole purpose of bringing T.5 to the school had been for future identification, he had been unable to remember whether he had seen him that day or not, although he had seen a photograph since.

The applicant Government suggested that, in determining the conflict of evidence in this case the Commission should have regard to a number of matters. If T.5 had been taken in as a person not suspected but "known" to be an IRA man and, according to 8A, taken around the army posts for the dual purpose of making him known to the soldiers as an active IRA terrorist and intimidating him so that he would sever his connection with the IRA, it would be very remarkable if he had not been given a hostile reception by the soldiers, who were on duty in an area said to be hostile and where there had been shooting.

If it were felt that he would be deterred by fear from keeping up an association with the IRA, it appeared equally probable that the army would feel that he would be more effectively deterred by acts of torture and ill-treatment.

It was, they submitted, significant that T.5's father had not been allowed to go with him beyond the first army post.

There was corroboration for T.5's account in the statement made by his father to the police, put in the respondent Government, which confirmed that he had been in a distressed condition when he had returned home the same day and had complained of ill-treatment by the army. There was further corroboration in the evidence of Dr.4, who, five days later, had found extensive bruising which he had identified as being four to six days old.

T.5's own evidence and the medical evidence showed, they submitted, that he had had some old and some new injuries on his back in August 1972. As a term of the settlement of his action for damages he had been required to withdraw the allegation that the marks on his back had been caused by the army. Nevertheless he had not been required to withdraw his allegation that any of his other injuries had been caused in the manner alleged. It was submitted that it would be highly improbable for a person regarded as a known IRA terrorist to have been paid damages of £200 in settlement of a claim unless it had been believed to have been well-founded.

The applicant Government submitted that the case was important in that there had been very positive army evidence that the assault could not have taken place unknown to the officers in charge. In addition, the persons in charge had apparently not been told of T.5's allegations until two years later, when the action for damages had been coming up for hearing in court, whereas the RUC had had a complaint from T. 5 supported by a statement from his father and a medical report from Dr. 4.

The army evidence had confirmed that 50 or 60 soldiers and officers would have seen T.5 at the school but not one person, able to say that he had been there, had given evidence, although no less than six other witnesses had been put forward in an attempt to contradict his testimony on purely peripheral matters. This evidence had also confirmed that the army had kept careful records at the time and that it should have been possible to ascertain who had been there. Nevertheless the last communication T. 5 had had from the RUC had stated that "extensive enquiries" had failed to make any soldier "amenable" to the alleged assault.

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The case indicated that either the investigating machinery for applicants was not operated with anything like the diligence suggested by army and RUC evidence on general matters or that it came up against an impenetrable wall of silence which rendered it ineffective in practice.

The applicant Government submitted that the case, once T.5's allegations were accepted, established the existence of an administrative practice. They again drew attention to the number of persons who would have been present when T.5 had been brought to the school for identification and to the evidence that he could not have been assaulted in the way he had described without this coming to the notice of the commanding officer. They submitted that in these circumstances everyone present, including officers and men, was implicated directly or indirectly in the assaults and also in the concerted effort to conceal the truth afterwards.

As in the T.11 and T.6 cases there were no signs of an isolated or unique happening and the soldiers had done what they did without apparent fear of repercussions although they must have known that their identity could not be concealed if any serious effort were made by those in authority to discover it. This apparent indifference to the possibility of discovery could only stem from a belief on the part of the wrong-doers that they enjoyed immunity for their misdeeds. Such an attitude was evidence that a proper code of conduct was not enforced.

Further manifestations of official tolerance were also to be found in the handling of T.5's official complaint. It had been suggested that problems of identification had frustrated further enquiries whereas T.5 had never been given the opportunity of identifying any of the persons who had assaulted him. The Regimental Sergeant Major on duty at the school had known nothing of the complaint until subpoenaed to appear in court in 1974 and had never been asked to enquire among the soldiers about the alleged assault.

An adequate investigation had not, it was suggested, taken place and those in authority had shown indifference towards the complaint.

(b) <u>The respondent Government</u> (VR 12, pp. 180, and 221-222)

The respondent Government submitted that this was one of the cases either not proved or shown to be false.

T.5 had declined to give evidence on oath, whereas there could have been no religious or moral objection to his doing so. He had had no objection to giving evidence on oath to the Commission dealing with his internment. When he had been asked whether the reason for this was that he was afraid of the consequences of telling lies, the transcript showed that he had given no answer. He had also refused to comment when asked if he had been engaged in illegal activities.

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He had said that he had been offered £10 and a rifle which he himself had thought very strange. Having, according to him, had the biggest beating of his life, he had waited five days before seeing his doctor.

He could not, it was submitted, possibly be believed on the central issue of the weals on his back. He had not mentioned beatings by the soldiers causing weals either in his affidavit sworn in November 1972 or to his doctor. The allegation had appeared for the first time in August 1973 in the pleadings in his civil action and he had withdrawn it. He had said that he had done this for his father's sake. Even that could have been reported in the press, however, and when this had been put to him he had said that if the case had not been settled he would have gone into the witness box and sworn that the weals had been caused by soldiers.

T.5 had said in evidence "I have no idea how these weals were caused to me" and had, according to the transcript, given no answer when asked if he could account for them in any way. It had been put to him, and he had agreed, that the weals had been seen before he got to the school. He had denied having told the doctor subsequently on December 17 that he had noticed them in the mirror about eleven months previously.

T.5 was a man of whom it had been said that he hated everything British. Dr. 4 had given evidence that he had said that the weals had come from the beatings. He had found no injuries to the head, although, according to T.5, the blows on his head were of such severity that they were a shock to his whole body.

8A had said that, when asked about the striations on his back in August 13, T. 5 had said that he did not know how he got them. 8B had said that T. 5 had not discussed the weals with him. 8F, the doctor who had seen him on 13 December, had been unable to get an answer as to the cause of them.

In these circumstances it could not, in the respondent Government's submission, possibly be said that this case was proved and it might indeed be thought that it was disproved.

(c) <u>The applicant Government in reply</u> (VR 12, pp. 469-470)

The applicant Government observed that T. 5 had not declined to give evidence on oath and had said in evidence that he did not object to doing so. He had had two options and had opted to take the declaration. The reason why the transcript indicated "no answer" to the question as to the reasons for this was that it had immediately been objected to by the applicant Government.

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T. 5 had said that he had always had weals on his b[illegible]. The maximum number recorded by the army witnesses had been eight, whereas his own doctor had found fourteen. Although he had withdrawn the allegation regarding them in settling his action, he had not been asked to withdraw any of his other allegations. T.5's case was the only one in which withdrawal of an allegation had been asked for as a term of settlement.

(d) Respondent Government in reply (VR 12, p. 492)

In their final submissions the respondent Government submitted that it had not been suggested to T.5 that he had declined to give evidence on oath. He had merely been asked why, when he had given evidence on oath on several occasions in the Court, he had done something different on this occasion. It had been suggested that he knew it would have had an effect on his conscience if he had done so, and in answer to this he had given no answer.

2. The 41 Cases and other statements

(a) The applicant Government (VR 12, pp. 58 to 70, 108 to 125)

The applicant Government's conclusions on the Palace Barracks Cases contain a short description of each case as it has been set out in the statements of the person concerned and of the examining doctor. In addition they have submitted the following information:

T. 22 brought an action for damages which is still pending.

T.27 brought an action for damages for wrongful imprisonment and assault, which has now been settled for £900 and costs.

T.28 brought an action for damages which had not been heard by 22 July 1972, on which date he was assassinated.

T.29 brought an action for damages which is still pending.

T.30 sued for damages for assault and his claim was settled for £200.

T.31 sued for damages for assault and was awarded. £750 in settlement of his claim.

The Government then described briefly 13 further cases relating to Palace Barracks in regard to which statements have been submitted but no medical reports. They concluded that altogether 45 cases therefore concern allegations of ill-treatment of the Security Forces at Palace Barracks, Holywood.

In their submission, an examination of these cases showed that methods involving torture and ill-treatment went hand in hand with the interrogation process in Palace Barracks while it was being used as an RUC interrogation centre from 2 September 1971 to June 1972. This had been clearly established by coercive evidence and the police denials of such charges were not credible.

This further meant that in numerous cases the entire team of police officers involved, from the highest ranking officers to the lowest ranking men, had combined together and had falsely denied the charges levelled against them. At the same time they had conceded that the acts alleged could not have taken place unknown to those in authority at Palace Barracks and the general body of RUC men on duty there.

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If this were so, then it presented a classic example of the existence of an administrative practice of torture or ill-treatment, satisfying all the tests referred to by the Commission in the Greek Case, where the criteria adopted for determining such practice were "the repetition of acts and official tolerance of them" (Report in the Greek Case, Vol. II, Part 1, p. 417, para. 10).

Furthermore, the evidence showed that those in command and control of Palace Barracks had knowledge of the illegal practices and sometimes participated themselves in them. Yet, in not one of these cases had there been an adequate or proper enquiry into the allegations made, or disciplinary action taken against anyone. This applied to all those involved in the running of the centre, i.e. RUC and military policemen as well as Special Branch officers.

The applicant Government next submitted their conclusions on the Girdwood Park Cases which were similar to those of the Palace Barracks Cases. In addition to giving a short description of the cases as they have been set out in the statements of the persons concerned and in the medical reports, the Government have submitted the additional information that T.32 was paid £750 in settlement of his claims. They have also referred to the cases of T.28 and T.33 whose allegations relate only partly to incidents at Girdwood Park Barracks.

In the applicant Government's submission, these statements and the contemporaneous medical reports submitted in corroboration thereof, clearly indicated that what happened to T. 16 in Girdwood was not an isolated occurrence but part of a pattern of cruelty and brutality practised by the Security Forces, both in taking people into custody and in dealing with them when detained there for interrogation.

The Government also referred to the statements of 13 further cases relating to Girdwood Park in which similar allegations of ill-treatment had been made but in support of which no medical report was submitted. They pointed out that in three of these cases the respondent Government had paid substantial sums in settlement of the claims made against them in domestic proceedings. Thus, T.34 had received £750, T.35 £800, T.36 £478. Furthermore, they referred in this connection to the cases of T.18, T.17 and T.37 who were taken to the unidentified interrogation centre, and submitted that T.17 got £16,000 damages and T.18 £12,500.

The applicant Government then dealt with the evidence of P 11, P 12, P 13, P 16 and P 21A who had been put forward by the respondent Government in order to rebut the allegations made about the treatment of prisoners at Girdwood on 9 August 1971. They submitted that the evidence of P 11,

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P 12 and P 13 was of little value as they were all officers in the same battallion which had only been responsible for arresting the bringing in about 25 prisoners (out of a total of 185), and had thereafter not been responsible for the custody of the prisoners in the centre.

P 16, a major in the military police, had been responsible for the overall charge of all prisoners at Girdwood. However, he denied all allegations made by the prisoners, including those which the Compton Report had reported as having been admitted by the Security Forces, namely that prisoners were run barefoot across from Girdwood to Crumlin Road Prison, and that a route was taken which led around the perimeter of the field, over loose ground chippings. Therefore, if there was any substance in the allegations made about the treatment of prisoners at Girdwood on 9 August 1971 and the following days, P 16 must have been fully aware of what was happening and did nothing to stop it.

Most cases relating to Girdwood Barracks described interrogation methods used by army and police interrogators very much of a pattern with the allegations made in respect of interrogations at Palace Barracks. Since Girdwood had operated concurrently with Palace Barracks as the second main interrogation centre for Northern Ireland during 1971/1972, and since the same Special Branch men had conducted interrogations at both places, there was no reason to suppose that, if the allegations about Palace Barracks were made out, they were not also true of Girdwood Park. The administrative practice alleged in relation to Palace Barracks was one implicating the persons involved rather than the place, and it was clear that police officers moved freely from one place to another.

The applicant Government further submitted their conclusions in regard to the allegations of ill-treatment at miscellaneous places, including various military posts in Belfast and elsewhere and in the Maze Prison at Long Kesh. They gave a brief description of these cases which they considered important also in relation to the issue of administrative practice.

With regard to the cases relating to the incident at Long Kesh in September 1972 (cases of T.38, T.39 and T.40) the applicant Government asked the Commission to consider these statements, as well as the other statements contained in Appendix 19, in the light of the statement of T.41 who described the condition of prisoners he saw himself at mass four days after the incident had taken place, as well as in the light of the official explanation given by Lord Windlesham in his letter of 19 October 1972. They suggested that both statements could not be reconciled and that, if the

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account of prisoners supported by the medical evidence were true, then a premeditated attack had been made on the prisoners in retaliation of previous protests and to deter them from making further protests.

Finally, the applicant Government referred to six additional cases in which contemporaneous medical evidence had been submitted and which had not been included in the list of 41 cases. These were the cases of T.42 (App. 7), T.43 (App. 7), T.44 (Add. 2 to App. 7), T.45 (Add. 2 to App. 7), T.46 (Add. 2 to App. 7) and T.47 (Add. 2 to App. 7), which contain allegations of physical assault committed by the Security Forces on arrest and during interrogation at miscellaneous places.

(b) The respondent Government (VR 12, pp. 181 to 186)

The respondent Government first submitted that the "statement cases" varied substantially in degree in that some were trivial, e.g. concerning allegations that cigarettes had been taken away and that the food was bad, while others appeared to be Art. 3 cases in the sense that they contained allegations of physical ill-treatment.

However, in the absence of a full investigation of the complaints made it was not possible to test what gave rise to the injuries and to establish what was true and what was not true. Consequently, it would be very dangerous to rely on these statements alone because they contained in themselves many falsities and improbabilities so that even without cross-examining the complainants, great doubt was cast upon them. Furthermore, the allegations made by the complainants amounted to allegations of criminal assault and serious offences under the domestic law, and such allegations of crime could not, certainly under English and Irish law, be found proved by paper complaints.

It was submitted that, although of course the Commission had to take note of the fact that complaints have been made, it should not seek to come to a final conclusion about them. It had never been disputed by the respondent Government that, on occasion, there had been cases of assault or ill-treatment by certain members of the Security Forces. However, in such cases compensation had been paid and, where possible, the authorities had taken appropriate action against the offender. The making of allegations of assault or other ill-treatment could not of itself be accepted as evidence of misconduct as such allegations might be distorted, exaggerated or manufactured for political purposes. Further, the provision in good faith of medical certificates to the effect that harm has occurred, was not of itself to be accepted as evidence of the manner in which the injury or harm was suffered.

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In the 41 cases, 30 instances contained diverse allegations which were made by, and in certain cases, collected by, third parties, together with certificates, letters or statements by medical practitioners, so that in some instances it was not even a direct complaint. In the majority of these cases the complaints were never formally submitted to the appropriate authorities at the time of the events complained of so that they might be investigated fully on the domestic level and in only 11 of the 41 cases have proceedings been instituted, two of which have been settled and nine are still pending. In these circumstances it would be unsafe and unsatisfactory for the Commission to reach any conclusion on the statements and the medical material alone or to take this material into account in its consideration of the evidence under Art. 3.

In a further 11 cases the material consisted solely of a medical practitioner's report and such material, even taken at its face value, could not be accepted as relating to the manner in which injury or harm was suffered but only that it was found.

For example, the respondent Government referred in this connection to the case of T.4 (1) where it was quite clear that the injuries, however serious they were, could not have been suffered in the way the complainant said. In the case of T. 56 a complaint was made about cigarette burns but none were found. A man called T. 57 had alleged that, at Girdwood Park, they had been forced to run over broken glass and tin cans, but witness P 11 (2) who had been asked about this, had said that there was no glass or tin cans and besides nobody had asked to see a doctor about these complaints. As regards the allegations relating to the so-called "obstacle course" it turned out that there was no such course but that there was sniping and trouble from the IRA nearby and that these men had to be got through a hole in the wall into Crumlin Road Prison in order to avoid attention and attraction of the firing. For the same reasons it was highly improbable that the prisoners were, as alleged, forced to shout and sing and thereby attract attention to them. Furthermore, a man called T. 34 had said that he had to lie on the wet pavement but it turned out that it had been a dry day (VR 10, II, p. 1174). He had also said that a Roman Catholic padre had mocked at the prisoners, but it turned out that he had not at all been near them. The allegations by some people that they were turned out of the Centre so late at night that they had to stay the night in a hotel was false as shown by a check made on the register of the hotel concerned; nor was there any medical record of four bleeding people who were supposed to have been walking over broken glass arriving in the prison in that state.

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(1) cf. above, pp. 298-302

(2) Counsel was probably referring to witness P 16 who was asked about these matters at VR 10, II, pp. 1168 et seq.

Accordingly, it was the respondent Government's submission that, unless a full investigation were carried out into the facts of each case in order to determine to what extent the allegations were justified the Commission should, apart from noting that allegations had been made in respect of the 41 individuals concerned, disregard those cases for the purpose of the present proceedings.

C. Conclusions on the general evidence under Art. 3 and final submissions

1. The applicant Government (VR 12 pp. 2-12 and 125-152)

(a) Introductory Submissions on the Approach to the Evidence

The applicant Government referred to the Commission's decision to hear the parties' final submissions and conclusions on the evidence, and indicated that in view of that decision they proposed to confine themselves to submissions on the evidence and not to make further submissions on the legal issues arising under Art. 3.

They suggested that the Commission should follow the procedures adopted in the Greek case and in accordance therewith should:

(i) examine the facts and make findings in relation to the 16 illustrative cases, and report whether or not acts contrary to Art. 3 occurred;

(ii) examine the documents in each of the 41 cases referred to in the 1974 letter of October 11 and report whether or not acts contrary to Art. 3 had occurred;

(iii) examine and make findings on certain of the cases involving the five techniques not included in the 16 illustrative cases or the 41 cases, but in respect of which documentary evidence had been filed, and no conflict of testimony apparently arose;

(iv) examine and make findings on all the cases involving Ballykinler in Appendix 6;

(v) if it decided that acts contrary to Art. 3 had occurred in the cases which it had examined, decide whether or not these cases were part of a practice of torture or ill-treatment during the relative periods. In reaching this decision it should consider inter alia whether there had been repetition of acts and official tolerance of them;

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(vi) in reaching conclusions in relation to the existence of an administrative practice, it should not ignore the sheer number of complaints: 205 persons in addition to the 20 illustrative cases and the 3 substituted illustrative cases. If it considered that, in the 16 illustrative cases, the 41 medically corroborated cases and other cases which it might examine, ill-treatment had been established, it should not reject the remaining complaints as part of a conspiracy. It should regard the actual volume of complaints brought, in the words of the decision in the Greek cases, as "strong indication that acts of ill-treatment are not isolated or exceptional nor limited to one place".

In assessing the genuineness of the complaints, the Commission should take into account the fact that in some cases damages had been paid by the respondent Government. The only inference from the payment of damages was that the respondent Government believed it had committed a wrong against the person to whom damages was paid. In the absence of rebutting evidence this inference should be accepted. If it were, then it was strong corroborative evidence that the acts complained of had taken place.

In assessing the evidence and for the purpose of establishing the facts, the Commission should, as in the Greek case, also take into account the failure of the respondent Government to file rebutting evidence or the giving of limited or partial evidence. The failure to file evidence was a factor of considerable significance in assessing the genuineness of the complaints before the Commission.

For over three years the respondent Government had had the main bulk of the applicant Government's evidence, all of it containing detailed statements of where, to whom and when acts of ill-treatment had occurred. Throughout the proceedings it had maintained the attitude indicated in its Counter Memorial of not admitting any of the particular allegations of ill-treatment. Nevertheless in five of the sixteen illustrative cases it had decided to propose no evidence at all and to dispute the accuracy of the testimony, save for insignificant dispute as to the injuries in the cases of T.6 and T.16. Together with the fact that damages had been paid in a number of cases, this led to the inference that the failure to file evidence arose from a knowledge that no reliable rebutting evidence was available in all or most of the cases referred to the Commission. The failure of the respondent Government was highly significant.

In cases where proceedings had been instituted against the respondent Government, the facts must have been investigated and evidence obtained. Nevertheless this evidence had not been

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made available to the Commission. No difficulty in obtaining evidence could have arisen in the other cases. The detailed nature of the complaints in each case had been filed by the applicant Government within a short time of the incident complained of.

The great majority of the incidents related to persons in custody. Prison records must have been available as must records of the complaints in cases where doctors had visited the complainants in prison. It was known that medical records in respect of persons taken in for interrogation were made on their arrival and discharge from November 1971 onwards. In addition investigation of the 16 illustrative cases had shown that the respondent Government was able to obtain evidence when it so wished.

The strong inference to be drawn from the failure to respond to the invitation contained in the letter of 11 October 1974 in relation to the 41 cases was that the complaints in those cases could not successfully be contested.

If the Commission found that breaches of Article 3 were established, it would be asked to hold that the evidence established an administrative practice based on the criteria in the Greek case. Repetition of acts would be considered as the evidence was examined and it would be submitted that both repetition of acts and official tolerance were established. It would be shown that the superiors of those immediately responsible must have been aware of the acts complained of and had taken no action to prevent their repetition or punish those responsible. As an alternative factor establishing official tolerance, reliance could be placed on the inadequacy of investigatory machinery and the manner in which complaints were dealt with would be commented on.

In considering the existence of an administrative practice the Commission would also be asked to consider the inference to be drawn from the refusal of the respondent Government to permit questions in relation to the seminar in April 1971 when the five techniques had been taught to members of the RUC by the security forces of the United Kingdom. Because of the respondent Government's attitude the Commission did not know what, apart from the five techniques, had been taught there. The five techniques had been applied in August and if the Commission were satisfied that other techniques of ill-treatment were applied to persons in custody, there would be a strong inference that these techniques had also been taught at the April seminar.

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b) Introductory submissions on the evidence

The applicant Government then turned to their analysis of the evidence, which is summarised above, and in connection therewith made a number of introductory submissions. In the first place they invited the Commission to hold, on all the evidence before it, that breaches of Article 3 of the Convention had been clearly established against the respondent Government. They then considered the following matters:

The scope of Article 3

Article 3 prohibited the use of torture or inhuman or degrading treatment or punishment. Following the example of the Greek case, the applicant Government proposed to use the composite phrase "torture or ill-treatment" as a general description of conduct forbidden by the terms of Article 3. They also accepted for the purposes of their submissions the construction placed on these terms in the Report of the Commission in the Greek case(1).

The applicant Government also attached importance to the reference by the Sub-Commission in the Greek case to "non-physical torture or ill-treatment".(2), Examples given there had included mock executions, threats of death, insults, humiliation and similar conduct, all of which featured prominently in the evidence in the present case.

The applicant Government also referred to the following view expressed by the Sub-Commission in the Greek case at p.371, para.18:

> "(i) prolonged isolation of detainees in the conditions described, psychological pressure designed to break the will and deliberate or unnecessary emotional suffering caused to their families, are all prohibited by Article 3 ..".

They asked that the principles enunciated in these passages should be applied by the Commission in its consideration of the evidence in the present case.

The Notion of Administrative Practice

The applicant Government accepted that before a breach of Article 3 could be established it was necessary in the circumstances of the present case to prove acts of torture or ill-treatment and also that such acts were committed as part of an administrative practice for which the respondent Government was responsible.

In seeking to establish the existence of such a practice they would rely inter alia on the criteria adopted by the Commission in the Greek case, namely "the repetition of acts and official tolerance". The manner in which these two requirements might be established had been further considered in paras. 28 and 29 from which the applicant Government quoted (3). ./.

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(1) cf. Vol. 2, Part I, p. 1, quoted on p. 245 above

(2) cf. Vol. 2, Part I, p. 364, quoted on pp. 245-246 above

(3) cf. Vol. 2, part I, paras. 28 and 29, quoted on p. 255 above

The applicant Government then examined and made submissions on the evidence under four different headings which were as follows:

(1) Cases relating to the unidentified interrogation centre or centres which were in use in August and October 1971;

(2) Cases relating to Palace Barracks, Holywood;

(3) Cases relating to Ballykinler Camp;

(4) Cases relating to other places.

These submissions are summarised above under the appropriate cases or groups of cases.

c) Conclusions to be drawn from the Evidence

The applicant Government submitted that the evidence established that very large numbers of the security forces must have participated in what had occurred. Officers were implicated as witnessing and sometimes as participating in acts of torture or ill-treatment. The acts were too numerous and too blatant to be described as isolated cases of ill-treatment.

The acts detailed were clear breaches of Article 3 and taken together provided overwhelming evidence of an administrative practice.

They referred to the list submitted by them of cases in which the complainants had been awarded damages as a result of proceedings in respect of alleged torture and ill-treatment. The general pattern had been that these cases had been settled. Proceedings in many other cases were still pending. They pointed out certain discrepancies between the list submitted by them and the list submitted by the respondent Government. The total number of claims paid and outstanding was, according to the latter, 1,666, although it appeared that at least 8 cases had been omitted.

It had never been suggested by them that the evidence they had filed constituted anything but a small fraction of the acts of ill-treatment committed by the security forces. The evidence of POP 2 established that from 9 August 1971 to 30 November 1974 2,615 complaints had been received against the police, of which 1,105 were of ill-treatment or assault. He had said that from mid-1971 to November 1974 there had been 7,441 complaints against the army, not all in respect of ill-treatment. He had spoken of 1,268 complaints against the army in respect of assaults or shootings from March 1972 to November 1974. N.12

The great volume of complaints was something which the Commission could not ignore. It lent support to the evidence and led to the inevitable conclusion that the acts of ill-treatment complained of were not isolated acts for which the respondent Government could disclaim responsibility.

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There had been a great deal of evidence which demonstrated failure to take any, or any effective, action in respect of complaints. One of the factors which established the evidence of official tolerance was a manifestation of indifference by higher authority in the face of numerous allegations of ill-treatment, but it was also established if it could be shown that the superiors of those immediately responsible were cognisant of the acts or took no action to punish them or prevent their repetition.

Even if the Commission concluded that a complaints machinery, which the higher authorities wanted to work, had been established, its value would have been minimised if the acts had been condoned by those immediately superior to the men committing the ill-treatment. This had obviously happened on a very large scale in Northern Ireland.

If the Commission were satisfied that the assaults alleged had taken place, then it was clear that the investigation of the complaints would not have achieved any worthwhile result. The false denials made to the Commission would obviously have been made also to the investigating authorities and the complaints machinery would have been frustrated. The great discrepancy which existed between the number of complaints and the number of persons actually charged in respect of them was evidence not that the complaints were unjustified but that there was a widespread official tolerance of the acts complained of.

A particularly glaring example of this had been the case of Patrick Devenney who had been batoned in his home by at least six RUC men in April 1969 and had subsequently died of a heart attack. None of the RUC men involved had been identified and Sir Arthur Young, the Inspector General of the RUC, had made a statement attributing the lack of evidence to a conspiracy of silence among members of the RUC.

d) Final Observations on the Evidence

The Commission would have to reach factual conclusions when in certain instances the evidence before it was not complete. In doing so it should bear in mind the way in which the respondent Government had carried out its obligations under Article 28 (a) of the Convention.

In this connection the applicant Government drew attention to the respondent Government's refusal to inform the Commission what authority had ordered the application of the five techniques and the ban imposed on witnesses heard in January 1975 precluding them from answering questions on the five techniques. They referred also to their refusal to allow the cross-examination of witnesses heard in London in February 1975, to comply with the delegates' request for photocopies of the interrogation records in the cases of T.9, T. 14 and T.1 and to furnish documents concerning any disciplinary proceedings against the witnesses concerned in the T.11 case.

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When difficulties arose in reaching conclusions and these had been created by the respondent Government, the issues should be decided in favour of the applicant Government's contentions and the witnesses proposed by them.

The influence of the present case could be immense and lasting. It would set standards in relation to the five techniques and also in relation to the behaviour of security forces and authorities of public authorities in Europe for years to come. The Commission should regard the five techniques as being in breach of Article 3 and should also find that the security forces for which the respondent Government was responsible had committed other acts of ill-treatment, in respect of which a breach of Article 3 was also established. Such a finding might give some recompense to those who had suffered but it would also help to ensure that the standards which the Commission had been established to maintain were strengthened and safeguarded throughout Europe.

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2. The respondent Government

(VR 12, pp. 133-180, 225-226, 360-405)

a) Introductory Remarks

The respondent Government suggested that the case, which had rightly been described as of importance and lasting influence, was a difficult one if for no other reason than the emotional overtones that attached to it. It was charged with responsibility for acts of torture or inhuman and degrading treatment. The words "ill-treatment" which had been mentioned did not appear in Art. 3. It was easy to lose touch with a sense of reality in the case. The context into which it had to be fitted could not be ignored. It was primarily about the IRA and was not, obviously, the type of case envisaged by the framers of the Convention, who had been concerned in the post-war era with preventing recurrence of a Nazi-type situation.

This was not that sort of case or regime, nor the case of a military dictatorship persecuting those with views opposed to it. It was, perhaps for the first time before the Commission, a case of an accepted democratic country faced with an armed uprising in its midst by groups of people determined to overthrow the state by force. The IRA had had no regard for the democratic institutions of the state and had been utterly ruthless. Any idea that it had been some kind of benevolent association of men seeking their own freedom must soon have been shattered when the nature of its activities came to light during the course of the case.

It was not sought to excuse or condone any acts of ill-treatment by saying that they were justified because the authorities had been dealing with a ruthless organisation. The importance of the background was that a situation of mounting terror was bound to produce mounting complaints. Some would be genuine, and it had never been disputed that there were cases where people had been ill-treated. Others would be false, since as soon as the campaign against the terrorists showed signs of success the need to cast a slur on the security forces became greater. The danger was that if one heard complainant after complainant and a long recitation of facts, case by case, it was possible to become mesmerised and forget to ask the important question whether they were true.

It was very easy, where little or nothing was said about the evidence in detail, as for example in the paper cases, for a hostile atmosphere to be created. Crucial and central to the case was the examination of the 16 illustrative cases because the point, presumably, in hearing the witnesses was to see what, if anything, the cases illustrated. Did they illustrate a pattern, and if so what sort of pattern? Did they show circumstances which made a government responsible or something else?

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Allegations had been made by the applicant Government in their submissions of vast numbers of cases of gross brutality. It should be observed, however, that whereas in some cases, particularly the interrogation in depth cases, high awards of damages had been made, in many others comparatively small awards such as £200 or £300 had been made. Claims had been made and settled. People had not been deterred from making them. This was not consistent with the idea of an administrative practice. There must also have been people who had chosen not to sue.

In addition it should not be forgotten that many actions had contained not only claims for damages for ill-treatment but also claims in respect of wrongful arrest or false imprisonment. In settling an action the prospects of success of all parts of the action had to be considered and awards made might have been at least in part attributable to that.

The applicant Government had invited the Commission to draw the conclusion from one case, the Devenney case, which had started in 1969, that because it had apparently been reported that the police enquiry had met with a conspiracy of silence, this was an indication of the general attitude of the RUC. The Commission would see at once the danger of trying to establish a general proposition from one particular case. The partial answer at least to the allegation was the number of prosecutions that had taken place, although it should always be borne in mind that the police were in the same position as anyone else under the criminal law and had the same rights as any citizen accused of crime. Private citizens were frequently suspected, but there was insufficient evidence to prosecute. No conclusion could be drawn by saying that in a particular situation it was a shame that a particular policeman or soldier was not prosecuted.

b) General Submissions on the Construction of Art. 3 and the Notion of Administrative Practice

The respondent Government submitted that the fundamental key to the case lay in the proper construction of Art. 3 in the context of the case. What had been said in the Greek case had no doubt been right in the context of that case but it could not be regarded as an all-embracing, all-inclusive pronouncement upon the subject for all time.

What had been declared admissible was a claim against the United Kingdom Government that it had been responsible for an administrative practice of torture or inhuman or degrading treatment or punishment and that it had thus been in breach of Art. 3.

In the respondent Government's submission, it could, in the context of this case, only be found guilty of a breach of Art. 3 if it had been proved to be at fault. Culpability was the key test. It must, through the appropriate agents, have acted with a guilty mind in breach of Art. 3 either by giving

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direct orders, possibly under cover of sham orders, or deliberately shutting their eyes to what was happening.

They could only be found blameworthy in that way, if through Ministers or senior officers, they had either authorised torture, inhuman or degrading treatment or connived at it by turning a blind eye.

The idea of an administrative practice had emerged from the Commission's jurisprudence and might mean different things in different cases, and had done so in the First Cyprus case and the Greek case. In the First Cyprus case it had been dealt with as part of the phrase "legislative measures and administrative practice" and appeared to relate to regulations made under the law. In the First Greek case it had meant something quite different and it was questioned whether the criteria laid down there were wholly or exclusively applicable in the present circumstances.

Official tolerance was obviously a factor but it was not a necessary conclusion to be drawn from a repetition of acts and in the particular circumstances of the case was not to be imputed to the State from evidence relating to its subordinates.

The applicant Government had based its argument entirely on a few words in the description of an administrative practice in the Greek case. The situation in the present case was entirely different.

The respondent Government quoted a number of passages from the Greek case (Paras. 24-26):

They referred first to Para. 24:

> "The Convention does not in terms speak of administrative practices incompatible with it -"

and relied particularly on the following passage:

> "but the notion is closely linked with the principle of the exhaustion of domestic remedies. The rule in Article 26 is based on the assumption, borne out by Article 13, that for a breach of a Convention provision there is a remedy available in the domestic system of law and administration, even if the provision is not directly incorporated in domestic law, and that that remedy is effective".

They submitted that para. 25 was perhaps even more important for the purposes of the present case:

"Where, however, there is a practice of non-observance of certain Convention provisions, the remedies prescribed will, of necessity, be side-stepped or rendered inadequate. Thus, if there were an administrative practice of torture or ill-treatment, judicial remedies prescribed would tend to be rendered ineffective by the difficulties of securing probative evidence and administrative enquiries would either be not instituted or, if they were, would be likely to be half-hearted and incomplete.

It may be noted here that, in its decision on admissibility of allegations under Article 3, the Commission found that evidence of administrative practice of torture or ill-treatment, contrary to Article 3, had not, at that stage, yet been produced. It therefore found that remedies were ineffective on grounds other than the existence of an administrative practice."

They finally quoted paragraph 26:

"In the first place, acts prohibited by Article 3 of the Convention will engage the responsibility of the Contracting States only if they are committed by persons exercising public authority; further, it must be presumed they are contrary to domestic law. Breaches of Article 3 are therefore governmental acts which are essentially irregular and abnormal, and if expressly mentioned at all, they will be so only by the most secret instructions."

They stressed that these considerations had led the Commission to conclude in the Greek case that the two elements of repetition of acts and official tolerance were necessary for the existence of an administrative practice, and quoted the Commission's definition of those elements. Paras. 25 and 26 of the Greek case thus showed that the concept of administrative practice had been clearly linked by the Commission with the principle of exhaustion of domestic remedies.

The practice referred to in the Greek case had been one which led to the side-stepping of remedies and to half-hearted investigations. They submitted that in the present case judicial remedies were plainly shown not to have been rendered ineffective; the courts were admitted to be fair and impartial and the second Cyprus case had stated that compensation was an important part of domestic remedies. It was clear from the evidence that civil actions proceeded and settlements were made. In addition there had been inquiries such as the Parker and Compton Inquiries and investigations of complaints by the police and army.

Just as a soldier might assault a civilian in anger, despair or frustration or for any other reason, so for the same reasons it would be astonishing if there were not some cases where

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something seemed to have gone wrong with the investigation. Nevertheless the procedure laid down was, it was submitted, first-class, and in the main it had been carried out.

There was thus a completely different situation to the Greek case. There had been no difficulty in securing probative evidence in civil cases as the Government itself could be sued. There was difficulty in always ensuring probative evidence to justify criminal prosecution where for one thing the burden of proof was higher. This was due not to an administrative practice but to the working of the criminal law.

The applicant Government had fastened on the words of para. 29 in the Greek case and submitted that acts of ill-treatment or torture were tolerated in the sense that the superiors of those immediately responsible did not take action to punish or prevent them.

This raised the crucial problem in the case, which had to be decided by the Commission for the first time, namely at what level of involvement by State servants, responsibility attached to the State in these circumstances as opposed to the different circumstances of the Greek case. One of the difficulties in this case was that the Commission might find that comparatively junior officers or middle rank officers possibly of the rank of Chief Inspector in the RUC, or the equivalent in the army, might, for example at Palace Barracks, have taken inadequate steps to prevent the repetition of a large number of complaints. The difficulty that then arose was what the position of the Government was, if through its ministers and senior officers it was genuinely seeking to prevent ill-treatment and punish those responsible. This was the important difference from the Greek case, and if the respondent Government were to be held guilty of a breach of the Convention in those circumstances such a result would be unjust and contrary to common sense.

Various situations were possible. A Government might expressly authorise ill-treatment in which case they were clearly guilty. A Government might not expressly authorise it but might, through its senior officials and army and police officers do nothing to investigate allegations or stop the treatment. That was the situation in the Greek case, which was different to the present one.

In addition acts of ill-treatment might be carried out by members of the security forces with the toleration of junior officers although the Government itself neither authorised nor connived at the ill-treatment, but where domestic remedies were inadequate or ineffective. This might be because tolerance and concealment by junior officers make it impossible for an individual to prove that he had been ill-treated. In those circumstances the Government would be held in breach of the Convention on the basis that it was responsible in international law for the denial of justice by permitting a defective system of justice.

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There was another type of case, which, it was submitted was the position here. This arose where acts of ill-treatment were carried out, possibly with the toleration of junior officers, but when the Government itself neither authorised nor connived at such ill-treatment but tried to stop it by issuing orders, organising the thorough investigation of complaints, appointing doctors at police detention centres, and prosecuting members of the security forces in the courts where proof was available and when in addition, in contrast to the Greek situation, domestic remedies were adequate and effectual so that everyone who had been ill-treated could recover compensation. It had been said in the second Cyprus case that civil actions made it possible for the courts to find that the illegal acts were of a substantial and illegal character as well as to fix compensation.

In this type of situation, the respondent Government should not be held to be in breach of the Convention because it was guilty under neither of the two principles recognised by international law, and by the jurisprudence of the Commission: it was not guilty under the direct injury principle, because the Government itself had neither authorised nor connived at ill-treatment, nor was it guilty under the principle of denial of justice by reason of its domestic remedies being ineffectual or inadequate because its domestic remedies were in fact adequate.

In relation to the level at which official tolerance might be said to manifest itself the respondent Government suggested that it did not seem to matter whether this factor was seen as a separate item in the definition of administrative practice or as an element negativing the official tolerance factor. If the Commission were dealing with the case on the basis of an allegation of administrative practice it must, they submitted, have regard to the question of toleration and culpability at a level engaging the liability of the Government at first hand, namely at the level of senior officers of the Government, army or police. In the case of the army these might be brigadiers or generals and in the case of the police, chief constables, assistant chief constables and officers of that sort. They would not include officers of middle rank such as army captains or majors, or police chief inspectors or superintendants.

There might be a situation when the lower officers would not communicate what they were doing to the higher levels because they knew that it would not be tolerated. This showed the vice of applying literally to a situation like the present what had been said in the Greek case, since it would be contrary to common sense to find the respondent Government guilty of a breach in those circumstances.

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It was not the respondent Government's submission that it did not have responsibility for soldiers at all levels. There was responsibility, for example in domestic law, because they were all servants or agents of the Government, but an entirely different situation must prevail under the Convention, otherwise in any country where the type of situation outlined arose the Government would be guilty of one of the most serious breaches of the Convention. It would be contrary to common sense to say that it was authorising torture if it was doing all it could to prevent it.

If responsibility were not established at the appropriate level, then it did not amount to an administrative practice. The matter would then fall to be examined, if at all, on the basis that the domestic remedies should first be exhausted. The proposition that the existence of effective judicial remedies went to disprove an administrative practice, was also applicable here.

The evidence must thus be looked at to see whether it was of a character that attracted governmental responsibility at the appropriate level, or alternatively, accepting for the purpose of the argument the test in the Greek case, to see whether there were direct orders or official tolerance.

c) The Burden of Proof

In order to establish a breach of Article 3, the applicant Government had to prove beyond reasonable doubt, this being the burden of proof laid down in the Greek case, that there was an administrative practice of treatment contrary to Article 3 for which the respondent Government was responsible. From the submissions of the applicant Government it might have been thought that the burden of proof had shifted. In particular they had asked what suggestion was made by the respondent Government as to how the people had come by their injuries. This approach was entirely wrong. The respondent Government did not have to, and could not, establish how people came by their injuries. They could point to circumstances tending to indicate that another explanation was more likely but this was not a burden of proof upon them.

d) The Direct Injury Principle

In the present case the question of direct orders was sub-divided into two matters, those relating to interrogation in depth, which was conceded to have been authorised at a high level, and those relating to ordinary interrogations in respect of which the general nature of the allegation was that a "get tough" policy had been instituted around internment time.

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It was relevant to consider the role of the army, which had been brought in to aid the civil power in preserving law and order and to stand between two more-or-less warring factions. Inevitably both sides in such a situation made allegations of unfairness and partiality. In these difficult circumstances there was a body of evidence from army officers that they saw their role as peace keepers and as trying to maintain the best relations possible with the two branches of the community.

Reference was made to the evidence of officers dealing with the allegations in relation to Ballykinler, to the effect that they had been doing certain social work to foster community relations. It was against this background that it was apparently being suggested that there had either been some secret direct, orders to be brutal or that they had turned a blind eye. Various officers had said that they realised that it was particularly important not to indulge in acts of brutality or to appear to condone them since the position the army was trying to build up would otherwise fall to the ground.

The police force was a permanent institution set up to enforce law and order and thus also had to foster good relations between both branches of the community.

If there had been an administrative practice, this would have run counter to the fostering of good relations the witnesses had described. In considering whether it was likely, it was relevant that there was no concentration camp system and the period of interrogation had in the main been fairly short. The initial period had been forty-eight hours after which detainees might be prosecuted, interned or released. In any event there would come a time when the people concerned returned to their communities. Knowing this it would have been fatal to have adopted an official policy of brutality which would have resulted in bitterness and hatred against the security forces when the people were released. More than one witness had touched on this aspect of the matter.

It was also relevant to note that comparatively minor instances of misconduct had been dealt with by the army. In one instance a soldier had been fined £25 for singing a Loyalist song to taunt Catholics. If the authorities were so meticulous over minor incidents it would be very odd if they had nevertheless turned a blind eye to more serious ill-treatment.

In relation to the police the respondent Government drew attention to the directives contained in Annex CM VII to its Counter-Memorial and the Attorney General's directions to troops and police set out in paras. 3.7 and 3.8 of the Counter-Memorial. They referred to the evidence of POP 1 to the effect that police had been told to behave properly and that no different instructions had been issued after 9 August than before, and to his evidence that various specific techniques which had been alleged

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(Russian roulette, ear clapping etc) had not been taught. There was the evidence of G. 3 that every policeman was instructed to be humane and that interrogation by gentler methods was more likely, in his view, to be successful. The evidence of POP 2 as to the complaints machinery had disclosed that there was a committee of public figures from all walks of life with access to documents and able to exercise a supervisory function. If arrangements of this sort were made it was hardly the context for direct secret orders for brutality or for turning a blind eye.

Reference was also made to POP 2's evidence of a joint army/RUC investigation team set up in January 1972, which had not been challenged in cross-examination, and to the figures he had given of 2,615 complaints against the RUC, half of which had been for assault, and of some 23 prosecutions for assault. His evidence had been that the percentage of substantiated complaints was slightly lower than in England and Wales, where until recently there had been no terrorist activity. He had said that no fewer than 200 officers were investigating complaints, although the security forces were under great strain.

G 3 had said that on 8 August 1971 officers in charge of the holding centres had been told that they were responsible for proper treatment of detainees in accordance with existing instructions. Several RUC officers had said that violence was counter-productive in interrogation or that there had been no instructions to change the methods of interrogation. Reference was made to the evidence of PO 4A, PO 4E and PO 12F.

In relation to the army, G 2 had said that there was no policy that detainees should be harshly treated. Reference was also made to the evidence of N. 12 who had said that 7,111 out of 7,441 complaints reaching his office had been fully processed. He had also given evidence of a supervisory body containing figures from public life and all walks of life who were able to act as a questioning committee, watch the production of documents and trace or ginger-up any lethargy in investigating complaints. P. 17, the Assistant Provost Marshall had said that the army were instructed to use minimum force and had introduced the photographing system to see if people in army custody were injured. Reference was also made to P. 11's evidence as to the orders given to his battalion and the evidence of 5 B in relation to Ballykinler.

The whole elaborate complaints machinery explained by POP 2, N. 12 and P. 17 could not be regarded as a mere charade. Action resulted in the appropriate case. Lord Gardiner had said in his report published in January 1975 that procedures for investigating complaints against the RUC were more thorough than those elsewhere in the United Kingdom. He had added that this was not the general belief in Ireland. This was a problem

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of communication. He had also considered the desirability of complaints against the army and police being investigated by persons other than service personnel. It should be borne in mind, however, that the actual investigation must be in the hands of trained people, although the possibility of introducing an independent element was being considered.

e) The Notion of Official Tolerance and the steps taken to prevent ill-treatment

The burden of establishing that toleration had taken place, if that were the alternative allegation, lay squarely on the applicant Government and the evidence of it must be compelling and substantial. It must show that the respondent Government, as a matter of policy, had deliberately engaged in, or by turning a blind eye connived in, a steady and systematic process of torture and ill-treatment of citizens in Northern Ireland. In the respondent Government's submission it had failed to discharge this burden.

The respondent Government then referred in detail to the steps it had taken to prevent acts of ill-treatment, to investigate allegations, afford a fair hearing of complaints and, where specific acts of ill-treatment had been established, punish the offender.

They referred in particular to the directive on military interrogation annexed to the Parker Report, contained in Annex 6 (2) to their Observations on Admissability, the current directive, dating from the summer of 1972 (1), contained in Annex CM 7 (3) to their Counter-Memorial and the RUC code Regulation No. 1380 (2) and Discipline Regulation No. 629 (3), both in Annex CM 7 (1) to their Counter-Memorial. They recalled that one witness had given evidence of an incident when two soldiers had hit somebody over the head with a rifle and an RUC man present had been charged under the latter regulation with knowingly allowing violence to be used.

They also referred to the extract from the RUC Manual of Instruction in Annex CM 7 (1), the Brigade Instructions of 24 April 1972 on arrest under the Special Powers Act (4) in Annex CM 7 (4), and the RUC Force Order 64/72 of 26 April 1972 (5) in Annex CM 7 (5). There was also the Ministerial Directive by the Attorney General (6) on pages 46 to 47 of the Counter-Memorial and army and RUC instructions of August 1972 on the treatment of persons on arrest and during interrogation (7) in Annex CM 7 (6) and (7

There was evidence from POP 1 that revised instructions to the RUC in November 1973 had replaced those of August 1972. In addition it was clear from army and police witnesses that the instructions had been passed on to the rank and file. In this respect reference was made to passages in the evidence of P. 11, P. 12, P. 13 and P. 16. There was evidence from POP 1 that the

(1) cf. above, p. 267-268
(2) cf. above, p. 266
(3) cf. above, p. 266
(4) cf. above, p. 268
(5) cf. above, p. 269
(6) cf. above p. 270
(7) cf. above, p. 269

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handling of men in custody and during interrogation was taught as part of basic RUC training and from P. 12 and P. 17 that the use of minimum force was part of a soldier's basic training. It was clear from the evidence that police and army officers attached considerable importance to enforcing the directives and orders and that the conduct of soldiers on the ground was carefully supervised. This came from the evidence of P. 11 and P. 12. The evidence of P. 13 showed that subordinate officers understood the need for strict discipline and P. 17's evidence was that the fact that on occasions there was a breakdown of discipline did not mean that there was any general departure from the rules or a pattern of ill-treatment.

Reference was made to the evidence of POW 1 as to the supervision of and responsibility for the police holding centres and to his evidence that the five techniques had not, apart from the seminar, been taught and that other particular forms of ill-treatment suggested had not been taught.

There was evidence that medical arrangements had been improved from what had, admittedly, not been an altogether satisfactory start. In this respect reference was made to the evidence of P. 18 that a system of medical examination of prisoners on entry and discharge from the holding centres had been introduced in November 1971. 21 A had given evidence that medical staff were instructed to submit reports on all persons where there was evidence, or a complaint, of ill-treatment. The current directive in Annex CM 7 (3) of the Counter-Memorial contained the requirement for medical examinations.

There was thus an improving situation which was a clear indication that the authorities were facing up to their responsibilities and not turning a blind eye.

According to the Greek case official tolerance could be shown either by taking no action to punish wrongdoers or no action to prevent repetition. The evidence showed that proper attempts had been made to investigate complaints and this had been required by the Police Act. Investigation had been enforced and supervised by the committee of public figures referred to. Reference was made to P. 17's evidence that it was the GOC's policy that every complaint should be investigated and there was evidence of General Tuzo having invited a complainant to lodge his complaint with the RUC. Reference was made to evidence that 200 officers had been investigating complaints at one time and to P. 17's evidence that 1,800 soldiers had been interviewed in relation to the internment arrests. There had been evidence that between 1972 and 1974, 563 allegations of assault had been referred to the Director of Public Prosecutions. There had been 31 prosecutions and P. 17 had explained that in many cases the evidence had been weak. There had been joint army/RUC investigation teams, the Compton and Parker enquiries, and the tightening up of medical examinations when complaints began to come in.

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POP 1 had said in relation to Holywood that although there had been much propaganda not all complaints had been dismissed and those lodged with the complaints department had been investigated. He had visited holding centres to supervise his officers. The office of the Director of Public Prosecutions had been set up in March 1972. There had also been the question on the form asking detainees whether they had complaints to make. Reference was made to the evidence of P. 18 that over a two-year period after the introduction of medical examination there had been 20 to 30 complaints of injuries of which about 50 per cent had been cases of assault.

It was obviously impossible to have a watcher standing behind every policeman or soldier. It was only along these general lines that steps could be taken to show that wrongdoers would be punished. Only by bringing to the notice of the people concerned what might happen could repetition be prevented since potential wrongdoers might realise their own liability and the liability they could secure for the Government in any civil proceedings.

In reply to questions by members of the Commission the respondent Government accepted that the length of time for which a situation continued was not to be ignored. The authorities had been aware of this and had improved certain matters as time went on. There were obvious practical difficulties. The best solution was to have good officers who would enforce discipline. It should also be sought to bring the relevant orders and the consequences of disobeying them to the attention of the people concerned. These were the only sort of things that could be done. It was not practicable to detach large numbers of the security forces to watch others in a time of dire emergency.

They did not accept that, if all possible steps were taken and a situation of ill-treatment continued, the Government would be liable. The question was what the intent of the Government was and this could only be judged by its actions and those of its senior officers. If the Government was acting in good faith it would not be guilty, even if, with hindsight, it appeared that it had overlooked something which should have been done. The res ipsa loquitur test had no application as this would involve applying a counsel of perfection. Bona fides was the proper test, not any absolute obligation.

It was not possible to commit a breach of the Convention by accident or mischance. This was why there must be either direct orders or a "winking of the eye", either of which involved the state of mind. This part of the test had been laid down by the Commission in its jurisprudence and this led to the indication that the state of mind must be important.

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The respondent Government did not accept that bona fides, if relevant, could only be relevant in relation to the effectiveness of responsibility and that the proceedings before the Commission should not be looked at as relating to charges against it. In the proceedings a charge was brought by one Government against another. The situation then was that the State was being criticised on the basis of facts said to be widespread and it could not be criticised unless it was shown to have turned a blind eye. Once the notion of administrative practice was introduced, inevitably the notion of state of mind was introduced also.

Mere repetition of acts was not of itself evidence. It was an element to be taken into account in considering whether there had been tolerance but other aspects had to be taken into account also. Otherwise if a State were doing its best to ensure that things were done properly and yet complaints went on, the State could be liable. This would not accord with the intention of Article 3. In United Kingdom civil law the State was liable for the acts of all its servants, but this could not be equated with the position, in an inter-State context, under the Convention.

Affixing absolute liability to a State in respect of the repetition of acts would not be in accordance with the provisions of Article 13. If the mere repetition of acts, even if the State were trying to prevent them or if they were at a low level, was said to amount to tolerance and an administrative practice of the State, it was difficult to see what defence there could be in the circumstances. It could not have been intended that the Convention should be so construed.

The respondent Government then turned to the second aspect of tolerance referred to in the Greek case, namely the situation where higher authority, in the face of numerous allegations, manifested indifference by refusing adequate investigations or when a fair hearing of complainants in judicial proceedings was denied.

This, quite clearly, was not the situation here. Enquiries and investigation machinery had been set up. The courts had taken action and damages had been awarded. Criminal prosecutions had been brought in the appropriate circumstances. All action possible had been taken to prevent repetition.

There had been ministerial direction by the principal law officer of the Crown on the treatment of persons in custody; there were the ministerial instructions set out in para. 308 of the Counter-Memorial; prompt action had been taken to investigate ill-treatment. An example of this was the taking of a statement from T.16 by the RUC on the very day of his release. P. 17 had given evidence of the introduction of colour photographs of arrestees. He had also given an illustration how, by his prompt intervention, a senior officer had, on the occasion of the transfer of people from Armagh to the Maidstone, been able to attribute responsibility for assaulting detainees

to certain troops. P. 17's evidence of consultations between the GOC and Cardinal Conway and the subsequent appointment of two RUC detectives to oversee army investigations was also referred to.

It was inconceivable that any government would be able to defend itself against an allegation under Article 3 unless it could put forward matters of this sort. It showed the distinction between the sort of situation that should prevail in a democracy and that in a military dictatorship where nothing was done at all.

Referring to the investigation of complaints the respondent Government submitted that to suggest, as the applicant Government had to do to establish an administrative practice, that it had deliberately taken no action against wrongdoers or manifested indifference by refusing adequate investigation or deliberately preventing a fair hearing of complaints in judicial proceedings, was to fly in the face of the evidence. General enquiries had been set up promptly to investigate allegations made from the day when internment had been introduced. They had been as full as possible and had been fair since there was no doubt that the Compton Commission had not hesitated to criticise the conduct of the security forces where it thought such criticism was justified. The respondent Government could not be blamed for the fact that the majority of complainants had declined to participate. Thereafter the Parker inquiry had been set up and had made a full inquiry into the methods of interrogation, as a result of which the five techniques had been abandoned. This did not suggest a Government manifesting indifference to complaints or trying to prevent proper investigation.

Since 1971 significant improvements had been made in the system of investigating and remedying specific complaints. As with the provision of medical services, this was an illustration of an active Government behaving in good faith as might have been hoped and expected.

Reference was made to the evidence of POP 2 as to the complaints procedure under S. 13 of the Police Act,(Northern Ireland)1970, which had been in force from 1 April 1970. Particular emphasis was laid on the evidence that the investigating officer had to submit a report on any complaint, whatever the circumstances, to the Chief Constable. Notice had been taken of complaints from whatever source. There had been a duty on the police authority under S. 12 of the Act to keep itself informed as to the manner in which complaints were dealt with by the Chief Constable. There had been an official committee of five members of the police authorities, including two Protestants and two Catholics which had each month examined the records of complaints kept by the Chief Constable. They

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had had powers to ask for reports and information, which they had frequently done. P. 17 had said that where a serious criminal offence was disclosed reports were submitted to the Chief Crown Solicitor and in turn to the Attorney General. After direct rule the Director of Public Prosecutions had received these reports.

POP 2 had said that from November 1972 all completed investigations on police officers had to be sent to the Director of Public Prosecutors, however minor they were and regardless of whether they were supported by evidence or whether the complainant had co-operated in the enquiry.

Reference was also made to the number of officers involved in such investigations and to POP 2's evidence as to the numbers of complaints, and of prosecutions and convictions for assault, of which there had been 25 and 6 respectively. The evidence of N. 9 as to the investigation of D.1's complaint concerning Whiteabbey Police Station was referred to as an illustration of the thoroughness with which complaints were investigated. Lord Gardiner's observations on the procedure were also referred to.

In relation to complaints against the army it was conceded that initially there had been defects in the investigation system. In particular the identity of arresting soldiers had not been recorded and investigations had been carried out by the RUC, who, according to P. 17, had been short-staffed and had only to investigate where there appeared to be a serious criminal offence. Complaints had had to be referred to outside authority for directions on whether to prosecute. P. 17's evidence showed, however, that since the emergency had developed very important improvements had been introduced. From May 1970 onwards the arrestee and arresting soldier had been photographed together. From the introduction of internment considerable efforts had been made to ensure that soldiers would be easily identified and considerable efforts had been made to trace soldiers involved in arrests on 9 August 1971. 1,800 interviews had been carried out, including 200 - 300 outside Northern Ireland.

Evidence showed that the system of investigation had improved. Reference was made to the graph produced by P. 17. General Tuzo's letters to T.11 showed that complainants were encouraged to complain to the RUC. P. 17's evidence as to the co-operation between the RUC and military police was also referred to. He had also spoken of the automatic appointment of an investigator as soon as an incident was recorded, even before a formal complaint had been made. Complaints in the newspapers or from third parties had also been investigated. N. 12 had given evidence of the setting up of a central complaints office in Autumn 1971. On 20 January 1972 the joint army/RUC investigation team had been set up. This had followed strict procedures.

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From the establishment of the office of Director of Public Prosecutions the results of all investigations disclosing a serious offence had had to be sent by the Chief Constable to the Director and from 1 November 1972 even those disclosing minor offences had had to be sent to him.

M. 12's evidence had been that from 31 March 1972 to 30 November 1975 the Director had considered, in relation to the army, 563 allegations of assaults in custody, and had given directions for prosecution in 31 and not to prosecute in 508, directions being awaited in 24. It had been accepted that he was acting properly on the basis of the information before him. He had dealt with 515 allegations of assaults not in custody, giving direction to prosecute in 55, and not to prosecute in 444, directions being awaited in 16 cas

It could be seen that complaints against the army had risen to a peak in about June/July 1972 and had been dropping since. This illustrated the success of the measures.

Finally reference was made to the Attorney General's letter in Annex 8 (2) of the Counter-Memorial, instructing the Director to tell the RUC to investigate and report on any circumstances which might disclose the commission of a criminal offence by a member of the security forces.

In the light of this it was tempting to ask what more humanly could one have expected to be done. It was inevitable that complaints continued. The difficulties in the investigating and prosecuting processes must be borne in mind. Having regard to IRA propaganda, if one appeared to be doing very little, it was said that there was no investigation. If teams went around allegations of harassment were made. There had been evidence of exaggerations and distortions in complaints, of lack of co-operation by complainants, and of lack of evidence of identification. It should be recalled that no one could be compelled to go on an identification parade. Reference was made to difficulties which arose from the criminal law in relation to the burden of proof beyond reasonable doubt and the necessity to identify the particular offender in, for instance, a patrol. Other factors which had to be taken into account were the credibility of witnesses, the presence or absence of injuries whether injuries were recent or not and the possibility of other explanations for them. The case of T. 5 was referred to as an example of a case where an allegatio as to injuries was shown to be palpably false.

The prosecuting authorities would be faced with the same difficulty as might have faced the Commission's Delegates in deciding who was responsible for ill-treatment in any particular case.

The respondent Government submitted that the 16 illustrative case were a "mixed bag of cases" which were not illustrative of a pattern of events giving rise to an administrative practice. Details of their submissions on these, the 41 cases, and other "statement cases" are summarised above.

They submitted that having regard to the effect of the illustrative cases in themselves and to the statement cases, it would be dangerous to find a pattern of conduct amounting to administrative practice involving responsibility of the Government at whatever level it was finally decided that that responsibility attached.

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f) The Emergency

The respondent Government recalled that it had had to meet a challenge to the principles of human rights from the IRA and from unionist terrorists who copied the tactics of the IRA. It was their responsibility to protect the victims of terror from the destruction of their rights and freedoms, their homes and their lives.

The issues under Articles 3 and 14 had to be looked at in the context of the undisputed emergency which was a matter of death, of limbs and sight destroyed, of deliberately shattered kneecaps, of bombs and flying glass, of burning homes and of riot. Over 1,100 people had been killed, over 11,500 injured and over £140,000,000 worth of property destroyed. The allegations made, were made in the context of an emergency unprecedented in Western Europe in the past 250 years. The character and quality of the respondent Government's actions in Northern Ireland were related to the reasons for them. The IRA should be kept in mind as they were a principal source of the violence and terror against which the security forces had to react. The reactions of the security forces and other authorities formed the basis of the allegations, not their initiatives.

The Protestant extremists and hooligan element of both communities could not be ignored either, and nor could the traditions, fears and intolerance of the two communities. The history of the period under consideration was not only one of violence but also one of attempts to end violence, remove legitimate grounds of complaint and reconcile the communities. In considering the allegations of an administrative practice contrary to Article 3 and the allegations under Article 14 consideration should be given to the nature of the authorities charged and what they had been trying to do. The Commission should take into account what could and could not be achieved in the situation.

It had been suggested by the applicant Government that there had been a deliberate policy of deploying particular units in trouble spots for the purpose of harassing the population by conducting security operations in a brutal manner. This was a speculation unsupported by evidence. If it were an allegation it was of the most serious kind calling for the clearest of evidence before it could be substantiated. The most experienced units had naturally been sent to areas where the security risk was greatest but this was no basis for the inference which had been suggested.

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g) The Five techniques

Throughout the case the respondent Government had drawn a distinction between the fourteen cases described in the Compton Report in which the five techniques had been used and the other cases referred to by the applicant Government. They maintained that distinction and accepted that the use of the techniques on the fourteen people concerned, but not any other acts alleged by them, constituted an administrative practice.

They did not propose to address the Commission on whether the use of the techniques constituted a breach of Article 3, although it was not admitted that they did. That question did not arise for determination by the Commission. They referred to the setting up of the Compton and Parker Committees and their Reports and to the statement by the Prime Minister announcing the abandonment of the techniques. The decision to abandon the techniques had been put into effect. The significance of these steps was that the Convention provided an external safeguard for the protection of human rights but the front line of defence was and must be domestic machinery. In this respect they quoted passages from a speech made by Mr. Sørensen, former President of the Commission, to the Consultative Assembly in 1968. He had said that international supervision came into play in a subsidiary manner, namely when national institutions and the remedies available to the citizen in his own country could not ensure respect for his rights and he had stressed the importance of the methods chosen by each State to protect the rights of individuals.

Domestic machinery and national institutions had been invoked to deal with the complaints made about the five techniques. Both committees had been set up before the present application was submitted and not in reaction to it. The facts had been disclosed for public examination and the respondent Government had in effect provided the applicant Government with the material with which to assail it. After this public examination the techniques had been abandoned. The domestic machinery had worked as it should in a democratic society, whereas it could not have worked in such a way in the Greek situation of military dictatorship.

The Commission should act on the basis of this formal and deliberate abandonment of the techniques, not some remote academic contingency. It should note what the respondent Government had done and leave the matter there. This course had been taken in the first Cyprus case and reference was made to the Commission's reasons for taking it (Vol. I, pp. 103 - 104). These reasons had additional force where the Government itself had caused the matters to be enquired into before any application and had itself decided to abandon the procedures complained of.

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The respondent Government then dealt with the refusal of its witnesses to answer questions concerning the five techniques or the seminar referred to in the Parker Report. They had advised witnesses not to answer these questions because of concern for their safety. It was conceded that an inquiry into the fourteen cases might have been hampered by this but these cases had generated considerable publicity and emotion and anyone suspected of having been concerned ran a considerable risk of a vengeance killing. One witness who had given evidence before the Commission had since been murdered by the Provisional IRA. In the second place the Commission's enquiry was not about individuals but about an administrative practice. This was admitted in relation to the five techniques and the issue was thus determined. In those circumstances the fact that the delegates had been inhibited from fully examining this part of the case was not material. It was also emphasised that the matters on which the witnesses had refused to answer had been limited to the five techniques and the seminar.

h) The Extent of the Other Allegations under Article 3

The allegations under Article 3 were confined within certain parameters. The first was the alleged administrative practice which involved an allegation of State responsibility for the systematic approval or tolerance of the gravest practices. A further parameter arose from the submissions of the applicant Government on the merits in December 1973, when they had said that allegations were not made personally against any member of the United Kingdom Government. The only area within which the respondent Government was called upon to answer in respect of Article 3 was thus an area of allegation of administrative practice not attributable personally to Ministers of the respondent Government.

i) Administrative Practice and State Responsibility

It was essential to distinguish between violations by persons acting in an official capacity on the one hand, and violations by a State on the other. This distinction was borne out by the words of Article 13. Only violation by the State was subject to the jurisdiction of the Commission and only when violations by individuals led to a finding of violation by the State, could the State be regarded as in breach of its obligations and should the Commission so report under Article 31. This view was confirmed by the provisions of Article 1.

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This distinction, which was clear from the wording of the Convention, was clearer still in the present case where the allegation was of an administrative practice, although even apart from this the Commission's jurisdiction under Article 24 or Article 25 was confined to violation by the State.

Whether or not persons had been subjected to ill-treatment by persons acting in an official capacity was not the question for determination. The question was whether there was an administrative practice for which the respondent Government was responsible. If the allegation had been simply that a public servant had been guilty of a violation the question would have been altogether different. The first question would have been whether an effective remedy had been provided and only if it had not, would responsibility under the Convention arise. The Convention accepted that violations by persons could not be totally prevented and an effective remedy was what it required in those circumstances.

The significance of this distinction was that the allegation in this case was one of direct violation and not of consequential violation through the absence of an effective remedy. The importance of this was that a violation of the character alleged could only arise if the administrative practice arose by virtue of the direct acts of persons responsible at the level of the State or if such persons tolerated practices which they knew to be violations by public servants and the degree and circumstances of the toleration was such that it must be inferred that it was the intention of the State that the practice should continue.

The level of the State meant the level of the executive or an agency of the executive specifically entrusted by it with authority to order or promote the practice complained of. The effect of the alleged authority must be to authorise both violation of the protected rights and freedoms and, in the present case, of domestic law. Such an authority ought not to be inferred lightly.

The reference in the Cyprus case to administrative practices and legislative measures in juxtaposition was a plain indication that it was only at the level of the State that violation in respect of either was considered relevant.

The submissions of the applicant Government were unacceptably wide. They appeared to suggest that for the purpose of an administrative practice amounting to violation by the State it was sufficient to show that some official person immediately superior to those responsible for acts of violation, must be taken to have known and turned a blind eye to those acts. This was an argument from weakness on which it seemed that, no matter how low in status the persons committing assaults, the State was responsible by way of administrative practice if any person superior to them could be assumed to have authorised or condoned

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their conduct. The logic of this contention was impossible to follow. There was a significant distinction between the present case and the Greek case where those carrying out acts of torture or inhuman treatment must have had it well in mind that the leaders of the regime would not be likely to call them to account. The position was plainly different in a democratic society, and in particular in one which had publicly produced the material in relation to the five techniques. The inferences of facts available in the Greek case could not be available in the present case.

Whatever the practical limits (in terms of the ranks of persons responsible) of the range within which the principle of responsibility of the State would be likely to apply, the essential point was that State responsibility in terms of an administrative practice must be no lower than an agency specifically entrusted with authority to authorise conduct contrary to the Convention and even domestic law. Regulations and instructions from a higher level were important. If they emanated from a lower level they might still be described as an administrative pratice but the State could only be responsible if it could be shown that such regulations had been tolerated at the level of the State.

The evidence to establish that must be clear and must be either direct or arise from an inevitable inference which was far less easy to draw in a democratic society than in a military dictatorship. Whether tolerance at the level of the State could be inferred was a question of inference and fact rather than law. Thinking in terms of an arbitrary level of rank or status did not help to provide the answer. Relevant facts, which also plainly distinguished the present case from the Greek case, would be if persons subjected to violence had been in a position to complain and to bring civil claims in the courts, if claims had been accepted where there was evidence to support them, if complainants had been able to report their stories to a free, popular press, if enquiries had been set in motion at the level of the State and if the State had taken action to stop further violations of the same nature.

There was no difference in principle between an application brought by an individual and one brought by a State. The only difference between this case and the usual individual application was the allegation of an administrative practice.

It might be valid, to say that the longer the period of violation the greater the likelihood of knowledge coming to those at the level of the State and, if they failed to take action, they could be regarded as tolerating the violations. This, however, depended on the circumstances and was only one of many facts to be taken into account. Ministerial directives and other actions showing increased anxiety on the part of the State that proper conduct should be observed were powerful factors to be taken into account amongst others.

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Failure to stop conduct which was not condoned would not result in responsibility of the State. It would be wrong to regard States as having accepted an obligation amounting to that of an insurer. In the first place it could not be assumed that a State, knowing of the practical impossibility of ensuring that violations would never occur, would accept such an obligation. Secondly the value of the Convention would necessarily be diminished if violations were held to occur whatever steps might have been taken to try to avoid them. The domestic remedy rule underlay this concept.

It was a reasonable inference from the wording of the Convention that the parties were undertaking to take all reasonable and practicable steps to prevent violations and to remedy them when they did occur. Partly for this reason an administrative practice could not be spelled out of a mere repetition of acts. This might lead to knowledge by those at the level of the State but when knowledge was established there was still a gap to be filled before tolerance could be inferred, for questions then arose of the ability of the State to prevent further repetition. Ill-judged steps or steps seen to be inadequate with the benefit of hindsight were not to be dismissed for that reason. The Commission was not dealing with a concept of negligence or with the responsibility of an insurer.

It was necessary to show a degree of connection between violations which occurred and the level of the State itself and to show that the administrative practice was authorised or tolerated at the level of the State. It was accepted that certain matters were entrusted by the State to the army and police. Whatever might have been entrusted to the chief of police or GOC, the question was whether it was to be assumed that what those persons were ordered to do, or what was tolerated, covered not only the ordinary incidents of arrest and investigation but also a manner of acting which was contrary to the Convention.

Summing up their submission the respondent Government submitted that it had to be borne in mind that the articles of Section I of the Convention referred to violations by individuals and that violation by the State arose either under Article 13 where there was no remedy or if an administrative practice of violation was proved. Article 1 imposed the obligation on States to secure the rights and freedoms defined in Section I, the articles of which might be violated by persons. The first possibility of violation by the State arose where an individual had been the victim of a violation by a person acting in an official capacity and did not have an effective remedy. It was no doubt for this reason that Article 26 provided the procedural necessity for exhaustion of remedies. The second possibility was where there was an administrative practice for which it was responsible. The present case concerned only that possibility since that was how the matter had been alleged and how the Commission had treated the matter at the stage of admissibility.

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If the Commission found that there had been violations of the protected rights and freedoms by persons acting in an official capacity but was not satisfied that these were the result of an administrative practice, it was submitted that, whether or not it was appropriate to record in a Report under Article 31 the violations by public servants, it would be incumbent on it to state its opinion in clear terms that those violations did not disclose a breach by the State of its obligations under the Convention.

j) The Position under Article 50 in the Absence of State Responsibility under the Convention

In reply to a question whether their argument as to administrative practice and State responsibility was compatible with Article 50 and whether compensation could be awarded under that article without there being responsibility of the State under the Convention, the respondent Government submitted that there was nothing in that article to alter their argument. If there was a remedy which was inadequate in the sense that it was only partial, or if there was no remedy at all, the State as distinct from the public servant became guilty, through Article 13, of a violation of the Convention. If an administrative practice was established it would follow that there had been violations by persons acting in an official capacity and the need for an effective remedy would again arise by virtue of Article 13. There might thus be other violations in the sense that no effective remedy existed in relation to the violations committed by public servants which together formed the evidence or part of the evidence of the administrative practice.

k) Comparison between the European Convention on Human Rights and the Geneva Conventions

The question was put whether acceptance of the respondent Government's submissions would not have the effect of making a violation of the European Convention on Human Rights less likely than a violation of, for instance, one of the Geneva Conventions, having regard in particular to Articles 146 - 148 of the Fourth Geneva Convention.

The respondent Government submitted that whilst it might be of value to look at other Conventions to see how they treated parallel matters, the particular provisions of one Convention could not be construed by reference to the provisions of another. This was especially so in the case in point since the European Convention provided for a new system of collective enforcement not contained in the Geneva Conventions.

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Examination of the relevant articles of the Fourth Geneva Convention showed, however, that the apparent contrast did not in reality exist. Article 146 obliged States to take action to take measures to punish or prevent grave breaches committed by individuals under Article 147. The explanation of the wording, used in Article 148, that no High Contracting Party would absolve itself or any other High Contracting Party from liability in respect of breaches referred to in the preceding article, was that the liability referred to was that arising under Article 146.

Article 13 of the European Convention was similar in character to Article 146 of the Geneva Convention, although Article 13 did not provide for specific forms of remedy. Article 147 defined certain grave breaches by individuals in the same way as Article 13 started on the premise of violation by individuals and in each case one went on, by virtue of the further necessary steps, to the situation where the State itself, in one of the two ways mentioned, was liable.

1) State Responsibility for Unauthorised Acts

The respondent Government continued their submission by referring again to the question of the State's responsibility for unauthorised acts. They submitted that it was not enough to find an individual soldier violating the provisions of Article 3. What must be looked at was the point, possibly within the army, possibly higher up where the authority of the State had been entrusted to a particular person under whose orders those below were acting. A General might be entrusted with the task of making arrangements for arrests, the holding of arrestees and their transfer, for example, to the police. The fact that he had been invested with authority to perform these acts did not invest him with authority to perform them in a manner contrary to the Convention. Before responsibility attached to the State it was necessary to find either that the General was invested with authority to perform the acts illegally or by way of violation of the Convention or that that was the way in which the authority was in fact exercised and that the State must have been aware of it and tolerated it.

Even if persons at the level of general officer so disregarded domestic law and the Convention as to bring about violations by individuals, the State could not be made responsible unless it had authorised or tolerated the violations.

If the State were made responsible where the authority it had given was lawful but it had been unlawfully carried out, this went beyond what could reasonably be seen as the intention of the Parties to the Convention. If there was liability on this basis, it would arise from the acts of public servants of any level and place on the State the liability of an insurer.

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A private soldier carrying out regulations was an agent of the Government for the purpose of carrying them out lawfully. The mere giving of authority to a State servant to do something lawfully was not sufficient to make the State guilty of breaches of the Convention unless it was shown to have accepted, approved or acquiesced in the unlawful carrying out of the lawful regulations.

m) The Construction of Article 3 and its Application in the Present Case

It was submitted that there was a danger in the use of the term "ill-treatment", which covered a very much wider span than the acts covered by Article 3, which were of the gravest sort. The word "torture" itself admitted acts only of a high level of gravity and the other acts referred to in Article 3 were of a comparable level. Terms such as "inhuman", namely such as no human could easily be contemplated as employing, were not to be watered down. This became clear, if it were not clear from Article 3 itself, from Article 15 (2) under which certain articles were regarded as of such vital importance that, even in times of war or public emergency, they could not be the subject of derogation.

The articles in this category were, apart from Article 3, Article 2, Article 4 (1) and Article 7. It should be noted that a distinction was made between para. 1 of Article 4 and the other parts of Article 4 relating to conduct plainly less grave than slavery or servitude. These provisions of Article 4 could be derogated from. Article 15 thus permitted derogation except in certain extremely grave matters and the gravity extended throughout the provisions of Article 3.

If a policeman in a riot lost his temper and struck around him with his truncheon, this should not happen, but it was nevertheless plainly not treatment covered by Article 3. It was difficult to distinguish between different degrees of gravity, but a distinction must be made. In the present case it was clear that application of the five techniques was conduct of a totally different level of gravity to that in many of the other allegations and much of the evidence. A guide to relative gravity could be found in the amounts of compensation awarded. In the five techniques cases this had amounted to many thousands of pounds, whereas in the vast majority of other cases the money accepted, presumably as adequate compensation, had not exceeded three figures and in many cases had been below £500. There had been two awards of about £2,000. If people were prepared to accept such sums it must be assumed that they and their advisers considered that whatever suffering they had undergone had been totally different in character and gravity from those who had been awarded many thousands of pounds.

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n) The Relevance of the Number of Compensation Claims and Awards

Commenting on the relevance of the number of claims and awards of compensation (1,193 claims outstanding and 473 met) the respondent Government accepted that repetition of acts was one of the factors from which an inference of toleration might be drawn. It had to be seen in relation to all other facts, including the very fact that the State had allowed for the making of compensation and in fact made it.

Accordingly it was wrong to take account of the point out of the context in which the admittedly unlawful acts being compensated had arisen. The State was not an insurer. In a situation such as that in Northern Ireland the inferences to be drawn from the number of complaints must inevitably be weakened.

In addition it should be remembered that elements other than violence were involved in many claims. There had been many cases of false arrest and might be many such cases involving also some relatively minor assault.

Inevitably in the context there was a certain level of force. The Commission should not ignore the indiscriminate violence of the IRA and the frustration felt by the security forces at their inability adequately to protect the citizens. They themselves had been the target of a brutal conspiracy in which 279 soldiers and 60 policeman had been killed and many more were injured. The fear and rage which they must have felt should not be overlooked. Their responses had not resulted from training or orders, but were human responses. Inevitably, whatever the discipline and rules, people suspected of killing or bombing or organising these things would, on occasion, be ill-treated. In that context they became entitled to damages from the State.

b) Observations on the Evidence

In looking at the written complaints the Commission should bear in mind that allegations of ill-treatment were in themselves among the weapons used by the IRA for political ends. It was part of the technique of the modern terrorist to exaggerate every incident of reaction by security forces into an act of undoubted brutality. The Commission should not therefore, remembering that it was asked to accept all the 235 cases in the application, be naive in its evaluation of untested allegations.

The evidence, far from showing an administrative practice by tolerance or otherwise, was all the other way. Reference was made to the abandonment of the five techniques and the evidence as to the various orders issued and the steps taken by the law enforcement authorities to investigate and stamp out ill-treatment.

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The reports of committees of enquiries set up by the Government which had been drawn on to provide evidence of culpability, should be regarded instead as compelling evidence of the way in which the domestic machinery worked to eliminate legitimate matters of complaint.

Whether all the steps taken were totally effective was not in point. What was in point was that they clearly indicated that far from endorsing or tolerating malpractices, prompt steps had been taken within the bounds of what was practicable to tighten up and improve procedures so as to prevent any repetition of ill-treatment.

The applicant Government had invited the Commission to infer that complaints were not being adequately investigated. This suggestion did not appear to have been made to any of the general practice witnesses. There had been many investigations and 180 members of the security forces had been prosecuted for assault.

Reference was again made to the difficulties in investigations and prosecutions. Inability or failure to produce evidence to the Director of Public Prosecutions could not, for these reasons, be a matter of complaint of official tolerance or administrative practice against the State. The State did all that it reasonably could and could not be expected to do more or to undertake a responsibility by virtue of the Convention which went further.

p) Final Observations on Article 3

The respondent Government's case was that no positive proof had been adduced either of an administrative practice or, as had been suggested, of an official policy of ill-treatment. The applicant Government had sought to establish such a policy not by fair and necessary inference from the facts but by a cloud of suspicion which was easily invoked in such a situation.

What evidence there was showed on the contrary a continuing endeavour by the State to take all reasonable and practicable steps to prevent further ill-treatment, which, whether they had been successful or not, demonstrated that the State was not condoning, tolerating or authorising an administrative practice or policy of ill-treatment.

3. The applicant Government in Reply
(VR 12 pp. 418-430, 445, 450-452, 473-479)

a) Administrative Practice

The applicant Government noted that much time had been spent going over arguments which had been discussed in October and December 1973. The inference must be that the respondent Government realised that if the criteria of the Greek case were applied, they would be found to be in breach of Article 3. The Commission was asked to refer back to the arguments made by the applicant Government at previous hearings.

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It was suggested that there was a fundamental confusion in the respondent Government's arguments between two separate concepts, namely the concept of State responsibility and the concept of an administrative practice in the jurisprudence of the Commission.

The concept of State responsibility meant that a State might be held responsible vicariously for the wrongful act of individual members of its public authorities. If a soldier or a policeman committed an assault, the State in whose service he was employed might be liable. No question of mala fides on the part of the Government or the State arose. Even if an individual soldier or policeman acted contrary to orders, the State concerned might be vicariously liable.

A State might seek to make another liable for a wrongful act committed against one of its nationals by a member of a public authority of the respondent State. The respondent State would be liable irrespective of the grade in the public authority which the wrongdoer held. In this respect reference was made to Oppenheim's International Law, 8th Edition, p. 362, para. 163 which referred to the vicarious responsibility of States for the acts of members of their armed forces on the basis that their acts were prima facie acts of the State.

A similar vicarious responsibility applied to the Parties to the Convention. Reference was made to the case of Yuman's claim, as reported in Vol.IV of the Report of International Arbitration Awards, p. 110, where Mexico had been held vicariously responsible for the acts of militiamen who had acted exactly opposite to their orders. Reference was also made to a report on the 1,211th meeting of the International Law Commission, contained in its Year Book for 1973, Vol. I, p. 46. This concerned the consideration of a draft Convention on State responsibility, Article 5 of which provided that the conduct of persons possessing the status of organs of the State and acting in that capacity, was considered as an act of the State. The position was, of course, different if such persons were acting in a private capacity. It had been not disputed at this meeting that the draft Article 5 was part of existing international law.

If an individual soldier or policeman committed an act contrary to Article 3, the State concerned would be vicariously liable and in breach of its obligations. If a claim was brought against it under either Article 24 or Article 25, it could be met by the assertion that remedies had not been exhausted. Such an assertion was a jurisdictional one based on Article 26 and was not a claim that the State was not liable. In reply the applicant could raise the concept of the ineffectiveness of remedies and in that context it would raise the concept of an administrative practice.

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If an administrative practice of torture or ill-treatment could be shown, remedies would be ineffective because of the difficulty of obtaining witnesses and because administrative enquiries would be half-hearted or incomplete.

The concept of administrative practice thus concerned the adequacy of remedies and not State responsibility for persons exercising public authority. If acts were isolated in time and place and, after proof, duly punished, domestic remedies would not be ineffective and an administrative practice would not be established. If the Commission found that the acts were repeated and that those immediately superior to the wrongdoer were aware of them and took no action to punish the wrongdoer or prevent repetition, there would be no effective domestic remedy.

Again, if the higher authority were aware of numerous allegations and did not carry out an adequate investigation into the complaints, domestic remedies would again be inadequate. These failures were termed in the Greek case "official tolerance".

The acts and omissions referred to in the phrase "official tolerance" were acts and omissions which would make domestic remedies ineffective. If the Ministers of a Government were not indifferent to the complaints and ordered enquiries to be held, there would nonetheless be no adequate domestic remedy. If there had been a repetition of acts and the immediate superiors of those responsible for them, being aware of the acts, did not punish the wrongdoers or did not prevent repetition, the enquiries would be valueless because the wrongdoers could not be identified. In such circumstances the wrongdoers could commit their acts with impunity, knowing that they would not and could not be punished.

The respondent Government had suggested that the concept of official tolerance should be changed so as to provide that there must have been tolerance by senior officials or members of the Government. This suggestion ignored the basic reason of effectiveness of remedies which lay behind the concept. If, for example, the allegations in respect of Palace Barracks were all true and the officers in charge there had been aware of the ill-treatment and done nothing to stop it, the domestic remedies of the victims would be ineffective. If the criteria of the respondent Government were adopted, there would be no Convention remedy because of the operation of Article 26. The result of this argument would be to make the Convention of little practical value since it would be virtually impossible for an applicant to prove what was in the minds of the Cabinet of the respondent Government. There could thus be a massive cover up in the middle ranks, as had happened in the Devenney case, and a situation where the guilty men could not be punished and could thus continue with their breaches of Article 3, where domestic remedies would be of little value and where the Convention could not be called in aid.

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The member States had voluntarily accepted the obligation to secure the rights and freedoms set out in Section I of the Convention. It was just that they should be responsible for acts they ordered directly and equally just that they should be vicariously liable for acts committed by soldiers and police and responsible for them if there were no effective domestic remedy.

The case was not being argued on the basis of responsibility for aliens but on the basis of responsibility of the High Contracting Parties to persons within their jurisdiction, which was analagous. If the respondent Government were correct, Article 1 should be rewritten to provide that High Contracting Parties should not, mala fide, deprive anyone of their rights and freedoms. The criteria in the Greek case were correct and soundly based in international law and the Commission's jurisprudence.

It was finally stressed that the argument on official toleranoe was alternative to the argument on direct responsibility which had been made, in particular in submissions in the Harvey case.

b) The Five Techniques

The applicant Government noted that the respondent Government had stated in their submissions that it was "not admitted" that use of the five techniques was contrary to Article 3. Their position thus appeared to have changed slightly, since in their Counter-Memorial they had denied this. The applicant Government submitted that it was clear from the Compton Report alone and also from the evidence that their use was contrary to Article 3.

The respondent Government's attitude was relevant in considering the effect of discontinuance of the techniques. In his statement the United Kingdom Prime Minister had contemplated the possibility that legislation might have to be introduced to authorise their use. There was evidence that techniques such as wall-standing and hooding had been used individually in certain cases before the Commission. The army was still being trained in resistance to them. It was thus not, as had been said, entirely fanciful to think that they would be reintroduced.

Article 19 provided that the Commission's function was to ensure the observance of the engagements undertaken by the Contracting Parties. Not to adjudicate on a revoked measure would mean that the revoked measure could subsequently be reintroduced after the Commission had disposed of the complaint without adjudication on the measure, and the Commission would be powerless to carry out its functions to ensure the observance of engagements undertaken under the Convention.

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Furthermore, Article 31 required the Commission to "State its opinion as to whether the facts found disclose a breach by the State concerned of its obligations under the Convention". This applied to all complaints not concluded by a friendly settlement. Accordingly, not to express an opinion would be a breach of this article.

In the Cyprus case the revocation had taken place in the context of a friendly settlement, which was not the case here.

c) Construction of Article 3

The applicant Government asked the Commission to accept the definition of what was a breach of Article 3 contained in the Greek case, and suggested that the Commission should apply these criteria to the evidence and not start comparing the amount of damages awarded in different cases.

In their submissions on the 16 illustrative cases the respondent Government had not suggested that, if the acts took place, they were not in breach of Article 3. The applicant Government submitted that, if they had taken place, they were breaches.

d) Final conclusions on the evidence

The applicant Government recalled that the 16 case-witnesses came from many walks of life and some were of poor education. This should be borne in mind in considering their performance under cross-examination, by a skilled lawyer. Their evidence should be judged as a whole and not on the basis of single questions as had been done by the respondent Government.

It was recalled that in its Decision on Admissibility the Commission had said that the various allegations of ill-treatment could not be considered in isolation from the five techniques. Owing to the attitude of the respondent Government it was not known how many techniques had been taught at the April seminar. If the five techniques were deliberate policy, how much else was?

Commenting on a suggestion by a member of the Commission that men could have proved their cases by going to court rather than settling them, the applicant Government observed that the only relief the courts could give was money and suggested that nobody who was offered all he thought he could get in court would risk this by putting his uncorroborated evidence against that of numbers of security men who, as had happened in hearings before the Commission, would swear to the contrary.

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Further no self-respecting Government faced with similar allegations against its security forces would pay money to persons they believed to be frauds or charlatans defaming the security forces. PO 4B had agreed that it would be a betrayal of the security forces to pay up money on a bogus claim. It would be a thoroughly demoralising thing to do unless the Government were convinced of the guilt of the security forces.

Much had been made of an IRA propaganda campaign but what need had the IRA for such a campaign when it was presented with such material by the respondent Government. If there was such a campaign, why was not even one case fought? The only one to have been fought was Moore v. Shillington, where the evidence of the security forces had been disbelieved.

The applicant Government observed that it was clear from Moore v. Shillington that the security precautions demanded by the respondent Government for their witnesses before the Commission, were not available under United Kingdom law. These procedures had, it was suggested, greatly hampered the Commission in its work.

The special branch files had been a vital item of evidence, but the respondent Government had refused to produce them.

In addition the witnesses POP 1 and POP 2 had both failed to give evidence or information on matters on which the Delegates had, by letter, requested that they should speak.

Extensive evidence had been given on the complaints machinery but this had to be very carefully analysed to see whether it was in fact effective. Great reliance had been placed on the Compton Enquiry but the situation had called for investigation by an independent international tribunal rather than a committee which had been hand-picked by the executive against whom the allegations were made. The committee had met in private and there was to have been no cross-examination of the members of the security forces involved, and no confrontation of witnesses. In the event the persons claiming to be victims had elected not to appear before it.

The committee had, in the circumstances, showed an excessive willingness to accept the evidence of the security forces and was not regarded by the applicant Government as an adequate or proper enquiry in the circumstances.

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A deliberate decision had been taken at a very high level to go outside the law. It was impossible to believe that either the RUC or Mr. Faulkner had thought that the five techniques were legal. The fundamental rule that a man could only be kept for 48 hours for interrogation had been broken. Mr. Faulkner, General Tuzo and Sir Graham Shillington had known of the rule but had decided to break it. There had been a decision at the top level of the Executive to break the law and when an enquiry was sought the Executive had hand-picked the members itself.

The Commission had been told that prosecutions had been directed in 110 cases of assault or shooting involving the army and that 68 persons had been convicted. They had not however been told how many of the 110 cases, in some of which many soldiers might have been charged, had resulted in convictions.

A tiny fraction of the complaints against the army and police had resulted in prosecution leading to the conviction. The system was slow-moving and cumbersome. The T.10 case illustrated this. There had been army evidence that if there was any prospect of a prosecution no disciplinary action was taken. The situation thus arose in the T.16 case where three or four years after the assault nobody had been prosecuted and the army were still apparently holding their hand about disciplinary measures.

These were some of the obvious defects in the system. The evidence in the 16 cases showed how it had worked in practice. In none of the cases had there been any evidence of disciplinary action or prosecution except in the T.7 case, where a soldier who had inflicted very serious injuries had been reprimanded. The Commission would be impressed by the discrepancy between the numbers of complaints and of prosecutions or convictions. Obviously there were difficulties but it was essential that the law should be enforced with the utmost rigour against the army and police if any departure from proper conduct was alleged in relation to persons, who, being in custody, were at their mercy.

The respondent Government had been driven into the extraordinary position of saying that if complaints were made and there was a conspiracy of silence, nothing further could be done and they should not be held responsible. If the common law system permitted such a situation, it should be changed.

Reference was made to a press report according to which three persons had, in February 1975, been acquitted of murder charges in Northern Ireland because the court had found it prima facie established that statements made by them had been obtained under torture or inhuman or degrading treatment.

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On all the evidence the Commission must conclude that there was a rotten element in the RUC and army. There would always be black sheep, but here this element was of serious proportion and its existence had been tolerated by the respondent Government by their failure to take the necessary steps to eliminate it.

4. The respondent Government in reply (VR 12, pp. 479-493)

a) State Responsibility and Administrative Practice

Referring to the alleged confusion in their argument between the notions of State responsibility and administrative practice, the respondent Government submitted that the notion of State responsibility belonged to the field of general international law. The present case turned upon a particular international instrument and the special procedure and system set out in it. They did not rely on general international law and their argument had been directed to the true nature of administrative practice and the place which it occupied in this special system.

Article 13 required States to provide an effective remedy and Article 26 prohibited the Commission from examining a complaint if remedies had not been exhausted, although a State could not rely on this if it were proved that its remedies were not effective. This had been the position in the Greek case. A Constitutional Act had removed judges' security of tenure. Administrative enquiries, when held, had, in the words of the Commission, disregarded the most elementary principles. It was no wonder that the Commission had found (at pp. 174 and 505) that there were no effective remedies.

The passage in the Greek case describing the nature of an administrative practice thus had to be read as related to what the Commission had found proved, namely that action at the highest level of the State had produced the result that there was no effective domestic remedy. It did not help in saying what the position was if there were effective remedies, but the position then was clear. If there were effective remedies, they had to be exhausted.

At the same time it was fair to say that the Greek case did not enlighten the situation where there were repeated violations, with effective remedies in the courts but at the same time insufficient activity in the highest levels in disciplining the wrongdoers.

The critical picture in the Greek Case was the absence of effective remedies resulting from action taken at the highest level of the State. Whilst the Commission had referred to administrative practice as being closely linked with the principle of exhaustion of remedies they had not said that the two ideas were co-extensive and in fact they were not.

The Commission had said that if there was an administrative practice of torture or ill-treatment it would tend to render remedies ineffective. In Greece this had no doubt happened. In Northern Ireland, even if all the applicant Government had said about administrative practice was right, this had not happened and it was still possible to obtain judicial remedies.

The language in para. 29 of the Greek case, referring to official tolerance, was such as would naturally be read as applying to the high authorities of the State. It talked of "superiors" and "high authority". There was no reference in this paragraph to the ineffectiveness of remedies, and it did not say that official tolerance meant something which led to ineffectiveness of remedies. The reason was that the Commission was describing something which might be relevant even though remedies were still available and effective. It was describing an official policy of tolerating violations.

It was thus obvious that, whatever the position of domestic remedies an official policy of violation was something which the Commission could never overlook.

If domestic remedies were rendered ineffective for any reason, through administrative practice or otherwise, the State was precluded from the advantages of Article 26. This was not the position here as there were effective remedies. Secondly there was the situation of an official policy of toleration adopted at the level of the State. The evidence make it quite impossible to reach such a conclusion here.

The Commission should therefore conclude that an official policy of ill-treatment was not made out and in so far as it found that acts in breach of Article 3 had occurred, should find that its intervention was not justified because remedies were available, adequate and effective.

This did not mean to say that the matter should not have been declared admissible. The question of effectiveness of remedies was however one which remained to be decided.

It was accepted that there might be actions by middle rank authorities which would render domestic remedies ineffective. If that was so the State would be deprived of the protection of Article 26, not because of anything which was necessarily an administrative practice, but simply because remedies had been shown to be ineffective. If there was an administrative practice properly so-called, namely an official policy of the State to tolerate violations of the Convention, this could create liability under the Convention even though there were remedies available and unexhausted.

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Toleration by the State could be established by inference, where, for example, the whole evidence was that there had been many cases of wrongful conduct by middle rank officials none of whom had been exposed to any kind of sanction. In the present case the situation was very different as there was positive evidence of what the superior authorities had done in an attempt to enforce sanctions.

b) The Five Techniques

It was not correct to suggest that the five techniques were still being taught in the army. Resistance to them was being taught.

The discontinuance of measures in the Cyprus case had not occurred in the course of or as part of a friendly settlement. It had taken place at the same time as the possibility of friendly settlement was being investigated. Even if they had been revoked in the course of a friendly settlement, it was quite wrong to suggest that, because in the present case the respondent Government had freely and voluntarily revoked the measures at an earlier stage, it should be in a worse position.

The suggestion had been made for the first time that there had been something wrong with the type of enquiry set up and it had been said that the Compton Commission had contained no member of the judiciary. In fact one member had been the Official Referee, a subordinate judge of the High Court. It should also be noted that the respondent Government had not taken refuge in the majority report of the Parker Committee.

c) Final Observations

The respondent Government asked the Commission to weigh the evidence carefully and stressed that every case was important. They submitted that there was nothing unfair in testing thoroughly and even severely the evidence of witnesses making allegations as serious as these. It should be borne in mind that once a witness was detected in untruth, as opposed to defective memory or incomplete information, confidence in the whole of his evidence was inevitably shaken.

II. ESTABLISHMENT OF THE FACTS AND OPINION OF THE COMMISSION

A. INTRODUCTION

1. Character and scope of the allegations under Art. 3

Throughout the present case the Commission has distinguished between two main categories within the allegations under Art. 3 of the Convention, namely

(a) those relating to the so-called five techniques in aid of interrogation and their use, and

(b) those relating to other forms of ill-treatment.

This distinction has been made because different problems arise with regard to each category. In regard to the five techniques, the main facts are not in dispute between the parties, nor is it disputed that they were authorised by the respondent Government and must therefore be characterised as forming part of an "administrative practice". Moreover, in its decision of 1 October 1972 on the admissibility of the application the Commission has already observed that "there can be no doubt that the employment of these interrogation techniques constituted an 'administrative practice'" (Annex II, p. 115).

However, the respondent Government have maintained at all times during these proceedings that the Commission should not express an opinion on the consistency of these interrogation techniques with the provisions of Art. 3 of the Convention, since the techniques had been abandoned at as early a stage as possible and the persons subjected to them, fourteen in all, had received or would receive compensation (respondent Government's letter of 16 September 1975: eight have received compensation - negotiations continue with the others). In any event the Government originally contested, and later limited themselves to not admitting that the use of the five techniques constituted acts which were violations of the Convention by public servants.

In connection with the five techniques the Commission will therefore address itself to the above two points only.

On the other hand, in regard to the other forms of ill-treatment, the allegations by the applicant Government are contested by the respondent Government. This means that the respondent Government in most of the "illustrative" cases examined with a view to establishing the facts contested that any physical violence has been applied to persons in custody. In a few cases, the fact that individuals have been assaulted by members of the security forces has not been challenged by

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the respondent Government. The respondent Government have, however, maintained that they constituted individual incidents which were regrettable but could hardly be avoided in a situation such as that prevailing in Northern Ireland. Moreover, the individual wrongdoer had been duly punished where it had been possible to ascertain his identity. In particular, the respondent Government have denied the applicant Government's allegation that the treatment by the security forces of the respondent Government in Northern Ireland of persons in custody "constituted an administrative practice, and a continued series of executive acts, exposing a section or sections of the entire population within its jurisdiction in Northern Ireland to torture or inhuman or degrading treatment or punishment" within the meaning of Art. 3 of the Convention. (See the applicant Government's application of 15 December 1971, quoted in the Commission's Decision on the admissibility, Annex II, p. 44).

In connection with these allegations the Commission will therefore address itself to three questions, namely,

(a) whether or not, in the illustrative cases investigated and otherwise, the facts alleged have been established

(b) whether or not the facts, as established, disclose that persons in custody were subjected to treatment contrary to Art. 3 of the Convention, and

(c) if so, whether or not the treatment concerned constituted a practice in breach of Art. 3 of the Convention ?

Before addressing itself to the substance of the allegations under Art. 3, the Commission finds it necessary, however, to clarify its position in principle with regard to the two major subjects: the interpretation of Art. 3, and the concept of an "administrative practice" of treatment contrary to Art. 3.

2. The interpretation of Art. 3

The ordinary meaning and purpose of Art. 3 of the Convention which provides that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment" does not seem difficult to assess.

Difficulties arise, however, when it comes to defining the scope of the terms concerned and to applying them to the circumstances of particular acts purported to be in breach of that provision.

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In the First Greek Case the Commission considered the notions of "torture", "inhuman treatment" and "degrading treatment" first in relation to each other and found that "all torture must be inhuman and degrading treatment and inhuman treatment also degrading". Describing each notion separately, it started from the notion of "inhuman treatment" which covered "at least such treatment as deliberately causes severe suffering, mental or physical, which, in the particular situation, is unjustifiable". As regards "torture" the Commission considered that it was "often used to describe inhuman treatment, which has a purpose, such as the obtaining of information or confessions, or the infliction of punishment, and it is generally an aggravated form of inhuman treatment". Finally, "Treatment or punishment of an individual may be said to be degrading if it grossly humiliates him before others or drives him to act against his will or conscience". (Cf. Yearbook 12, The Greek Case, p. 186).

The Commission also explained further what constituted non-physical torture, namely "the infliction of mental suffering by creating a state of anguish and stress by means other than bodily assault". (Yearbook 12, The Greek Case, p. 461).

Finally, the Commission distinguished in the Greek Case between acts prohibited by Art. 3 and what it called "a certain roughness of treatment". The Commission considered that such roughness was tolerated by most detainees and even taken for granted. It "may take the form of slaps or blows of the hand on the head or face. This underlines the fact that the point up to which prisoners and the public may accept physical violence as being neither cruel nor excessive varies between different societies and even between different sections of them". (Yearbook 12, The Greek Case, p. 501).

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Since the Greek Case the Commission has only seldom referred to its definitions of Art. 3. Thus, in a case concerning police interrogation the Commission found that some psychological pressure applied to an applicant suspected of murder by reason of the remark that he would not leave the police station until the police knew everything could not in any way be described as exerting undue pressure amounting to inhuman or degrading treatment (Application No. 4771/71, Collection of Decisions 42, p. 22).

As in the Greek Case, the Commission considers in this case that any definition of the provisions of Art. 3 of the Convention must start from the notion of "inhuman treatment" and it maintains that the basic elements of that notion are those given in the GreekCase. For its more precise meaning and application to the particular allegations in the present case, certain further statements and legal texts will be taken into account below (pp. 400-401). The Commission notes, however, that the term "unjustifiable" (in the particular situation) has given rise to some misunderstanding and therefore finds it necessary to state clearly that it did not have in mind the possibility that there could be a justification for any treatment in breach of Art. 3.

In view of the importance of the question whether the prohibition in Art. 3 of the Convention is an absolute one, or whether there may be special circumstances, such as those existing in the present case, in which treatment contrary to Art. 3 may be justified or excused, the Commission has examined it ex officio and makes the following observations.

The respondent Government expressly stated in their conclusions on the evidence that in the course of the case they had not sought to excuse or condone any acts of ill-treatment by saying that they were justified because the authorities had been dealing with a ruthless organisation.

Nevertheless, the point has been referred to in the so-called "Parker Report"of 1972 which will be further dealt with below (B, 1, p. 11-13), where the majority considered that expressions such as "humane", "inhuman", "humiliating" and "degrading" fell to be judged by a dispassionate observer "in the light of the circumstances in which the techniques were applied, for example, that the operation was taking place in the course of urban guerilla warfare in which completely innocent lives are at risk; that there is a degree of urgency; and that the security and safety of the interrogation centre, of its staff and of the detainees are important considerations" (Parker Report, The Majority Report, para. 30, at p. 7).

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Under the Convention, war or other public emergency threatening the life of the nation does not authorise a High Contracting Party to derogate from its obligations under Art. 3 of the Convention (Art. 15 (2) of the Convention). This implies that an emergency situation such as that existing in Northern Ireland cannot justify ill-treatment under the Convention.

Furthermore, Arts. 3 of all the Geneva Conventions of 1949, contain certain minimum standards, in the case of "armed conflict not of an international character occurring in the territory of one of the High Contracting Parties", for the treatment of persons taking no active part in the hostilities. They provide that "the following acts are and shall remain prohibited at any time and in any place whatsoever with regard to the above-mentioned persons: (a) violence of life and person in particular murder of all kinds, mutilation, cruel treatment and torture ... (c) outrages upon personal dignity, in particular humiliating and degrading treatment". These provisions, although not directly applicable here, also seem to imply that for acts of ill-treatment there exists no justification whatsoever.

It follows that the prohibition under Art. 3 of the Convention is an absolute one and that there can never be under the Convention or under international law, a justification for acts in breach of that provision (1).

Result

The Commission maintains its understanding of the basic elements of Art. 3, expressed in earlier cases, in particular as regards "inhuman treatment", and confirms that there cannot be any justification under the Convention for treatment contrary to this provision.

3. The concept of "administrative practice" and "practice in breach of Art. 3" and its relation to State responsibility

Both parties have made substantial submissions with regard to the interpretation of this concept. To a lesser extent they have discussed its function under the Convention.

The applicant Government have, in principle, relied on the opinion expressed by the Commission in the First Greek Case and have submitted that the existence of an administrative practice was established where there was a repetition of acts in breach of Art. 3 and official tolerance on the part of the superiors of those immediately responsible for these acts.

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(1) Cf. also UN A/Res 3453 (XXX) of 9 December 1975

The respondent Government have, in principle, accepted the criteria laid down in the Greek case for the existence or non-existence of an administrative practice, but have submitted that, in view of the basically different factual situations in the Greek case and the present one, different standards should be applied by the Commission in determining whether there was an administrative practice in the present case. In particular, in order to hold the State responsible for an administrative practice in breach of Art. 3, the official tolerance required would have to be found to exist at a high level of the State, namely the level of the executive or an agency of the executive specifically entrusted by it with authority to order or promote the practice complained of.

The Commission observes that the submissions of the parties on the concept of an administrative practice show that both the criteria to be applied in determining whether such a practice exists and, if it is found to exist, its significance or function under the Convention, need further clarification.

a) The definition of the concept

The Commission has, in the First Greek Case, laid down two elements necessary to the existence of an "administrative practice": repetition of acts and official tolerance. It has also explained the meaning of these terms in the following way:

> "By repetition of acts is meant a substantial number of acts of torture or ill-treatment which are the expression of a general situation. The pattern of such acts may be either, on the one hand, that they occurred in the same place, that they were attributable to the agents of the same police or military authority, or that the victims belonged to the same political category; or, on the other hand, that they occurred in several places or at the hands of distinct authorities, or were inflicted on persons of varying political affiliations.
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> By official tolerance is meant that, though acts of torture or ill-treatment are plainly illegal, they are tolerated in the sense that the superiors of those immediately responsible, though cognisant of such acts, take no action to punish them or prevent their repetition; or that higher authority, in face of numerous allegations, manifests indifference by refusing any adequate investigation of their truth or falsity, or that in judicial proceedings, a fair hearing of such complaints is denied." (See Yearbook 12, "The Greek Case", p. 195/196.)

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This description of the terms indicating the necessary elements of an "administrative practice" should be maintained. However, such a practice is not, of course, "administrative" in the sense of being a repetition of administrative decisions. It consists of repeated factual events which are tolerated, i.e. go unchecked. On the merits it is preferable in such cases to speak simply of a "practice" in breach of Art. 3, as the Commission already did in its findings in the Greek Case (Yearbook 12, pp. 501-504).

These explanations relate specifically to a practice of treatment in breach of Art. 3. Allegations of an "administrative practice" in violation of other articles (e.g. Art. 8 on private and family life, or Art. 10 on freedom of expression) would mutatis mutandis have to be judged by similar criteria. But most likely the situation in fact would be different: the existence of the practice itself might in such cases be admitted and only its compatibility with the Convention might be in dispute. The reason for combining "legislative measures and administrative practices" from the early case-law onwards (First Cyprus Case, Yearbook II, p. 182, 184), for purposes of exemption from Art. 26 is that when the practice itself is admitted, such cases amount to a challenge of "the law of the land" and thus the normal assumption that domestic remedies could be effective does not apply. The same may be true in regard to "administrative practices" where such a practice has been denied: Then it is not "the law of the land", but if prima facie evidence of it has been shown to exist at the admissibility stage, the application can be declared admissible and Art. 26 of the Convention does not apply. The arguments will then be others: e.g. the difficulty of proof before national courts, but the result may be the same as will be further discussed below under c).

A general concept of "administrative practice" thus may have to cover widely different situations of law and fact. Even for a description and application with a view only to Art. 3 as above, this is so. The general situation in the Greek Case, which concerned the acts on behalf of, or under, a dictatorial regime against its political opponents, is in no way comparable to the present case which concerns acts taking place under a democratic Government in its effort to restore and maintain peace and order in a dangerous situation. However, a difference in the general situation does not affect the value of the description of the concept of an administrative practice given in the Greek case, whilst it might affect its application in the particular case.

As regards "repetition" it is appropriate to make only one further observation. The essential feature of repetition as a constituent element of an administrative practice is that the acts complained of form a pattern or system in the sense that some link or connection exists in the circumstances surrounding the particular acts, e.g. time and place where the acts occur and the attitude of the persons involved, and that they are not simply a number of isolated acts.

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As regards "official tolerance" it is confined to the notion of "administrative practice" as it has been developed in the jurisprudence of the Commission. It may be found to exist on alternative levels: namely that of the direct superiors of those immediately responsible for the acts involved, or that of a higher authority. The significance of these alternatives will be further discussed below.

b) State responsibility and "official tolerance"

In view of the submissions made in this case (summarised above, pp. 357-369, 372-374), it is necessary to state the views of the Commission as regards the meaning of "responsibility" under the Convention and its relation to "official tolerance". The latter was alleged by the respondent Government to be a condition for such responsibility in the circumstances of this case, where an "administrative practice" was in issue. The Government here drew a distinction between a violation of the Convention by a person acting in an official capacity and a violation by the State itself. Only the latter type of violation was subject to the jurisdiction of the Commission (the "direct injury principle"), and the State could only be responsible if "tolerance" was shown "at the level of the State", meaning the level of the executive or an agency specifically entrusted with authority to order or promote the practice complained of. (Similarly, an individual violation by a person acting in an official capacity would, in their submission, only entail State responsibility if the State did not provide the remedy required under Art. 13, a "denial of justice".)

The Commission cannot accept this line of argument. It considers that the concept of State responsibility and the concept of "tolerance", which is an element in the notion of administrative practice, should be kept apart as having different functions.

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The responsibility of a State under the Convention may arise for acts of all its organs, agents and servants. As in connection with responsibility under international law generally, their rank is immaterial in the sense that in any case their acts are imputed to the State. It is true that there are further conditions for responsibility (breach of a norm, a victim, sometimes fault, and damage), and for the jurisdiction of the Commission (Exhaustion of remedies and other formal requirements). The Commission is of the opinion that although the State can only incur new obligations through acts "at the level of the State" by persons duly authorised to bind it (e.g. to conclude a treaty), its existing obligations can be violated also by a person exercising an official function vested in him at any, even the lowest level, without express authorisation and even outside or against instructions.

"Responsibility" does not necessarily require any "guilt" on behalf of the State, either in a moral, legal or political meaning, and does not suggest any "tolerance" whatsoever of wrongdoing at the "level" of the State" in the sense in which this expression has been used by the respondent Government.

The system of protection of human rights laid down by the Convention is shaped in the form of corresponding obligations of States. The result, procedurally, is that all complaints of violations must be directed against States as respondents. They are in this meaning "responsible" for any violations within their jurisdiction, for acts imputed to them as explained above.

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c) The significance or function of the concept of "administrative practice" in proceedings under the Convention

The Commission in the First Greek Case has not substantially dealt with the question what significance or function the concept of "administrative practice" has in proceedings brought under the Convention. It pointed out that the "Convention does not speak in terms of administrative practices incompatible with it ..." and went on to say:

> "... but the notion is closely linked with the principle of the exhaustion of domestic remedies. The rule in Art. 26 is based on the assumption, borne out by Art. 13, that for a breach of a Convention provision there is a remedy available in the domestic system of law and administration, even if the provision is not directly incorporated in domestic law, and that that remedy is effective.
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> 25. When, however, there is a practice of non-observance of certain Convention provisions, the remedies prescribed will of necessity be side-stepped or rendered inadequate. Thus, if there was an administrative practice of torture or ill-treatment, judicial remedies prescribed would tend to be rendered ineffective by the difficulty of securing probative evidence, and administrative enquiries would either be not instituted, or, if they were, would be likely to be half-hearted and incomplete ..." (Yearbook 12, "The Greek Case", p. 194).

The Commission is of the opinion that the function of the concept of an "administrative practice" is different when it is applied at the admissibility stage and when it is applied on the merits of an application before it.

At the admissibility stage its function is generally procedural that it relates to the principle of exhaustion of domestic remedies provided for in Art. 26 of the Convention. This principle is subject to certain exceptions: The classical situation in which the domestic remedies rule clearly does not apply is that where the alleged violation is lawful in the respondent State, e.g. it is authorised by statute, or forms part of national customary law, or is accepted as the law of the land and applied by the courts without being customary law in the strict sense. But the domestic remedies rule is also inapplicable where an "administrative practice" consisting of repetition of acts and official tolerance has been shown to exist, and is of such a nature as to make court proceedings futile or ineffective. The level of tolerance is decisive for determining this question in the circumstances of a particular case.

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Thus, when tolerance has been shown to exist at a high level of the State, such as the level of the executive or agency of the executive specifically entrusted by it with authority to order or promote the practice complained of, this fact alone would be a strong indication that the complainant has no possibility of obtaining redress through any national organ, including the courts, and that therefore the domestic remedies rule is inapplicable. For in such a case the circumstances are likely to be such as described above in the Greek Case.

On the other hand, when tolerance has been found to exist on lower levels, such as the prison authorities or the commander of a regiment, the Commission must ascertain in each case referred to it, be it in the form of an individual application under Art. 25 or a State application under Art. 24 of the Convention, whether or not the domestic remedies available were effective and should therefore have been exercised. In such a situation it may normally be assumed that higher authorities and the courts would offer redress for the violation in question and there are therefore effective domestic remedies which must be exhausted. However, the Commission must here take into account the difficulty of securing probative evidence and have regard to the question whether or not the higher authorities of the State have themselves exercised their duty towards the individuals concerned to identify the practice and to prevent the occurrence or repetition of the acts in question.

On the merits of an application the concept of a practice in breach of the Convention is not procedural but a relevant feature in the description of the breach involved. Although one single act contrary to the Convention is sufficient to establish a violation, it is evidence that the violation can be regarded as being more serious if it is not simply one outstanding event but forms part of a number of similar events which might even form a pattern.

Again the level of tolerance is significant in this context insofar as it affects the seriousness of the violation involved: the higher the organ tolerating the acts the more serious is the violation involved. Finally, where repetition and official tolerance is combined, this would constitute an even more serious situation.

Consequently, the Commission's primary concern in any case admitted under Art. 3 - and whether it is arising under Art. 24 or Art. 25 does not matter - is whether or not the facts established disclose a violation of the Convention in respect of any individual. Where breaches of the Convention have been established in a number of individual cases this might amount to a practice in breach of the Convention with the consequence of rendering the fact that it has been violated more serious.

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It follows from the above considerations that the significance of "official tolerance" is different when it is used to designate the attitude taken in relation to the occurrence and repetition of acts contrary to Art. 3 by the direct superiors of the authors of such acts, and when it is used to designate the attitude of the higher authorities, in circumstances where numerous allegations of such acts have been brought to their attention.

Tolerance by the direct superiors of the acts of their subordinates is an essential, constituent element of an administrative practice and a practice in breach of the Convention. Indeed, the frequent, i.e. methodical repetition of these acts would hardly be possible without such tolerance. This tolerance is manifested by the fact that the direct superiors, though cognisant of such acts, take no action with a view to the punishment or discipline of those responsible or otherwise to prevent the occurrence or repetition of the act. It should be added that, although it is quite possible that isolated acts might escape the knowledge of the superiors, it is hardly conceivable that frequently repeated acts by their subordinates could do so. In particular, where such repeated acts have received publicity, a presumption of tolerance may arise which cannot be rebutted simply on the ground that there was no direct evidence of such tolerance.

However, the question remains whether the strain which a situation such as that existing in Northern Ireland imposes on the security forces and which produces acts in breach of Art. 3 on their part may in some way be taken into account in a case alleging that such acts amounted to a practice in breach of Art. 3. In this connection, it must be realised that a situation such as that existing in Northern Ireland produces anxieties and tensions on the part of the security forces which in turn might lead to violence being inflicted on those who are regarded as being responsible for the situation. For instance, it is not

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difficult, to take a hypothetical situation, to imagine the extreme strain on a police officer who questions a prisoner about the location of a bomb which has been timed to explode in a public area within a very short while.

In the Commission's view, any such strain on members of the security forces cannot justify the application on a prisoner of treatment amounting to a breach of Art. 3. On the other hand, as a matter of fact, the domestic authorities are likely to take into account the general situation as a mitigating circumstance in determining the sentence or other punishment to be imposed on the individual in a case which is brought against him before the domestic authorities and courts for acts of ill-treatment. This does not, of course, in proceedings brought under the Convention, affect the responsibility of the High Contracting Party concerned under the Convention for the acts in question. However, where a penalty has been so mitigated by the domestic judicial or disciplinary authorities, having due regard to the severity of the acts involved and the necessity of preventing their repetition, this fact cannot in itself be regarded as tolerance on the part of these authorities in determining whether or not the acts involved formed part of a practice in breach of Art. 3 of the Convention. This observation is particularly relevant when no practice is admitted.

Tolerance at higher levels consists in the failure to take measures which in the particular circumstances should be taken in the exercise of the official duties of the higher authorities either to prevent or to impose sanctions on the acts committed by persons of lower rank. Such tolerance constitutes a relevant feature in the description of the practice concerned and it might even sometimes be understood as tacit approval thereof although it is not a constituent element therein.

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This leads to a final observation on the concept. Where a particular line of action has been authorised by the competent organs of the State, no further question arises as to repetition or tolerance. An authorised practice constitutes as such an administrative practice or practice.

Result

The Commission considers then that it is necessary to distinguish between an administrative practice tending to render domestic remedies ineffective, and a practice in breach of the Convention. Thus:

(i) the role of an administrative practice is for the Commission procedural in that it involves the rule of exhaustion of domestic remedies and its applicability;

(ii) the role of a practice in breach of the Convention belongs essentially to the merits and where such a practice is found, involving acts in breach of Art. 3, the violation of the Convention is that much more serious;

(iii) there can be circumstances where a practice in breach of the Convention constitutes also an administrative practice tending to render domestic remedies ineffective.

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B. THE FIVE TECHNIQUES

1. Introductory observations

As has been said before, the five techniques consisting of hooding, wall-standing, noise, deprivation of food, water and sleep, have been used in aid of interrogation on certain persons in Northern Ireland, and their use has been authorised by the competent organs. They were used at an unknown interrogation centre. When allegations were made about them, a Committee of Enquiry (The Compton Committee) was set up on 31 August 1971 by the respondent Government to investigate, inter alia, these allegations. This Committee examined eleven cases of persons arrested on 9 August 1971 and its findings were that the allegations were substantiated and that interrogation in depth by means of the five techniques constituted physical ill-treatment, but not physical brutality as the term was understood by the members of the Committee. The Report was adopted on 3 November 1971.

In the meanwhile, further cases involving the use of the five techniques in October 1971 had become known and Sir Edmund Compton was asked on 5 November 1971 also to make enquiries into three cases, one of which related to interrogation by application of the five techniques. He submitted a further report on 14 November 1971 in which similar findings were made as in the first Report.

Two days later, on 16 November 1971, the Home Secretary of the respondent Government announced in the House of Commons that a further Committee had been set up under the chairmanship of Lord Parker of Waddington to consider "whether, and if so, in what respects the procedures currently authorised for interrogation of persons suspected of terrorism and for their custody while subject to interrogation require amendment ?" The "Parker Report" was adopted on 31 January 1972. It contained a majority opinion by Lord Parker and Mr. Boyd Carpenter and a minority opinion by Lord Gardiner. The majority report found that, on the introduction of internment two operations of interrogation in depth involving the use of the five techniques took place: to 12 persons in August and to 2 in October 1971. It came to the conclusion that the application of the techniques, subject to proper safeguards limiting the occasion on which and the degree to which they could be applied, would be in conformity with the 1965 Joint Directive on Military Interrogation and need not be ruled out on moral grounds. On the other hand, the minority report disagreed with this view, and both the majority and the minority considered that the methods were illegal, at least under English law.

In this connection the majority report specified that "the use of some if not all the techniques in question would constitute criminal assaults and might also give rise to civil proceedings

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under English law." The majority refrained, however, from expressing any view in respect of the position in Northern Ireland in deference to the courts there, before whom proceedings which raised this issue were pending. (Cf. Parker Report, The Majority Report, para. 2 at p. 1.)

On the other hand, the minority report referring to the written and oral representations from many legal bodies and individual lawyers from both England and Northern Ireland pointed out that there was no dissent from the view that the procedures were illegal alike by the law of England and the law of Northern Ireland. It specified that where "a man is in lawful custody it is lawful to do anything which is reasonably necessary to keep him in custody but it does not further or otherwise make lawful an assault. Forcibly to hood a man's head and keep him hooded against his will and handcuff him if he tries to remove it ... is an assault and both a tort and a crime. So is wall-standing of the kind referred to. Deprivation of diet is also illegal unless duly awarded as a punishment under prison rules. So is enforced deprivation of sleep." (Cf. Parker Report, The Minority Report, para. 10, at pp. 13-14.)

The Report was published on 2 March 1972 and on the same day Mr. Heath, then Prime Minister, made a statement in Parliament declaring that the "Government, having reviewed the whole matter with great care and with particular reference to any future operations, have decided that the techniques which the Committee examined will not be used in future as an aid to interrogation". In the course of the debate the Prime Minister confirmed that the techniques had not been used in cases other than those mentioned in the majority report. He further said however: "I must make it plain that interrogation in depth will continue, but that these techniques will not be used. It is important that interrogation should continue. The statement that I have made covers all future circumstances. If a Government did decide - on whatever grounds I would not like to foresee - that additional techniques were required for interrogation, then I think that, on advice which is given in both the majority and the minority reports, and subject to any cases before the courts at the moment, they would probably have to come to the House and ask for the powers to do it." And Mr. Heath repeated in reply to a further intervention "that interrogation in depth will continue when it is deemed right, but these techniques will not be used for this purpose. We must distinguish between these two things. I would repeat ... that if any Government did come to the decision, after the most careful thought, that it was necessary to use some or all of these techniques, it would be necessary to come to the House first before doing so." (Cf. Hansard, 2 March 1972, pp. 744-749.)

The term "interrogation in depth" has not been further explained by the Prime Minister. However, the Parker Majority Report stated that "essentially interrogation in depth consists

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in the main of questions and answers across a table. The techniques which have been criticised are in a sense ancillary activities." (Parker Report, The Majority Report, para. 10, at p. 2.) Furthermore in their oral submissions on admissibility, the respondent Government have defined interrogation in depth to mean "asking extensive and searching questions on subjects specially selected as likely to be able to provide useful information and its object is to obtain reliable information concerning the disposition of the enemy and of his intentions rather than to obtain evidence to achieve a conviction in court." (Cf. Decision on admissibility, (Annex II, p. 79).

Finally, it is to be recalled that the application of these techniques admittedly was authorised from the outset and therefore clearly constituted an administrative practice as defined earlier; and as it appears from the above observations, it was a practice later found contrary to the law of the country concerned.

2. The competence and duty of the Commission to express an opinion in respect of the "five techniques"

Throughout the present proceedings the respondent Government have maintained that, in relation to the claim concerning the five techniques, the Commission should take official note of the abandonment of the techniques without expressing any opinion on the legal issues raised by them. In support of this contention the respondent Government referred to the procedure adopted by the Commission in the First Cyprus Case (cf. First Cyprus Case Report of 26 Sept. 1958, Vol. I, pp. 104-106).

The applicant Government have opposed this view and have pointed out that the Commission had adopted this course in the First Cyprus Case in view of the friendly settlement discussions between the parties. This precedent was not applicable in the present case in which the measures in question had not been revoked in the context of a friendly settlement. The Commission was therefore required under the Convention to express its opinion on the matter.

In the First Cyprus Case while the Sub-Commission was investigating with the Parties the possibility of reaching a friendly settlement under which the respondent Government should agree to accept certain engagements with respect to matters dealt with in the measures complained of, the authorities of the respondent Government revoked certain of these measures, in particular the Emergency Powers Regulations concerning corporal and collective punishment and the order concerning the

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detention of Archbishop Makarios and others. Nevertheless, a friendly settlement of the whole case was not secured. The Commission observed that the "Convention does not expressly provide how the Commission shall act if ... some of the grounds of complaint are removed in the course of the proceedings, but others remain, and a friendly settlement covering all controversial points has not been secured". In these circumstances, and referring in particular to the Commission's general function which it described as being a "conciliatory function with a view to ensuring the observance of the Convention and the maximum enjoyment of the rights and freedoms guaranteed by it", the Commission decided by seven votes against four, that it was not called upon to express an opinion on the question whether the legislative and administrative measures revoked involved a breach of the Convention. (Report of 26 September 1950, Vol. I, pp. 104-106.)

On the other hand, the minority of the Commission which was supported by two further members of the Commission who had not participated in the vote, was of the opposite opinion. Referring to the terms of Art. 31 of the Convention, its legal and technical role under that provision and to its task to furnish the Committee of Ministers with a Report on the facts and its legal opinion on them in the light of the Convention, the minority considered that the Commission had no authority to disregard measures which had been, but were then no longer, applied. It was therefore required to reply to the applicant on the actual complaints made, except in the case where these complaints had been withdrawn (cf. Report in the First Cyprus Case, Vol. I, pp. 107-108).

When the Commission came to deal with the measures in question the majority nevertheless observed that the legitimacy of corporal and collective punishment under the provisions of the Convention raised legal issues of some seriousness and that the trend of opinion among peoples of the Council of Europe was not sympathetic to such punishment. It therefore ventured to mark its satisfaction at the fact that these measures were revoked by the respondent Government and added that the Commission's decision to express no legal opinion was taken on the assumption that the measures would remain revoked (Report in the First Cyprus Case, Vol. I, pp. 207 and 234).

In the present case, the Commission is of the opinion that it is not only competent to express its opinion on the legal issues arising under Art. 3 in connection with the use of the five techniques, but that it is bound under the Convention to do so.

This obligation results from the Commission's function under the Convention. Art. 19 of the Convention describes the Commission's and the Court's function as being to "ensure the observance of the engagements undertaken by the High Contracting Parties in the present Convention."

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In the fulfilment of this function the Commission has consistently interpreted its competence and duties as going beyond the parties' submissions and arguments and as being determined by the character of the facts and the issues before it. Thus, even where allegations have been withdrawn the Commission has not accepted the withdrawal if any reason of a general character affecting the observance of the Convention would necessitate a further examination of these complaints.

In the present case it is true that the abandonment of the measures has terminated any further practice of violation which might be found to exist in the use of these techniques. Furthermore the substantial sums recovered by persons who have been subjected to the techniques are indicative of the respondent Government's efforts to redress any wrong that might have been committed in respect of these complaints. Nevertheless in the Commission's opinion there are several factors which necessitate a further examination of the complaints concerned.

It has been stated in the Parker Report that the techniques have been developed since World War II "to deal with a number of situations involving internal security. Some or all have played an important part in counter insurgency operations in Palestine, Malaya, Kenya and Cyprus and more recently in the British Cameroons (1960-61), Brunei (1963), British Guiana (1964), Aden (1964-67), Borneo/Malaysia (1965-66), The Persian Gulf (1970-71) and in Northern Ireland (1971)." (Parker Report, The Majority Report, para. 10 at p. 3). No rules or guidelines for their application have ever been laid down in writing, nor have there been any written instructions authorising their use. They have been taught orally at intelligence centres and their application has been justified by reference to the fact that they have "produced very valuable results in revealing rebel organisations, training and 'Battle Orders'" and in obtaining information and the discovery of arms. (Parker Report, The Majority Report, para. 18 at p. 4).

When allegations were made about the application of these techniques in Northern Ireland the authorities of the respondent Government introduced domestic procedures to enquire into these allegations and to consider whether and to what extent they required amendment. The Compton Committee distinguished between physical brutality and physical ill-treatment and found that the techniques constituted physical ill-treatment but not brutality as it understood the term. The Parker Committee was divided on the question whether their use could be justified. At no stage did any of the domestic authorities pronounce on the question whether or not the techniques were in breach of the Convention. Lord Gardiner

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in the Parker Report clearly stated that he did not propose to express an opinion on this question as it was before the Commission in this case and therefore sub judice. The measures were then abandoned but at the same time it was stated that interrogation in depth would continue and that legislation would be required if any of these techniques or other procedures should again become necessary in order to assist interrogation. Finally, the respondent Government denies that the application of the five techniques was in breach of the Convention.

In these circumstances, the Commission considers that too many factors of a general character affecting the observance of the Convention have been left unresolved. It would therefore be failing in its duty under Art. 19 of the Convention if it were simply to take note of the situation without stating its opinion on the issues arising under the Convention.

Furthermore, under the terms of the Convention and in particular its Art. 31, the Commission may refrain from expressing its opinion only in a case in which the grounds of complaint have been removed to the satisfaction of both parties and of the Commission. This is achieved either by a withdrawal of the complaints by the applicant or by way of a friendly settlement between the parties, provided that in either situation the Commission is satisfied that the matter has been dealt with on the basis of respect for human rights as defined in the Convention. Since, in the present case, the allegations relating to the five techniques and their use have not been withdrawn, nor have they been removed by means of a settlement, the Commission is required under the Convention to express an opinion as to whether the facts found disclose a breach of the Convention.

Indeed, in its Report on the cases of F. Pataki and J. Dunshirn against Austria, which was adopted under Art. 31 on 28 March 1963, the Commission even followed this course in a situation where, as a result of friendly settlement negotiations, the provisions of the Austrian Code of Criminal Procedure which the Commission had found not to be in conformity with the Convention had been amended and supplemented, but where certain measures designed to give satisfaction to individuals who had been victims of the violation had not yet been implemented. The Commission expressed its opinion on the question of a breach but proposed, under Art. 31 (3) of the Convention, that the Committee of Ministers should "take note of the report, express its appreciation of the legislative measures adopted in Austria with a view to giving full effect to the Convention on Human Rights, and decide that no further action should be taken in the present cases." (Report of 28 March 1963 on the Pataki/ Dunshirn Cases against Austria, p. 52.)

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In this case, the Commission also observes that apart from the public enquiries and pronouncements referred to above, and the evidence concerning compensation to individuals, little is known as to what further measures as to this particular practice in fact were adopted by the authorities. So little evidence has been allowed to be given on this point that the Commission is not even able to know the nature of any such further steps apart from the statement that permission in the future would have to be obtained from the House of Commons. In particular, nothing is known about what action other than payment of compensation has been taken in order to deal with the practice found contrary to the law.

Result

In the light of these considerations the Commission holds, as already stated, that it is not only competent but also bound under the Convention to express an opinion on the question whether or not the use of the five techniques constitutes a practice in breach of Art. 3 of the Convention, despite the fact that the Prime Minister declared in Parliament in March 1972 that their use had been discontinued.

3. ESTABLISHMENT OF THE FACTS

The cases of T.13 and T.6

General remarks

The applicant Government have submitted the cases of eight persons in which the use of the five techniques and sometimes also other forms of ill-treatment were alleged. The Commission has examined the illustrative cases of T.13 and T.6. The allegations in regard to T.6 concern both the five techniques and other forms of alleged ill-treatment, whereas the allegations in regard to T.13 concern the five techniques only.

Both cases were among the eleven cases investigated by the Compton Committee. However, neither T.13 nor T. 6 had given evidence before that Committee, which based its findings on the oral evidence of the persons who supervised the operations at the centre and of the medical officer who was stationed there, as well as on various medical records, colour photographs and the feeding record (cf. Compton Report, paras. 54 and 55, at p. 14).

The Delegates of the Commission heard both case witnesses who gave their evidence in detail and were also cross-examined by the respondent Government. They had before them extracts from the medical officer's journal at Crumlin Road Prison, the medical examination records on arrival and on departure from the interrogation centre and colour photographs of T. 6 as well as various reports by psychiatrists who also gave oral evidence.

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However, the Delegates were not able to hear oral evidence from members of the security forces in relation to the allegations concerning the interrogation centre. In the first place no witnesses who had been present at that centre were made available. Secondly, the respondent Government stated at the hearing of witnesses at Sola in January 1975 that all of their witnesses had now been instructed not to reply to any questions regarding the five techniques and their use on the ground that the use of these techniques had been discontinued and that there were security considerations involved. This "embargo" on the evidence also related to matters connected with a "seminar" held in Northern Ireland in April 1971 by the English Intelligence Centre for members of the RUC, where the use of the techniques was taught orally (cf. Parker Report, Minority Report, para. 6 at p. 12; also Witness 13G at VR 6, pp. 190 et seq.).

The Commission does not consider it necessary to pursue this matter any further. It is satisfied that the five methods in aid of interrogation which, as a matter of public record, were used in emergency situations at various other places before they were used in Northern Ireland in 1971 (see Parker Report, Majority Report, para. 10 at p. 3 (1) were applied to the two case witnesses in the present case. It is further satisfied that a "seminar" as described was held in April 1971 by the English Intelligence Centre.

Course of events

The evidence before the Commission bears out the allegations made by the case witnesses and confirms the findings of the Compton Committee as regards the course of the events for the persons subjected to the five techniques.

T.13 and T. 6 were, together with others, arrested in the early morning hours of 9 August 1971 and brought to Magilligan Camp, being one of the three Regional Holding Centres set up to receive arrested persons. They were held there for two days and, having been selected for special interrogation were brought, on 11 August 1971, to the unknown interrogation centre. On arrival at the centre they were medically examined and at one stage they were taken by helicopter to another place where they were served with a detention order. They were taken back to the centre where they were interrogated in depth being subjected to the five techniques in the following way:

a. Wall-standing - the witnesses demonstrated how they were spreadeagled against the wall, with their fingers put high above the head against the wall, the legs spread apart and the feet back, causing them to stand on their toes with the

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(1) quoted above at p. 393

weight of the body mainly on the fingers (the stress position). They were forced to remain in this position. The exact length of time during which the witnesses were required to stand could not be established. Both witnesses said that they lost their sense of time but that it must have been many hours. The Compton Committee while describing the position as being a different one, found that T.13 had been against the wall during periods totalling 23 hours, and T.6 29 hours.

-b. Hooding - a black or navy coloured bag was put over the witnesses' heads. Initially it was kept there all the time, except during interrogation, but later on T.13 was allowed to take it off when he was alone in the room, provided that he turned his face to the wall.

-c. Noise - pending interrogations the witnesses were held in a room where there was a continuous loud and hissing noise.

-d. Sleep - pending interrogations the witnesses were deprived of sleep, but it was not possible to establish for what periods each witness had been without sleep.

-e. Food and drink - the witnesses were subjected to a reduced diet during their stay at the centre and pending interrogations. It was not possible to establish to what extent they were deprived of nourishment and whether or not they were offered food and drink but refused to take it.

The witnesses were at the centre from 11 to 17 August 1971, when they were transferred to Crumlin Road Prison in accordance with the detention order.

In 1971 T.13 and T.6 instituted domestic proceedings to recover damages for wrongful imprisonment and for assault and their claims were settled in 1973 and 1975 respectively for £15,000 and £14,000.

Physical and mental effects resulting from the use of the techniques

(i) Physical effects

The Commission is satisfied from the evidence given that the witnesses suffered loss of weight resulting from their detention at the unknown interrogation centre and from the use of the five techniques. It is furthermore established that, particularly the wall-standing technique, caused physical pain while it was being applied, but that the pain ceased when the person was no longer in that position.

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(ii) Mental effects

The witnesses themselves described feelings of anxiety and fear, as well as disorientation and isolation during the time they were subjected to the techniques and afterwards. However, the intensity of such sensations was different in respect of T.13 than in respect of T.6, as a result of differences in their personality. Consequently, T.13 had been more strongly affected by the application of the techniques than T.6.

On the other hand, the psychiatrists disagreed considerably on the after-effects of the treatment and on the prognosis for recovery. Professors Daly and Bastiaans considered that both witnesses would continue for a long time to have considerable disability shown by bouts of depression, insomnia and a generally neurotic condition resembling that found in victims of Nazi persecution. Drs. 5 and 1 considered that the acute psychiatric symptoms developed by the witnesses during the interrogation had been minor and that their persistence was the result of everyday life in Northern Ireland for an ex-detainee carrying out his work travelling to different localities. In no sense could the witnesses' experiences be compared with those of the victims of Nazi persecution.

On the basis of this evidence the Commission is unable to establish the exact degree of the psychiatric after-effects which the use of the five techniques might have had on these witnesses or generally on persons subjected to them. It is satisfied, however, that, depending on the personality of the person concerned, the circumstances in which he finds himself, and the conditions of everyday life in Northern Ireland at the relevant time, some after-effects resulting from the application of the techniques cannot be excluded.

Findings of the Commission

The five techniques in aid of interrogation were used in August 1971 on T.13 and T.6. They were applied prior to, between and during interrogations, but not after interrogation was terminated. This means that the persons concerned were subject to the techniques during at least four, possibly five, days. The exact times could not be established. The Commission is satisfied the total periods during which the two witnesses were at the wall,

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23 and 39 hours respectively. A certain degree of force was used to make the detainees stand at the wall in the required posture which caused physical pain and exhaustion. The posture required was a stress position and not a normal position required to search a person, although it cannot be considered to be proved that the enforced stress position lasted all the time they were at the wall.

No physical injury resulted from the application of the techniques as such, but it caused mentally a number of acute psychiatric symptoms. It cannot be excluded that in certain persons some of these symptoms continue to exist for some time afterwards.

The damages granted to them under settlements in court are substantial sums and, although it is not possible in any settlement to say what part was paid with a view to what claim, it may be presumed that the greater part of the sum was awarded in view of the allegations of ill-treatment including the application of the five techniques, having regard to sums normally awarded by courts for claims of assault as compared with sums normally granted for claims of wrongful imprisonment.

4. OPINION OF THE COMMISSION

In the present case the Commission is called upon to express an opinion as to whether or not the combined application of the five techniques in the cases of T.13 and T.6, and in the other cases referred to in the Compton Report, constituted a practice in breach of Art. 3 of the Convention.

As has already been stated, the question of practice is not in dispute as the use of the five techniques was admittedly authorised by the respondent Government and the existence of a practice has therefore been found to be established by the Commission in its decision on the admissibility of the case.

On the other hand, the question of whether or not the use of the five techniques taken together constituted a violation of Art. 3 of the Convention is still in issue between the parties.

The Commission has therefore examined the question whether or not, in the light of the considerations on the interpretation of that provision above (pp. 376-379), the five techniques were consistent with Art. 3 of the Convention. In doing so, it has also taken into account certain statements and legal texts which seem to throw some light on the kind of treatment against which Art. 3 of the Convention should protect, and are relevant to the particular facts established in this part of the present case.

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In this connection it first had regard to the preparatory works of the Convention, and, in particular, to a proposal by Mr. Cocks (United Kingdom) at the Plenary Sitting of the Consultative Assembly of the Council of Europe on 9 September 1949 to amend the draft Recommendation for the Convention on Human Rights. Mr. Cocks proposed to add to Art. 2 (1) of the Recommendation, in the content of the protection of security of persons, the following text:

> "In particular no person shall be subjected to any form of mutilation or sterilisation or to any form of torture or beating. Nor shall he be forced to take drugs nor shall they be administered to him without his knowledge and consent. Nor shall he be subjected to imprisonment with such an excess of light, darkness, noise, or silence as to cause mental suffering" (Collected Edition of the "Travaux Préparatoires", Vol. I, p. 116/117).

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This proposal was later withdrawn because it was felt that the point which Mr. Cocks wished to make was already in substance covered by the general terms of Art. 5 of the UN Declaration which corresponds to Art. 3 of the Convention. Nevertheless, there was agreement in the Assembly that the substance of what Mr. Cocks had emphasised in his amendment was to be read into the Convention (see Debate in "Collected Edition", Vol. I, pp. 153-154).

The Commission has further had regard to the Geneva Conventions of 1949 to which reference has also been made by Lord Gardiner in the Parker Report. It is, of course, clear that the main provisions of these Conventions are not directly applicable to the detainees in Northern Ireland. Nevertheless, they include provisions concerning investigation procedures and may also be relevant in the sense that they constitute an expression of the general principles of international law in regard to them and to the treatment of prisoners in general.

Thus Art. 13 of the Third Geneva Convention concerning prisoners of war prohibits all acts causing death or seriously endangering the health of a prisoner. Acts of intimidation and insults are specifically mentioned. As regards interrogation procedures, Art. 17, para. 4, states: "No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted or exposed to any unpleasant or disadvantageous treatment of any kind".

The Fourth Geneva Convention concerning the protection of civilians provides in Art. 89 that internees shall receive sufficient food to keep them in a good state of health. Art. 118, para. 2, states: "Imprisonment in premises without daylight and, in general, all forms of cruelty without exception are forbidden". Under Art. 119, para. 2, disciplinary measures may not be "inhuman, brutal, or dangerous for the health of internees".

Concerning the five techniques in the present case, the Commission considers that it should express an opinion only as to whether or not the way in which they were applied here, namely in combination with each other, was in breach of Art. 3. It observes that, if they were considered separately, deprivation of sleep or restrictions on diet might not as such be regarded as constituting treatment prohibited by Art. 3. It would rather depend on the circumstances and the purpose and would largely be a question of degree.

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In the present case, the five techniques applied together were designed to put severe mental and physical stress, causing severe suffering, on a person in order to obtain information from him. It is true that all methods of interrogation which go beyond the mere asking of questions may bring some pressure on the person concerned, but they cannot, by that very fact, be called inhuman. The five techniques are to be distinguished from those methods.

Compared with inhuman treatment discussed earlier (pp. 376 seq.), the stress caused by the application of the five techniques is not only different in degree. The combined application of methods which prevent the use of the senses, especially the eyes and the ears, directly affects the personality physically and mentally. The will to resist or to give in cannot, under such conditions, be formed with any degree of independence. Those most firmly resistant might give in at an early stage when subjected to this sophisticated method to break or even eliminate the will.

It is this character of the combined use of the five techniques which, in the opinion of the Commission, renders them in breach of Art. 3 of the Convention in the form not only of inhuman and degrading treatment, but also of torture within the meaning of that provision.

Indeed, the systematic application of the techniques for the purpose of inducing a person to give information shows a clear resemblance to those methods of systematic torture which have been known over the ages. Although the five techniques - also called "disorientation" or "sensory deprivation" techniques - might not necessarily cause any severe after-effects the Commission sees in them a modern system of torture falling into the same category as those systems which have been applied in previous times as a means of obtaining information and confessions.

CONCLUSION

The Commission is of the opinion, by a unanimous vote, that the combined use of the five techniques in the cases before it constituted a practice of inhuman treatment and torture in breach of Art. 3 of the Convention.

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C. THE OTHER FORMS OF ALLEGED ILL-TREATMENT

1. Introductory observations

As has been said before, the respondent Government have in all other cases examined involving interrogation contested the allegations of the case witnesses that they were severely assaulted by members of the security forces in the course of their interrogation or otherwise. In this connection they have contested both the extent of the alleged injury and also the manner in which it was said to have been inflicted. On the other hand, in three "illustrative" cases involving allegations of ill-treatment other than during interrogation the respondent Government have not disputed the fact as such that injuries were inflicted at the hand of the arresting soldiers, but they have contested that this treatment formed part of a pattern or practice tolerated by the Government.

a) Order of presentation

The Commission's first task in relation to these cases is therefore to establish the facts on the basis of the evidence obtained in the illustrative cases. It has grouped these cases into five categories, in accordance with the place where the treatment is said to have been inflicted, namely

(1) The unknown interrogation centre
(2) Palace Barracks, Holywood
(3) Girdwood Park Barracks
(4) Ballykinler Regional Holding Centre
(5) Other places

The assessment of the evidence which follows will set out the facts which the Commission considers to be established. Some assessment will also be made of the written evidence in the other cases of alleged ill-treatment which have been submitted to the Commission, and particularly in the so-called "41 Cases" which were supported by medical reports and on which comments have been received from the parties (above p. 326-331).

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However, before coming to this the Commission finds it convenient to explain briefly the standard and means of proof which it has applied, and its approach to the evidence, including some general observations which it considers relevant to all the cases examined.

b) Standard and means of proof

As in the Greek Case, the standard of proof applied by the Commission is that the allegations must be proved beyond a reasonable doubt. In accordance with the explanation given in the Greek Case this means "not a doubt based on a merely theoretical possibility or raised in order to avoid a disagreeable conclusion, but a doubt for which reasons can be given drawn from the facts presented" (Yearbook 12, The Greek Case, p. 196).

As regards the means of proof the Commission was aware in this case, as it was in the Greek Case, that there are certain inherent difficulties in the proof of any allegations under Art. 3. In particular the special requirements of the security situation existing in Northern Ireland made it necessary for the Commission's Delegates to obtain evidence under unusual conditions which have been described above (cf. above, pp 230 et seq). The Commission appreciates that this has caused inconveniences and obstacles for counsel for the applicant Government in cross-examining unidentified witnesses who were members of the security forces, and it has taken these difficulties into account. The security requirements have protracted the proceedings and imposed difficult working conditions on all those concerned. They have also to some extent hampered the effective conduct of the case in other ways, in particular because no personal confrontation of witnesses was possible. Again the Commission has taken this into account as explained below.

The evidence obtained in the illustrative cases falls mainly into two categories: medical evidence and witnesses giving factual evidence either orally or in the form of affidavits and statements.

In regard to the witnesses giving factual evidence the Commission considers it important to note that they were not independent witnesses in the classical sense insofar as most of them had a clear personal interest in the outcome of the case.

This is quite obvious for most of the members of the security forces. They belonged to the group of persons being accused of having inflicted bodily harm, sometimes even severe bodily harm, on prisoners or having been involved in such acts. They therefore reacted before the Delegates

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as if they were charged with a criminal offence, even where no specific allegations had been made against them personally. Particularly in a situation where, as in Northern Ireland, the security forces are confronted with civil-war-like conditions, it seems that a great sense of solidarity must prevail between the individual members of the police or of the army. That must be considered to be a natural impediment to personal admissions or to statements incriminating colleagues. It is therefore not at all surprising that the Delegates have not heard one single security force witness who either admitted himself to have done anything improper, or who stated that he had seen or heard anybody else do such things.

Furthermore, security reasons did not permit any confrontation of the alleged victims with the members of the security forces who had been implicated by them. It has therefore not been possible to test the evidence in that way, with the consequence that the identity of the persons who might have inflicted the injuries established has not been ascertained in any of the cases examined.

In this connection it seems to have been the approach of the respondent Government that, in order to disprove the allegations made by the case witnesses, it would be sufficient for them to point to other possible causes of the injuries, the position being that it was for the applicant Government to prove the case and not for the respondent Government to explain the injuries (cf. above, p. 345).

The Commission does not accept this approach in those cases where the alleged victims were in the custody of the security forces of the respondent Government at all relevant times. In such cases it would have been incumbent on the respondent Government to produce evidence showing facts which cast doubt upon the evidence given by the victim himself and supported by the medical evidence.

It is equally clear that the case witnesses who claimed that they had been the victims of ill-treatment at the hands of the security forces had a personal and in most cases also polit interest in the case. Although the Delegates, at the very beginni of their investigation into the allegations under Art. 3, decided that they would consider as irrelevant to the issue of treatment contrary to Art. 3 and therefore not allow, questions by the parties as to whether or not a particular witness was or is a member of the IRA, they realised that they had to allow questions relating to the witness's credibility, including any involvement or connection which he might have had with the IRA. From the evidence given it must therefore be suspected that several of the case witnesses either were members of the IRA or at least had connections with this

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organisation. But even where this is not the case, they belonged to the minority community in Northern Ireland, and it was against terrorists or suspected terrorists from that side of the Northern Irish population that the operations of the security forces in 1971/72 were exclusively directed. Moreover, the case witnesses have themselves been arrested and detained which makes it not surprising, for various reasons, that they could seem eager to establish a case against the security forces.

In addition, the Commission is aware that there was a substantial propaganda campaign, which originated within the Republican minded community, following the introduction of internment and which was designed to discredit the security forces. Independent press organs also publicised such allegations and reported a considerable amount of prima facie evidence. This factor must be taken into account when assessing the credibility of the case witnesses both as to their injuries and as to the treatment allegedly received by them at the hands of the security forces. Indeed, certain allegations regarding the injuries and the treatment suffered were, in the Commission's opinion, clearly exaggerated or simply not true. Examples of this have been given by Witness PO 4B, being a police officer of the RUC Special Branch who had received particularly adverse publicity in Northern Ireland in his evidence. Another example could be the allegations made by various persons about drugs producing certain hallucinations which the evidence of all the doctors did not bear out and which might well have been the result of stories told in the press. Press reports and propaganda campaign could conceivably also explain certain inconsistencies, in some cases, between the case witnesses' written statements and the oral evidence given by them before the Delegates as regards their allegations of ill-treatment.

The Commission has therefore come to the view that neither the security force witnesses nor the case witnesses gave accurate and complete accounts of what happened, although they were the only persons to know the exact facts. Counsel for both parties have in cross examination tried to show that the witnesses lacked credibility and it seems to have been one of their suggestions that, if a witness has been caught in a lie in the course of cross-examination, his entire evidence should not be believed. The Commission does not follow this suggestion in all its consequences. Whilst the evidence of such a witnessmust obviously be weighed with particular care, the Commission sees no reason why it should automatically disbelieve a witness's evidence about one matter simply because he has lied about another matter. A witness may have reasons for not telling the truth about matters such as IRA activities and his involvement in them which do not necessarily affect the credibility of other parts of his evidence.

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Nevertheless, in view of the above considerations, the Commission has particularly tried to find factual evidence which could be described as being objective evidence. Thus the Commission's Delegates requested the respondent Government to submit copies of the interrogation records showing which police officer interrogated a particular case-witness and during what period. However, the respondent Government found themselves unable to submit these records as in their view, and as a matter of principle, they constituted a class of documents which it would be injurious to the public interest to disclose.

On the other hand, the respondent Government submitted, in a number of cases relating to Palace Barracks, the so-called "no-complaints forms" which the case-witnesses had signed when being discharged from Palace Barracks. These forms contained above all a list of the property of the detained person who attested by his signature that the list was an exact list of his property handed over to the RUC on arrival and that he had received it back on departure from the centre. In the left margin, the hours and dates of arrival and of departure were given, and underneath was the mention: "complaints: No", with the prisoner's signature or initials.

The value of this evidence which could on its face be regarded as objective, is nevertheless questionable, as it is quite possible that these forms were signed under a feeling of pressure or by reason of some misunderstanding. Thus, some case witnesses stated that they thought the word "complaints" referred to their property, to the food given to them, or to the police officers who discharged them. Others said that they had signed because they were glad to get away.

It appears therefore that, where the allegations of ill-treatment are in dispute, the most important objective evidence are the medical findings which are not disputed as such. In these cases the Commission has therefore started to examine that evidence and its value for the establishment of the facts, before it has examined the evidence of the security force witnesses and of the case witnesses.

In regard to the medical evidence, one general comment might be made at this point. In some cases differences exist between the medical findings of the case witnesses' own doctors and those of Dr. M. who carried out medical examinations at Crumlin Road Prison in August 1971 and sometime thereafter. The Delegates heard his evidence at length both in regard to the general conditions of the detainees' medical examination at Crumlin Road Prison and in regard to certain "illustrative" cases (cf. VR 6, pp. 222 to 261).

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Dr. M. saw the prisoners who were brought to Crumlin Road Prison within 24 hours of their arrival and he examined them with a view to determining whether or not they needed any special medical treatment. At least during certain stages of the security operations in Northern Ireland in 1971 the prisoners, in the doctor's own words, "came in not in ones and twos but in quite a number" (VR 6, p. 236). They were given a thorough visual examination, a stethoscope examination of the heart and lungs, and an examination of the hernial orifices, the joints and the stomach, and entries were made in the committal book of the prison. Dr. M. also noted obvious physical injuries and marks but he did not ask the men how they got these injuries nor did anyone, according to him, ever make complaints to him.

As to the attitude of the detainees towards him, Dr. M. explained that "there was a great deal of antagonism towards the official people that were there. These people were not criminals, they were not people who had fallen foul of the law. They were detainees, they felt they should not have been brought in, and they were not, shall we say, as co-operative as they would have been had they gone in to see a doctor" (VR 6, p.255); "they were - what shall we say - anti the establishment and I was part of the establishment. They resented me and they also objected to my examining them. They did not want to have anything whatsoever to do with us, or with me, and whether I was a doctor or whether I was not, I was just another person in the establishment which they were against and they wanted very little - they had to have this medical examination because they had no option. This was not what was done all along the line" (VR 6, p. 236).

In the Commission's opinion the doctor's own attitude towards the detainees is reflected in his description of their attitude towards him. It is therefore not surprising, taking also into account the large number of people examined by him during that time, and the little space available in the prison entry book for medical findings, that his entries about injuries and marks found on the detainees are not as detailed as medical reports prepared by their own doctors, who had examined the case-witnesses normally at the request of their solicitors or members of their family, in the light of detailed allegations of illtreatment reported to them by the detainees. Any differences in the medical evidence might thus be explained, including any discrepancies and inconsistencies which will be dealt with in detail in connection with the relevant cases. Dr. M. himself was apparently inclined to explain them in this way.

On the other hand, the Commission observes that the doctors of the case-witnesses seemed to belong to the minority community and that some of them spoke about a number of similar experiences, expressed views on the causes of the injuries based on the complaints rather than objective medical findings, and in some cases had themselves taken action to protest against the alleged practices. The Commission has taken these factors into account as well when assessing the medical evidence.

There are two final observations of a general character relating to the means of proof which the Commission finds it useful to make at this stage.

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One is the fact that no investigation reports or witnesses speaking to enquiries in relation to the illustrative cases have been produced in this case apart from the Compton Reports. This does not mean that there was not an elaborate machinery for the investigation of complaints against members of the security forces, and witnesses POP 2 and P 17 in particular, gave evidence in this respect. It means simply, in this context, that the Commission was not able to test the evidence given in the "illustrative" cases against the results which any such investigation might have revealed.

The second observation is that a number of the victims of alleged ill-treatment have either been offered or paid compensation, sometimes in the form of quite substantial sums of money. Again, whilst the payment of compensation does not necessarily constitute conclusive evidence in support of the allegations made - and the reasons for this have been explained by the respondent Government (see above, p. 340) - it may nevertheless permit certain inferences to be drawn in particular from the number of claims dealt with and from the sums paid or offered.

With these considerations in mind the Commission has accepted as established those facts only which may safely be relied upon in each of the "illustrative" cases, taking also into account the facts alleged in those of the "41 Cases" where it has found comparable situations.

2. ESTABLISHMENT OF THE FACTS

In the present section the Commission deals with the facts established on the basis of the evidence relating to the cases where allegations of ill-treatment of individuals are made. The Commission has also examined evidence relating to the issues about practices. This evidence is the basis of some of the descriptions in this section, in particular of places and their administration. Otherwise, the evidence about practices does not form the basis of a separate establishment of facts in the present section (2) but is taken into account where the Commission expresses its opinion in the following section (3).

In assessing the evidence in the illustrative cases the Commission has proceeded as far as possible in the following way: every case or group of cases within each category is preceded by a few (a) general remarks concerning the allegations made and the circumstances of the arrest and interrogation or other events concerned. These are followed by an examination of the (b) medical evidence with regard to the nature and the extent, if possible, of the injuries sustained. Next comes the examination of the manner in which the injuries were inflicted in the light of any (c) possible causes of the injuries other than those alleged, (d) the evidence of the security force witnesses, and (e) the evidence of the victims. The examination is concluded with the (f) findings of the Commission giving also an indication of the degree by which the facts are considered to have been or not to have been established. In certain cases where the evidence of the victim (item (e) above) is not substantially contradicted, it is referred to before the medical evidence, while item (c) and sometimes (d) do not appear.

a). Cases relating to the unknown interrogation centre

(i) The Case of T.6

General remarks

In addition to his allegations concerning the five techniques, T.6 also alleged that, during his interrogation at the unknown centre and during transport

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to and from the centre, he was physically assaulted in various ways. In particular he claims that he was kicked and beaten "black and blue" on several occasions and handcuffed and hung on the wall with the toes just touching the ground.

As stated before, T.6 was at the centre from 11 to 17 August 1971. He was medically examined on entering and leaving the centre, and also on his arrival in Crumlin Road Prison, where he was detained until 3 May 1972. The Commission obtained the medical records of T.6's examination at the centre, as well as an affidavit from the Army Medical Practitioner who had examined him, identified as Witness 9A. 9A also stated that, for reasons relating to his personal safety, he declined to give oral evidence before the Delegates.

The Commission further had before it photographs T. 6 as well as an affidavit from an army sergeant, identified as 9B, who had taken the photographs and who explained when and how he had done this.

Apart from Dr. M., the respondent Government have not proposed any oral evidence in regard to T.6's allegations but, casting doubt on his credibility, they questioned him a great deal about his political inclinations and activities, particularly in the light of letters found during a search of his home. Thus, the only evidence in the case, apart from T.6's own evidence, are the medical reports and the photographs.

As has also been stated before, T.6 was awarded the sum of £14,000 in settlement of his claim for compensation. Although the terms of settlement do not give a clear indication with regard to what particular allegations the respondent Government have admitted liability and therefore settled the claim, a comparison of the award in this case with that received by T.13 seems to indicate that more importance has been attached to the application of the five techniques than to any other form of alleged ill-treatment.

Medical evidence and photographs

T.6 was first examined on 11 August 1971 by the medical officer at the interrogation centre. He was found to have a peptic ulcer, requiring him to take aludrox, and estimated weight 170 lbs. No physical injuries were found to exist and the doctor noted him to be "fit for interrogation". He examined him again on leaving the centre on 17 August 1971 and this time noted "bruising rt. shoulder + both legs". His weight was now estimated at 163 lbs. and he was found to be "slightly agitated". On

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the same day, he was also examined by Dr. M. at Crumlin Road Prison who noted "?Duodenal ulcer - Aludrox - 1 pint of milk extra - bronchitis - black left eye - contusions arms and chest - Prison Hospital".

There is thus prima facie a discrepancy in the medical findings of the two doctors who examined T.6 on 17 August 1971. This can, however, be reconciled in the light of the photographs taken on that day which show that both doctors had made correct findings.

Three colour photographs of T. 6 have been submitted, showing him in the nude, one from the front alone, one from the front together with another person in clothes, and one showing him from the rear. Although T.6 himself denied or could not remember whether and when these photographs were taken and denied having been photographed more than once (with one J.M.), the affidavit of Witness 9B indicates that they were taken at the unknown interrogation centre on 17 August 1971. 9B also described the circumstances under which they were taken. The photographs clearly show black marks on the right shin, on the right front shoulder, on the right elbow, on both upper arms extending to the arm pits, on the chest near the arm pits, and underneath the left eye. They also show some shadows on the back of both legs.

Taking into account the evidence of both doctors and the photographs, and the evidence of 9B, the Commission is satisfied that the injuries suffered by T.6 consisted of bruising and contusions on the right shoulder, arms, chest and the right leg, as well as of a black left eye. It is possible that there was also some slight bruising on the back of both legs.

Other possible causes of the injuries

Two other possibilities for the injuries have been suggested, both of which are mentioned in the Compton Committee's Report. One was that the "superficial" bruises on the right shoulder and both legs found by the centre medical officer were "consistent with the handling required to move [illegible] who on account of his limp resistance had to be carried about the centre". The other was that the further injuries mentioned in the medical records from Crumlin Road "Black left eye - contusions arms and chest" must have been suffered accidentally in transit by lorry and helicopter from the centre to Crumlin Road (Compton Report, para. 101, p. 23).

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The Commission considers that the possibility of T.6 having suffered any of the above injuries during transport to Crumlin Jail must be excluded in the light of the photographs and the evidence given by Witness 9B. This evidence was apparently not before the Compton Committee.

On the other hand, some of the bruises and contusions on the arms and on the chest which are found near the arm pits, as well as any marks which might have been on the back of both legs, were such that they could well have been caused by lifting and transporting a heavy man who refuses to stand or walk and must therefore be carried. It cannot therefore be excluded, on the basis of the medical evidence and the photographs alone, that these marks were caused in some other way than that described by T.6 himself.

The evidence of T.6

T.6 stated that he had suffered substantial injuries at the hands of the security forces during transport and during his interrogation. He said that he was "roughly jerked to my feet and half pulled half kicked and beaten for 400 yards. This was the worst and most sustained beating to date. Fists, boots, and batons crashed into my numbed body". He further said that he was hung up by the wrists which were handcuffed and that in a punishment room which he described as the "black hole" four men, naked from the waist up and wearing brown gaberdine trousers and brown suede shoes assaulted him in various ways.
At the suggestion of counsel for the respondent Government he described the treatment suffered by him as being beaten black and blue over a period of six days at the centre.

T.6's attitude towards the security forces can certainly not be described as being friendly or even indifferent. He had previously been interned from 1956 to 1960 and it was suggested by the respondent Government that in 1959 he was connected with the Fianna Uladh, an Ulster Republic Movement which was banned in 1956. He was detained during two days in August 1969 and then again from 9 August 1971 to 3 May 1972.

In all these periods he was suspected of having been involved or connected with illegal Republican organisations. T.6 denied that he had anything to do with such organisations but he accepted that that was probably the reason for detaining him on those occasions, although he had never been convicted of any offence. He said that since 1968 he was actively engaged in the Civil Rights Movement which was not political, that he assisted political candidates during elections, and that he gave money to an organisation called the National Graves Association.

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His Republican and anti-British attitude emerges clearly from the contents of the letters and poems which were put to him during cross-examination, and the explanations given by him about their meaning is little convincing (1). It further emerges from his own statement that he resented having to take the oath of allegiance to the Crown which he was obliged to take, and took, as a teacher.

Of course, this attitude does not prove anything in itself and particularly it is irrelevant for the present proceedings whether or not T.6 was or is a member of any illegal organisation. However, it would account for a possible desire on his part to discredit, as much as possible, the security forces, and thus the respondent Government, and therefore to exaggerate the extent of the treatment which he has suffered.

T.6 is an intelligent man, active in the political life of Northern Ireland, experienced in dealing with the RUC and familiar with internment procedures. He has certainly not been a co-operative detainee and, although he denied it, it is quite likely that he resisted some of the interrogation techniques to which he was subjected. He did so in the only way conceivable in the circumstances and short of any active resistance, namely by going limp and thereby requiring the security forces at the centre finally simply to give up. On the other hand, it is also quite probable that this very attitude caused the security forces at the centre to be tougher on him than they would otherwise have been.

Findings of the Commission

The evidence submitted to the Commission does not support all the allegations of ill-treatment made by T.6, but the Commission is satisfied beyond a reasonable doubt that, apart from the application of the five techniques, he sustained injuries to his body at the unknown interrogation centre as found by the two doctors who examined him on 17 August 1971. The Commission is further satisfied beyond a reasonable doubt that certain of these injuries, namely those to his right elbow, his right shin, and his left eye, have been the result of assaults committed on him by the security forces at the centre.

On the other hand, although no positive evidence has been produced in these proceedings, it cannot be excluded that the bruises and contusions on his upper arms and chest, right shoulder and possibly the back of his legs, as medically established, have been caused by lifting and carrying him, as was suggested by the Compton Committee. Any other physical ill-treatment cannot be regarded as having been established, but the Commission finds it probable that physical violence was sometimes used in the forcible application of the five techniques.

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(1) VR 3 I, pp.38-47

b.) Cases relating to Palace Barracks, Holywood

Palace Barracks, a military camp in Holywood, County Down, on the outskirts of Belfast, was used as a police holding centre during some days in August 1971 and again from 2 September 1971 until June 1972. The centre consisted of various huts in an area of the camp and was operated jointly by the RUC, consisting of both uniformed police and Special Branch officers, and by the army, consisting of military police, military intelligence, members of the Military Reactionary Force and medical staff.

The Commission has had before it, inter alia, sketches of the localities drawn up by various witnesses. The exact operational arrangements made for the reception, holding, interrogation and discharge of the detainees seem to have changed in the course of time, and it has not been possible to ascertain them completely at all times. Initially all arrested persons arriving at Palace Barracks were received by the military police who registered, searched and photographed them. From November 1971 onwards the detainees were also examined by a doctor on arrival and before leaving. In the beginning the doctors were provided by the army, but the army doctors were later replaced by civilian doctors.

After the reception the detainees were placed in the custody of the uniformed RUC at the centre who were on duty around the clock working in three shifts, each shift consisting of one superior officer and twelve constables. Since reception by the military police proved unsatisfactory, after a short period the system was changed and the uniformed RUC was also charged with checking in the arrested persons.

The interviews were conducted solely by Special Branch officers of the RUC who were at the centre in varying numbers, and were independent of the uniformed RUC. They operated under the responsibility of an officer in charge in the rank of Inspector but were otherwise free in their movements, and many of them interviewed prisoners both at Palace Barracks and at Girdwood Park Barracks on a rotating system.

The interviews were conducted normally by at least two persons. At the first interview a file was opened under the detained person's name in which the notes taken during the interviews were kept. A record of the time of the interviews and of the names of the interrogators was made on the inside of the folder. Between interviews the file was kept by the officer in charge who also discussed the results of an interview with the interrogators concerned. Any information on arms was passed by him at once to the military authorities; otherwise the files were, at the end of the 48 hours period of custody for interrogation, submitted to the police headquarters at Knock for further processing.

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Altogether some 2,000 persons passed through Palace Barracks while it was in use as a police holding centre. The cases of 45 of these persons have been referred to the Commission. The Commission has examined nine of these cases in detail, as illustrative cases (below pp. 415-437). These all related to the period between September and November 1971. It has considered another eight cases, included in the 41 cases on which the parties were invited to comment (below pp. 438-439). These cases related to the period between October 1971 to May 1972. It has finally referred to the remaining cases which were included in the application (below p. 439).

Illustrative Cases

(i) The cases of the four persons from Tyrone: T.2, T.15, T.12 and T.8

General Remarks

These four men were all arrested early on 20 September 1971 at their homes in County Tyrone and taken to Palace Barracks where they arrived at about 0900-1000 hours. All four men were interrogated there by police officers, mostly in the afternoon and evening of 20 September, and were transferred on the following day to Crumlin Road Prison.

They all alleged that at various times they had been made to stand spreadeagled against a wall and that they had been severely beaten and otherwise physically ill-treated, particularly during or about the time of interrogations. Injuries on three of the men were noted by the prison doctor on entry into Crumlin Road Prison on 21 September and Dr. I. who examined them on 23 September found injuries on all four.

Each of the men started proceedings in the civil courts for damages and received an offer in settlement of his claim of £750 which they all rejected.

Medical evidence

The four people arrested on 20 September 1971 were all photographed and examined by an army doctor immediately after their arrest, before they were taken to Palace Barracks. Since the respondent Government produced only the photograph of T.2 to prove that he had a scar on his nose at that time, it must be clearly concluded that no other findings of injuries were made when this examination took place.

All four men were held at Palace Barracks, Holywood until about 1400 hours on 21 September and then transferred to Crumlin Road Prison together. All of them were examined by Dr. M. after their arrival. His findings were stated by him in evidence. The entries in the committal book of Crumlin Road Prison have been provided. They refer to contusions and bruises on all the men except T.15.

On 23 September all four men were examined by Dr. I who found clear marks of injuries on all of them and described them in detail. He found all the injuries consistent with the allegations of severe beating made by the four men, and said that he could be reasonably sure that the injuries had not been inflicted on the previous day and that they "very possibly" were received about the 21st.

The findings of Dr. I., are not contested, but it has been suggested that the injuries could have been inflicted in prison.

The first question then is, whether Dr. I.'s findings can be taken as evidence for the condition of the men when they arrived at Crumlin Road Prison. It is common knowledge that discoloration caused by bruises develops and should make it possible for an experienced doctor to distinguish new from older bruises. It has not been disputed that Dr. I. is an experienced medical doctor and his appearance before the Delegates conveyed the impression of absolute credibility.

It must then be asked if the "discrepancies" between the findings of the two doctors can be explained. Dr. M. made it quite clear that his main concern was to see whether the people needed hospitalisation or other special treatment (1). He was not really concerned with smaller bruises. In the committal book he had only very little space to describe the condition of the men. It is not at all surprising then, that he noted much less than Dr. I. Nevertheless he noted contusions to the chest for T.12 and T.8 and complaints about pain in the chest for the other two. These findings are not in contradiction with those of Dr. I, who described bruises on the lower chest and upper abdomen or abdominal wall for all of them.

More specific injuries were noted by Dr. M. for T.2. He described contusions to his forehead, to his right eye and to his nose. Dr. I. found two small lacerations on the forehead, another outside the right eye and in front of the left ear. Here again the two medical findings are not irreconcilable. As Dr. I. expressly said in his oral evidence the lacerations were not very obvious except at close range. Taking into account that T.2 -- as all the four - dishevelled and unshaven it seems very likely that the lacerations were not discovered by Dr. M. but that he noted contusions where there were in fact lacerations besides contusions. For T.15 Dr. I noted a bruising on the left side of the head which had to be searched for, because it was in the region of the hairline(2).

(1) VR 6, pp. 222-224
(2) Cf. VR 5 II, p. 79 for G.; VR 4 II, pp. 88-89 for C. ./.

Taking into account the different purposes of the two medical examinations, only Dr. I's being clearly directed at finding all possible injuries, the discrepancies of the descriptions do not seem to be irreconcilable at all. There are clear indications in Dr. M.'s very short report that he mentions the same injuries which were later thoroughly described by Dr. I.

It may be asked why no reason for the injuries was recorded by Dr. M. In cross-examination this point was dealt with at length (1). Although Dr. M. at one point said that he would have recorded any complaints about injuries caused by members of the security forces, he later admitted that he had never done so, and it might even be that all the men had complained. He made it quite clear that these people, who came in "not in ones and twos but in quite a number" regarded him as a part of the establishment which they were against. That seems to show that Dr. M. himself looked at them as at a specially treated group, namely IRA suspects. That is supported by his statement: "I regretted that these things had to be done but they had to be done. This was not what was done all along the line". If one puts these statements into the context of the security operations in the autumn of 1971, it seems highly probable that Dr. M. just did not care to investigate into or even to report facts which he rightly thought to be outside his medical competence. It was certainly not his decision how the interrogation procedure should be run or what supervision was necessary, especially since the centre did not form part of the prison.

Summing up it can be said that the medical evidence in all the four cases makes it highly probable that all the four received their injuries while at Palace Barracks, Holywood. All the medical evidence is not only completely reconcilable with this course of events, but points to it, if closely examined.

Other possible causes of the injuries

The possibility that the four men received their injuries either when they travelled in an army lorry to Palace Barracks after having been seen by the army doctor or on the short trip to Crumlin Road Prison when they were together in a police van can be excluded.

It has been suggested that a prison fight or self infliction might be the reason. Dr. M. said that he would have been the first to be called if there were prison riots (2).

(1) VR 6, pp. 234-236
(2) VR 6, p. 253

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There is no evidence of any fight or riot in the prison at the relevant time, nor is there any evidence of the conditions in Crumlin Road Prison which might indicate that a fight leading to injuries of the type found by Dr. I. could have occurred without the knowledge of the prison authorities.

The four men in question were under the control of the security forces from their arrest until the finding of their injuries. Only members of these forces could have furnished evidence as to other reasons for their injuries, and in the absence of any attempt to adduce such evidence, the conclusion seems inevitable that there are no other credible explanations.

This view is supported by the fact that the respondent Government handed in the picture of T.2 to prove that he had a nose injury when arrested. The clear inference can be drawn that other material would have been received if there were any other explanations.

No likelihood that the injuries found during the medical examination by Dr. I could have been received otherwise than during the stay of the four men at Palace Barracks has been established.

The evidence of the security force witnesses

No member of the security forces at Palace Barracks who was heard by the Delegates admitted that he had beaten the men or knew that they had been beaten up. That is not very surprising given the general situation.

Most of the security force witnesses in these cases, being experienced police officers, made firm and clear statements without any contradictions. Their credibility is difficult to assess generally. For instance, when 4B, one of the inspectors against whom many allegations were made, described his method of interrogation and was asked whether he sometimes shouted, he replied that he did so only to deaf people. However, the whole context of the security operations in the autumn of 1971 contradicted that statement. It seems clear that these witnesses had the firm intention not even to admit the slightest impropriety.

There was, however, one security force witness whose evidence is of particular interest: PO 4A, the inspector of the RUC Special Branch who was stationed in County Tyrone where the four men had come from. This policeman seemed to be more concerned about the allegations than most others, especially those normally on duty at Holywood. He made it clear that he did not wish to be associated with Holywood and that became apparent when he stressed that he had been there only once in his life (1).

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(1) VR 5 I, p. 48

He also emphasised that his responsibility ended after he had interviewed the men. Although he was never mentioned by any of the four, who knew him well, as having assaulted them, and was very firm about his own behaviour, his answers always became vague when the possibility of the assaults having been committed by others was put to him. For example, when asked whether the rules for normal police interrogation applied, he answered: "Insofar as I am concerned it did". When questioned about the allegations of ill-treatment he first said that there was no truth in them, but when the allegations against RUC members were put to him he stressed that none had been made against him and conceded then that allegations against others could be true. He said he asked T.2 about the scar on his nose when he saw him at Holywood and gave the reason: "Because, as you said, there had been so many allegations throughout Northern Ireland, I wanted to make sure it did not happen when I was present or about the place". When asked whether other people had interviewed T.2 he was very vague again, and the same is true when he was asked about the time when he was not doing any interviewing(1). Very typical of his uneasiness about the situation seems to be his answer to the question whether the things alleged could have happened to T.8.: "They could not have happened. I believe they could not have happened while I was in Palace Barracks on the 20th. I do not see how they could have happened"(2).

PO 4A had not been named by anyone as having taken part in any assault. The way in which he answered showed resentment of the situation at Palace Barracks. His evidence as a whole hints at the possibility that unusual methods of interrogation may have prevailed there.

That the security force witnesses were not willing to state all they knew about the whole set-up at Palace Barracks became also clear when the reason for bringing the four men to this special interrogation centre which was far away from their home was discussed with several of them. The main reason given was that local police stations did not have adequate facilities. Only reluctantly was it admitted that the availability of more experienced interrogators at Holywood must have been another reason (3). PO 4A admitted that this was likely to have been one of the reasons but added immediately that the lack of local facilities was the main reason.

The position of PO 4B during these interrogations was far from clear from his evidence. Although he claimed with pride that he was an experienced officer having obtained many admissions, and stated that he could interview anyone he liked at Holywood, he thought that it would not have been useful to interview countrymen whose background he did not know. He admitted having seen only one of the four men who had asked to see him.

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(1) VR 5 I, p. 41-75
(2) VR 5 II, p. 267
(3) VR 5 I, pp. 157-158

Doubt is cast on the completeness of the police evidence by the fact that one officer, a CID officer from Omagh, who was clearly implicated by T.2 in the assaults upon him, did not give evidence although it appears that he was still serving in the police force (1). The police evidence as to the time during which the four men were interviewed is shown to be unreliable by a clear conflict between the evidence of PO 40, who spoke of having interviewed T.8 along with another officer whom he could not identify from 1150 to 1215 hours and from 1515 to 1545 hours, and that of PO 4F who spoke of having interviewed T.8 from 1150 to 1225 hours along with PO 4A, and again from 1515 to 1545 hours. The evidence of PO 4A corroborates that of PO 4F, as does the evidence of PO 120 with regard to the afternoon interview.

Summing up the Commission's appreciation of the evidence of the security force witnesses it is clear that they did not tell what they really knew. PO 4A especially gave the impression of someone who was concerned about the situation at Holywood without being able to tell the reasons for that. Taking into account the medical evidence already analysed, the evidence of the security force witnesses cannot at all be taken as a clear counter-indication. It seems rather to show that even some of these witnesses who were clearly not involved themselves felt sorry for these events.

The evidence of the four men detained

When assessing the statements of the four detainees the Commission has been aware of their subjective attitude to their treatment. The analysis of the other parts of the evidence shows that it is very likely that these men were severely beaten during interrogations roughly over the first part of their 48 hours' custody at Holywood. Their condition on arrival at Crumlin Road Prison was bad. In such a situation it is not possible long afterwards to remember all the details of the different interviews. Also exaggerations are quite likely owing to the fact that these people felt the necessity of explaining the pain they had lived through. through. If information to the police had been given there was a further reason to exaggerate.
Finally it must be remembered that the general situation of these four men was such that it could easily have induced them to exaggerate their allegations against the security forces, as was pointed out above.

Bearing these considerations in mind it cannot be doubted that the general description of what happened at Holywood given by all of them, is consistent with the medical findings. All of them claimed to have been severely beaten in the stomach and the chest during continuing interviews. All of them also complained of having been beaten around

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(1) VR 10 II, p. 1340 .

the head. The head injuries found on T.2 and T.15 are clearly consistent with their story, as is T.8's All four said that they had to stand against the wall for periods and were also beaten while standing in that position. It has been suggested that this is unlikely since one could hardly punch anyone in the stomach when he was facing a wall. However, if a detainee had to keep his hands outstretched, as in the wall-standing position, a punching would be possible.

There are certainly allegations which seem rather unrealistic. The story that T.12 was offered a gun to shoot a soldier belongs to this category, and so does T.2's allegation that he felt an electric shock from something like a cattle-prodder. The latter can, however, be taken to be a subjective description of some surprising touch with some instrument in the back.

Findings of the Commission

The Commission holds the following facts to be established beyond reasonable doubt:

The four men were brought to Palace Barracks, Holywood, for interrogation. They were severely beaten by members of the security forces, during continuing interviews, mainly while standing at a wall where they were made to stand for longer times while being questioned or between periods of questioning. The beating was not occasional but it was applied in a sort of scheme in order to make them speak. It was mostly directed to the abdomen and lower chest, and occasionally to the head, and had the result of clearly distinguishable external injuries. No damage was done to internal organs.

(ii) The cases of T.9 and T.14

General remarks

It is recalled that T.9 and T. 14 were arrested by an army patrol in the street in Belfast around midnight on Saturday, 16 October 1971. They were later that night brought

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to Palace Barracks for interrogation and kept there until Monday evening 18 October when they were brought to Crumlin Road Prison. T.14 was then taken to the prison hospital after his examination by the prison doctor. Both of them soon made statements of complaints alleging ill-treatment at Palace Barracks. They obtained legal assistance and were further medically examined.

Their main allegations concern ill-treatment at Palace Barracks.

The only evidence about any violence before that concerns a blow to T.14's neck allegedly by a rifle butt during the arrest. This is disputed, and the Commission is unable to make any finding on this point, which also does not seem called for as it could hardly in the circumstances amount to a violation of the Convention.

More generally, there is much evidence, in part conflicting, about the circumstances surrounding these two cases. That is the position with regard to the cause and nature of the meeting between T.9 and T.14, details about their arrest (e.g. the role of some girls in the street and the size of a gathering crowd), what was said during the interrogations, the medical attention given to the two prisoners, after-effects of the treatment they allege, etc. Again, it does not seem necessary to establish all the details of these surrounding circumstances.

Both men instituted proceedings for damages for "assault, battery and unlawful imprisonment", and their claims were settled on terms that T.14 was paid £2,250 and T.9 was paid £1,975. They apparently also complained to the police about their treatment but no evidence of a police enquiry into their cases was submitted to the Commission.

As in other cases, the most objective and important evidence regarding the main allegations of ill-treatment is the medical evidence, in particular insofar as the medical findings are not contested and are consistent with the allegations, and insofar as descriptions given by various medical witnesses differ from each other only in degree or completeness. Such differences may be consistent with various persons' assessment of the same facts at different times, under different conditions and for different purposes.

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Medical evidence

There is no evidence apart from certain inferences as to their condition when they were arrested (they walked "smartly" without difficulty, but T.9 was suggested to have had a sore heel, T.14 a varicose vein).

Dr. M., after their discharge from Palace Barracks, saw both men and then found injuries which were noted as entries in the committal book. These seem reliable as a minimum description, not very detailed, of their condition.

Moreover, this evidence can be regarded as confirmed by, and consistent with, the findings of Dr. 7 (in T.9's case) and Dr. 8 (in T.14's case). Although they were called in to examine the two men after their complaints of ill-treatment had been made, and thus were influenced by the stories told by the men, there is no reason to disbelieve or detract anything from these more detailed descriptions and they are proof of the same condition, with a few days' difference, as that recorded by Dr. M. This prison doctor was not told anything, and did not ask, about the causes of the injuries. Taken together, therefore, these independent examinations by different doctors prove fully the recorded injuries, which have been described as "substantial" in T.9's case and "massive" in T.14's case (1). In their conclusions the United Kingdom Government offered no comment whatsoever on the medical evidence concerning T.14. The fact that T.14 spent three weeks in the Prison Hospital Wing, and that the Royal Victoria Hospital in connection with X-ray examination also confirmed the "massive bruising" to his legs, contributes to this assessment in his case.

Other possible causes of the injuries

The proved existence of injuries, as well as the fact that the allegations of ill-treatment are consistent with these injuries, is not evidence of how they occurred. However there are in the view of the Commission few other possibilities open. No evidence points to any other explanation for these injuries than that given by the men themselves This narrows down the range of doubt remaining as to the cause of the injuries. It has not been suggested that the injuries were sustained while they were not in the hands of the security forces. It may be relevant to some extent whether blows or kicks were incidental, occasional or systematic, few or many, and from whom they came and for what purpose. At one point a more "innocent" possibility was suggested by Dr. M.: the grasp of medical orderlies to support T.14 could have been the cause of the bruising on his arms. But this is a minor point.

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(1) VR 12, p. 40

In these cases no such possibilities as self-infliction, earlier existence of the injuries, or causation by violent resistance by the prisoner have even been suggested. It only remains, therefore, to assess the importance of the evidence given by the witnesses involved during the events: the members of the security forces against whom the allegations are made, and the injured parties themselves.

As stated before it would not be enough to point to alternative theoretical possibilities without offering evidence, at least as long as it is certain that the injuries were caused while the complainants were in the custody of the security forces.

Indeed, it was admitted in the conclusions on the evidence by the respondent Government that the Commission might find the allegations in these cases proved, but certain doubts were said to exist (cf. above, p.291).

The evidence of the security force witnesses

As in the above cases of T. 2 others no admission of brutality done, heard, or seen was made by any of these witnesses. Again, this is not very surprising.

As observed by the applicant Government, the arresting soldiers' evidence allow certain inferences as to the condition of the two men when taken into custody. They must have been both quite fit.

The 14 persons who had been on duty at Palace Barracks during the relevant period and who gave evidence before the Delegates, are said to have included all those who interviewed the men (save one who had emigrated) plus Witness 13G (1) who based himself on the files and who also was present and carried superior responsibility for the occasion.

Accepting this does not exclude the possibility that other persons than the interviewers in the narrow sense may have caused the injuries, persons who have not given evidence and whose identification might be impossible even for the respondent Government. Nevertheless, the persons - in particular the Special Branch officers - who gave evidence and confirmed having interviewed T.9 and T.14, generally could not have been ignorant of any ill-treatment done by others (appearing as witnesses or unidentified persons) during their stay at Palace Barracks, and in some cases they conceded that.

Some of these persons may have been among those described by T.9 and T.14 as having ill-treated them. The only possible way of really testing this, namely on identification parade or confrontation, was not open to the Delegates because of the security conditions to which the taking of evidence had to be subjected.

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(1) VR 6, p. 74

Certain assumptions as to credibility on the two sides then have to be made.

The objective fact of the injuries as well as the admitted circumstances referred to above, in particular the impossibility of brutality going unnoticed by all these witnesses, tend to make their complete denials of any knowledge of the injuries and their causes, incredible.

The applicant Government pointed to certain inconsistencies in the evidence of the security forces' witnesses and submitted that these inconsistencies reduced their credibility (cf. pp.287-289 above).

Be that as it may, the Commission, summing up these observations, is of the opinion that the evidence of the many security force witnesses neither confirms nor disproves the allegations and does not essentially alter the conclusions drawn from the medical evidence.

The evidence of the two men

It follows from the above observations that the proved injuries must have been caused while the two men were at Palace Barracks. This means that the range of doubt is narrow, and the only descriptions as to how they occurred are the ones given by themselves.

T.14 was not cross-examined on his evidence of ill-treatment, nor was it referred to in the conclusions on the evidence by the respondent Government. His general credibility was challenged through an intense questioning about his IRA connection. The Commission does not consider that his answers on this subject seriously affect the credibility of the main elements in his description of the beating and kicking. There is nothing to indicate that the injuries could have resulted e.g. from a fight, provocation or resistance on T.14's part.

It is equally understandable - and in this way it does not reduce the credibility of the main allegations - that he may have exaggerated, e.g. as to the length of time the beating went on. It is true that his general credibility is affected by the impression that he also may have invented

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some of his allegations, or rather offered some unsubstantiated suspicions, such as the "tea and hallucinations" episode which curiously entered his story in Strasbourg, 2 years after the event, while it had formed part of T.9's account earlier. But the Commission is not concerned with the question whether or not T.14 is generally a truthful person but only whether his description of the causes of his injuries can be believed in this case.

As far as the ill-treatment itself is concerned, T.14 himself spoke about it in a restrained way, and the strong corroboration of his account of beatings and kicks by the medical findings have been held to be decisive for the assessment of these descriptions.

Compared with T.14, T.9 made much more of his allegations, apparently on a somewhat weaker background. This may have been a question mainly of different personalities. Perhaps T.14 displayed the normal but T.9 a stronger tendency to exaggerate. Also some points in T.9's story are less probable. Again the "tea and hallucinations" story comes to mind, because it seems more likely to have been suggested to him by publicised similar allegations and because there is nothing in the evidence to substantiate this. The explanation of the "singing" episode - which apparently happened - remains a mystery, although it is not impossible that a man is forced to sing between beatings, if not exactly in the position described by T.9. The story of the pins in his legs, russian roulette etc. have not in any way been corroborated.

His credibility was also challenged by the respondent Government on less relevant points, such as whether his visit to Belfast was planned or not. Whether or not the alleged gunrunning activity was one of the purposes of his trip is a secondary matter on which the Commission does not have to make any finding in order to form an opinion as to the truth of his description of ill-treatment. This description, when the circumstances of the time, T.9's condition, his personality and imagination as well as the time-lag are taken into account, seems to be sufficiently confirmed by the medical findings and can be regarded as established, proving beyond reasonable doubt the most likely set of facts within the narrow range of doubt referred to above.

Findings of the Commission

T.9 and T.14 were taken to Palace Barracks for interrogation and, after initial questioning where they gave no useful information, were subjected to physical violence, especially kicking and beating, during or between a series of "interviews" conducted by the Special Branch. The assaults caused substantial physical injuries in the case of T.9 and massive injuries in the case of T.14.

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(iii) The cases of T.1 and T.4

General remarks

The cases of T.1 and T.4 have certain similarities. Both men were arrested in the autumn of 1971, taken to Palace Barracks, Holywood, interrogated there for some hours and released on the same day. They both alleged that they had been ill-treated during the investigations. Medical reports were submitted with regard to both of them according to which T.1 had a number of relatively minor injuries whereas T.4 had very serious injuries and was detained in hospital for a couple of weeks. It is also a common feature in the two cases that the men were not medically examined until some hours after their release, being a fact which is relevant to the question whether they might have received their injuries in some other way than that alleged by them.

On the other hand, there are no direct connections between the two cases and the arrests were not on the same day. T.1 was arrested in his home in the early morning hours of 20 October 1971 at about 0130 hours by soldiers who took him to Palace Barracks where he was handed over to the RUC. After having been questioned several times during the day and allegedly beaten and ill-treated he was released at about 1830 hours on the same day, after having signed a no complaints form, and was taken back to Belfast in a police car.

T.4 was arrested at about 1600 hours on 2 November 1971 in the street near his home by an army patrol. He was taken by a saracen to Musgrave Police Station. He stayed there for less than one hour and was then taken by a saracen to Palace Barracks, Holywood, where he arrived at 1700 hours (1). After having been questioned and allegedly beaten and ill-treated he was released the same day at 21.15 hours, after having signed a "no complaints" form, and was taken back to Belfast by a police car.

(1) VR 5 III, p. 911

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T.1 said that he brought a civil action for damages but there is no evidence as to the outcome of these proceedings. He also said that, upon his complaint, the RUC had investigated his allegations but had said they found them to be unfounded.

There is no evidence as to any civil action brought by T.4 but there seems to have been some enquiry into his case during which Witness 7C made statements. The results of any such enquiry are not known, however.

The case of T.1

Medical evidence

Dr. 4 (G.P.) who had known T.1 for some years as a patient was called by the wife of T.1 in the morning of 21 October (the day after the arrest) and went to see T.1 the same morning. According to his written statement and his evidence he found that T.1 had several small bruises on his upper arms and larger swollen bruises on the abdominal wall and on both buttocks. T.1 complained about bleeding from the rectum. Dr. 4 undertook a digital rectal examination but found no blood and did not detect any abnormality or disorder to account for the bleeding. If T.1 had been bleeding this could, according to the doctor, have been the result of severe kicking. The doctor considered T.1's injuries to be rather superficial and thought that he had recovered within a week without after-effects. T.1 himself also said that his bruises and pain cleared up in about a week or a fortnight.

Other possible causes of the injuries

As the medical report shows some injuries, and as T.1 alleged that he had received these injuries as a result of beating by the security forces whereas all the security forces witnesses completely denied this, the question arises whether T.1 might have come about his injuries in some other way.

One of the witnesses, PO 1A, suggested that T.1 might have had the injuries before he came in or got them after he went out before he saw the doctor. He said that very often persons who had been questioned by the police were picked up by the IRA after their release and questioned about what they had told the police. During such questioning they were, according to this police witness, beaten and severely ill-treated. Such interrogation was called "rompering", and

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it took place in a "Romper Room", the expression having been borrowed from a popular TV series for children in Northern Ireland. The same suggestion was made by Witnesses PO 1B and PO 1C.

No evidence has been produced which could substantiate this suggestion. On the other hand the Commission has no evidence about what T.1 did between the time when he was released on 20 October at 1830 hours and the time when he saw his doctor on 21 October in the morning, other than T.1's own statement that he went home.

The evidence of the security force witnesses

Altogether six police officers were heard as witnesses. They all denied that they had in any way ill-treated T.1 or heard him cry or being ill-treated.

It was, however, a somewhat surprising fact that, according to the Witnesses PO 1B, 1C and 1D, whilst they were on duty in the early morning hours on 20 October, nobody was in command of the Special Branch officers at the centre. They were all rather young policemen and it is difficult to believe that there was no officer present who was in charge of the centre or that at least not one of them was in charge.

The evidence of T.1

T.1 explained that from his arrival at Holywood at 0130 until 0330 hours he had been interrogated. He had often been made to stand against the wall with his weight on the fingertips. In this position he had been struck on the body, kicked in the stomach, and arm and buttock. He said that when he went to the toilet after 0330 in the morning he passed blood from the rectum.

His allegation of having passed blood was challenged in cross-examination but T.1 insisted strongly that it had occurred in the way in which he had described it. Nevertheless it seems that T.1 was not particularly worried about it afterwards since, when it occurred again, he did not do anything about it and it may indeed not have appeared necessary to do anything about it or secure evidence of it.

Another aspect of his evidence to which reference should be made is his vigilante work and the concession that he had some, though superficial and undesired, connections with members of the IRA. It can therefore at least not be entirely excluded that he had further contacts, perhaps involuntary, with the IRA after his release from Palace Barracks.

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Findings of the Commission

The only fact which can be established beyond doubt is that T.1 had the injuries described by the doctor on the morning of 21 October 1971. It cannot be established that he had a rectal bleeding.

It is very difficult to know whether he received the injuries while in the hands of the security forces in the early morning hours of 20 October, or at any other time or place. Although it is possible that the injuries may have been caused by ill-treatment, as described by T.1, the Commission cannot consider this possibility as sufficient evidence.

It cannot therefore be concluded beyond a reasonable doubt that he has received these injuries in the way alleged by him.

The case of T.4

Medical evidence

In the morning of 3 November 1971, the day after his release T.4 went to see his family doctor, Dr. 6, who found extensive bruising all over his body especially on the buttocks and the legs. He did not send him to hospital and the only treatment he ordered was pills. The doctor asked T.4 come back the same afternoon to be photographed. The pictures show, besides smaller bruises, a large area of bruising on the right buttock and another on the inner side of the left leg. The peculiarity about the bruising on the buttock is that it stops in a straight line around the area of the hip.

The same morning T.4 went to see his solicitor who made an appointment with Dr. 2 at the Mater Hospital for 1100 hours the next day, 4 November. When Dr. 2 examined him he found severe injuries similar to those found by Dr. 6., which he described in detail in his medical reports. He also took photographs which give the same general picture as Dr. 6.'s photographs: two very extensive bruises and a number of smaller bruises and marks.

After the examination T.4 admitted to hospital for observation and further examination. Because of the danger of embolism he was kept in hospital for about 15 days.

In cross-examination Dr. 6. said that T.4 had walked quite normally on 3 November when he saw him and that this was not inconsistent with the injuries that were found on him.

Dr. 2. accepted that the injuries found on T.4 would be consistent with a heavy fall or coming in contact with a hard object. As far as beating was concerned several strokes

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would not produce this condition unless they were devastatingly heavy. Re-examined however, Dr. 2 accepted that the injuries he discovered were consistent with having been caused in the manner described by T.4, but said that his story was the only evidence available to show that he had not instead been involved in a motor accident, for instance.

Other possible causes of the injuries

Different possibilities were suggested during the examination of the witnesses. It was suggested that injuries could have been caused by T.4 being hit by the bonnet of a car on one side and by the bumper on the knee, or by a heavy fall, or by ill-treatment by the IRA after the release from Palace Barracks.

Although apparently none of the possibilities could be excluded, nothing has been done to substantiate such suggestions, and T.4 himself stuck to his explanations that the injuries were received as the effect of kicking and beating while in the hands of the security forces.

The evidence of the security force witnesses

Witnesses 7E and 7B were both young soldiers who were in the back of the saracen together with 5 or 6 other soldiers when T.4 was taken from Musgrave Police Station to Palace Barracks. The soldiers were sitting in a row on each side of the saracen and T.4 was lying face downwards on the floor of the saracen. They admitted that they might have used rough language when they talked to T.4. They also admitted that their boots might have touched T.4. They denied however that anyone had kicked him deliberately, hit him with rifle butts or beaten him with the rifle sling, but they thought that it would have been possible to beat T. 4 if anyone had wanted to. They also denied that T.4's braces were down.

It is difficult to assess the credibility of these witnesses. On the one hand, if they had beaten T.4 they would not be likely to admit it. On the other hand, it would be rather risky to hit T.4 in such a brutal way as described by him, bearing in mind that the saracen was driven through roads with heavy traffic with both back doors open. If they had ill-treated T.4 the risk of someone outside seeing or hearing it would have been rather large.

In this connection there is one piece of evidence on which the respondent Government have put particular emphasis in this case. Witness 7C, the platoon commander who had arrested T.4 and whose soldiers had accompanied him, first to

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Musgrave Police Station and then to Palace Barracks, stated that he had seen T.4 the next day sometime between 1030 and 1500 hours. T.4 had been walking quite normally and there had been a short conversation between them during which T.4 had made no mention of any ill-treatment on the previous day either by the soldiers or by the police. T.4, in his evidence, had flatly denied having seen 7C on the following day. There is thus a clear conflict in the evidence which may have various explanations. The Commission has taken note of the observations by the Delegates that this officer gave his evidence in a very convincing manner. The Commission considers that, having also regard to the medical evidence given, there is no visible reason why he should have invented this meeting.

The police officers when questioned about T.4's allegations of having been beaten while at Palace Barracks denied that anyone of them had ill-treated him or that they had seen or heard anybody else do it.

The evidence of T.4

T.4 alleged that he had been ill-treated, beaten and subjected to rough language while being driven in the saracen from the street where he was arrested to Musgrave Street Police Station, at Musgrave Street Police Station, in the saracen from Musgrave to Palace Barracks, and finally when interrogated in Palace Barracks. However, he hiuself apparently only considered the treatment in the saracen from Musgrave Street Police Station to Palace Barracks, and the treatment at Palace Barracks, as having been serious.

The main problem in the case before the Commission has been to establish where he received the serious injuries described by the doctors and shown on the photographs. According to T.4's own statements he has received the most serious injuries in the saracen from Musgrave to Palace Barracks where, according to his explanations, 6 to 8 soldiers kicked him, hit him with rifle butts and beat him with rifle slings when he was lying on the floor in the saracen.

There are two difficulties about these allegations: one is that, in order to sustain injuries of the kind that were found on T.4, the beating must have been either over a long period of time or, as Dr. 2 said, "devastatingly heavy". Although all witnesses agreed that the possibility of either of these conditions being met could not be excluded, there is nevertheless, in the Commission's mind, considerable doubt about this in view of the little space available in the saracen, of the time of day in which the arrest and transportation of T.4 took place (between 1600 and 1700 hours), and the periods of travel involved. In this connection the

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Commission is of the opinion that the time estimates given by T.4 for the periods of travel could not have been accurate, given the distances involved and the fact that after his arrest at 1600 hours he spent about 45 minutes at Musgrave Street Police Station and arrived at Palace Barracks at 1700 hours. Besides, it is more likely than not that an army vehicle carrying a prisoner through the streets of Belfast in November 1971 should be driven at a fairly high speed.

The other difficulty is the peculiarly straight line in which the large area of bruising on his buttock ends, and it is difficult to imagine that beatings or kicks of any kind could have produced a bruise of that kind.

Findings of the Commission

The only important fact which is clearly established is that T.4 had severe injuries when he was seen by the doctor.

Bearing in mind that 12 hours elapsed from his release until his medical examination, the statements of the soldiers, and some doubt about T.4's reliability, it cannot be concluded, solely on T.4's own statements, that he received these injuries at the hands of the army or the police.

(iv) The case of T.10

General remarks

T.10 was arrested at his home early in the morning of 18 November 1971 and after interrogation at Springfield Road Police Station taken to Palace Barracks the same morning for further interrogation and kept there for 28 hours. All interviewing took place on the first day, however, whereupon T.10 was allowed to sleep. The next day a detention order was served on him and he was transferred to Crumlin Road Prison and subsequently to Long Kesh. He was medically examined three times: when entering Palace Barracks, when entering Crumlin Road on 19 November, and the next day by his family doctor, Dr. 7, who saw him in prison.

The assessment of T.10's allegations of ill-treatment at Palace Barracks offers some difficulty. The medical evidence is not very precise and it has not been possible to explore in detail the possible causes of the injuries found after he left Palace Barracks. The credibility of the case-witness has been questioned because of inconsistencies in his story, his past record and his attitude to his complaint. On the other hand reference has also been made to inconsistencies in the police evidence.

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Finally, the circumstances of what was called a "full police investigation" (1) may be considered significant. T.10 complained through his lawyer against a number of police officers, but no evidence of any investigation in respect of any such personnel has been produced. An effort to obtain another statement from T.10 himself was only initiated by the police many months later. T.10 has apparently not instituted civil proceedings for damages.

The medical evidence

None of the three doctors referred to above gave oral evidence relating to this case. No report or other evidence relating to T.10's medical examination on entry to Palace Barracks was submitted and there is thus no independent evidence as to his condition before the alleged ill-treatment. Nevertheless it must be assumed that, had any injuries been recorded at that time, relevant evidence would have been submitted, as was done in the case of T.2, one of the four men from Tyrone referred to above.

Documentary evidence of the findings of the prison doctor on T.10's entry to Crumlin Road Prison on 19 November was submitted in the form of a copy of the relevant entry in the prison committal book. The only injury recorded there was an injury to the right eardrum, of which, according to the entry in the book, T.10 had complained.

Dr. 7 had been intended to give evidence but was prevented from doing so through illness. An affidavit sworn by him has been accepted as evidence subject to a reservation by the respondent Government as to his opinion on the consistency of the injuries he found with T.10's allegations. According to the affidavit he found a traumatic perforation of the right eardrum of very recent origin and a number of apparently minor bruises and some tenderness on various parts of the body and scalp.

There is not necessarily any inconsistency between the descriptions which are available of the findings of these doctors. The less detailed recording in the prison committal book is consistent with what is known about the practice in this respect from other cases. Whilst T.10's own evidence that he had complained of having been beaten and that the doctor had seen and remarked on bruising to his ribs is not borne out by the entry in the committal book, the prison doctor who examined him was not called to give evidence. Although evidence has been given by Dr. M., a prison doctor, who examined a number of other case-witnesses, as to his practice in noting complaints and injuries, there is no evidence to show whether he was in fact the doctor who

(1) VR 12, p. 223

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examined T.10. The only part of his evidence which can safely be relied on in the present case is his evidence as to the purpose of the medical examination of detainees on entry into the prison, since this would be the same whoever was the doctor carrying it out, whereas the practice of individual doctors in noting down complaints and injuries might differ.

T.10's own descriptions of his condition was that he felt tired, frightened, and restless after his ill-treatment, but was not really feeling pain except from the kick to his private parts. He also said that he was more concerned about his right ear at the time of the examination by the prison doctor.

In all these circumstances the fact that the prison doctor did not record the various minor injuries subsequently noted by Dr. 7 does not prove that they were not there at the time.

Other possible causes of the injuries

It was suggested (but denied by T.10) that the additional injuries could have been caused after the prison doctor's examination. In the absence of any other indication of a "debriefing session" in prison administered by other inmates, this suggestion must be regarded as unlikely.

It is unlikely similarly that T.10 had his injuries before he was arrested. It was suggested that a nearby explosion could have damaged his ear (T.10 was alleged to have been an explosives officer in the IRA), but this is merely a speculation (1). According to Dr. 7 the injury was of very recent origin.

The fact that he signed a "no complaints" form should be mentioned but cannot be regarded as decisive.

There seems to be little doubt that the injuries were acquired at Palace Barracks.

The evidence of the security force witnesses

Interrogation and cause of injuries: The relevant witnesses, five in all, denied all allegations of ill-treatment and were unable to offer any explanations as to how these injuries were caused. Their evidence was in part based on the interview files and showed some minor inconsistencies, as pointed out by the applicant Government (2), which may be explained by difficulties of memory as regards matters which do not appear from the files, and their reliability is difficult to assess. The

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(1) VR 12, pp. 223 and 465
(2) VR 12, pp. 55-57

number of interviews is disputed, and it cannot be taken as established that there were not more interviews, or more persons dealing with T.10, perhaps less formally, than their evidence refers to.

Investigation of complaints and possible harassment: The evidence of the two police officers concerned with these aspects of the case confirms that a number of visits were made to T.10's home in connection with his complaint and quite often by army and police also in other connections (1) and that the police were in the end told that no further investigation of T.10's complaint was wanted. In the circumstances it seems quite likely here that what was seen as the normal carrying out of duties from one side was seen as harassment from the other side.

This evidence also shows some possible misunderstanding regarding the treatment of the complaint, and clearly confirms that no other steps were taken to investigate the complaint than certain letters addressed to T.10 and visits to his home. These steps were only taken many months after the complaint had been submitted. They were a routine matter of a purely formal nature as the acting police officer in fact admitted. He could not explain why nothing had happened earlier, as he did not get the matter before. He seems to have had so little knowledge about the matter he was supposed to investigate - or about Palace Barracks - that the efficiency of this procedure in dealing with complaints must be open to serious doubt.

The evidence of T.10

The allegations made by T.10 concern numerous acts of ill-treatment carried out in many different ways. However, when examined more carefully they appear as comparatively trivial beatings, in particular a number of slappings on the ears, punches to chest and stomach, etc. which would not necessarily leave serious marks or much pain afterwards. In this sense the substance of his allegations are consistent with the nature of the bruisings and other injuries established by the medical evidence, and also with the witness's own description of his condition afterwards: He did not really feel pain but was rather tired, frightened and restless. Some details of the medical findings seem to correspond rather closely to his description as to how they occurred and could not in the circumstances easily have been caused in a very different manner (e.g. by a kick to his privates and a strong blow to his ear), once it is assumed that they were caused while he was at Palace Barracks.

The intensity and number of assaults may, however, be a good deal exaggerated. His account of the number and the conduct of interviews and interviewers differs from that of

(1) VR 10 II, pp. 1452-1457

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the police officers. His complaint against a well-known police officer as having banged his ear with particular violence, cannot be verified, although, as such, the damage to his ear is on record. The evidence about his withdrawal of his criminal proceedings against this policeman is inconclusive.

T.10's general credibility was also questioned on the basis of his record which, besides his alleged IRA involvement for which he spent a period in detention, includes a subsequent criminal conviction. In the circumstances, it is quite uncertain what should be inferred from these factors concerning the credibility of his particular allegations. Fear of IRA punishment for having given information and a wish to jump the "bandwagon" of making allegations against the named officer, have been suggested on one side, the improbability that he should have volunteered information if the allegations against him were true, on the other.

It seems that such considerations must remain speculations and that the most likely explanation of the medical evidence is that his allegations to some extent are true. Had there, for instance, been any evidence of resistance on his part the picture might have looked quite different. The silence of the contrary evidence thus indirectly confirms the essence of his story.

Findings of the Commission

After the interrogation at Palace Barracks, T.10 had injuries, generally not major but distinct injuries.

These injuries could not have been caused, beyond a reasonable doubt, in any ways materially different from those described in his own evidence: from being slapped on ears, beaten on chest and stomach a number of times, and probably to some extent kicked.

In the absence of any factual evidence to the contrary and having regard to the fact that T.10 was in the custody of the security forces at all relevant times, it must be considered as established that these acts took place while he was kept at Palace Barracks for interrogation and in the hands of the security forces.

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From the 41 Cases

Short description

There are eight cases within this group which concern allegations about incidents at Palace Barracks, Holywood.

One of these cases (T.22) contains, in addition, allegations relating to the five techniques. This case was one of the cases in October 1971 which was examined by Sir Edmund Compton and dealt with in his further report of 14 November 1971. The report concluded that T.22 had been subjected to the five techniques and therefore to physical ill-treatment, but that there had been no evidence of any other form of ill-treatment either at Palace Barracks or at the unknown interrogation centre. Still the official medical reports established when leaving the centre and when entering Crumlin Road Prison which were before Sir Edmund Compton indicated that there had been superficial bruising largely in the way described by Dr. I who examined T.22 shortly after his committal to Crumlin Road Prison. This case is somewhat comparable to the case of T.6.

In the other seven Palace Barracks cases, all except one (T.28) concern persons who were arrested, interrogated, and subsequently detained. T.28 was released following his interrogation. Five persons were arrested in October, November and December 1971, one in January 1972 and one in May 1972. The prisoners alleged ill-treatment by the army during transport to the interrogation centre or by the police during interrogation.

In all except two cases (T.29 and T.30) they were medically examined within 48 hours, following their committal to prison and injuries were found on them. T. 30 was medically examined about five days, and T.29 about three weeks, after the alleged events. T.28, although he was released, was medically examined only after one hour of his release.

No evidence has been obtained from the respondent Government and it is therefore not possible to say to what extent, if any, there were other possible causes of the injuries. It might be noted, however, that T.29 managed to escape after his arrest but was recaptured and that the arrest of T.29 was preceded by shooting during which he received gunshot wounds. It is therefore possible that the injuries sustained by these two persons were mainly the result of these incidents.

Three persons (T.27, T.30 and T.31) received damages ranging from £200 to £900 in settlement of their claims.

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Short assessment

It would appear that in all cases the allegations are similar to those made in the illustrative cases. The medical reports show that the persons concerned have sustained injuries in varying degrees. It would not be safe, however, to make, on the basis of these documents alone, any findings as to how these injuries were sustained in each case. Nevertheless, in those cases in which the victims were detained following their interrogation and were medically examined shortly after their committal to detention (the cases of T.22, T.27, T.48, T.29, T.30 and T.31) there exists a strong indication that the course of events was similar to that found in the illustrative cases. In this connection the Commission has also had regard to the fact that compensation has been paid to three of the persons concerned.

Remaining cases

The Commission takes note of the fact that another 28 cases have been referred to it which contain further allegations of ill-treatment at Palace Barracks.

In the absence of any evidence corroborating these allegations, including medical evidence, the Commission has not found it possible to examine these cases further and therefore refrains from making any findings in respect of the cases other than confirming that such allegations have been made and that compensation has been paid in some of them (1).

C. Cases relating to Girdwood Park Regional Holding Centre

Like Palace Barracks, Girdwood Park was an army centre. It is located on the outskirts of Belfast and was used on 9 August 1971 and afterwards as a Regional Police Holding Centre and as a place for interrogating suspects. It is adjacent to Crumlin Road Prison and, in order to facilitate access to the prison a hole was made in the wall separating the two establishments from each other.

Girdwood Park was temporarily closed down some time in August, when 186 persons had passed through it (2). It was then reopened in October as a Police Holding Centre. The arrangements for receiving, holding, interrogating and releasing prisoners and the procedures for their interrogation, were essentially the same as those at Palace Barracks.

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(1) By March 1975 compensation had been paid in five ./. of these cases and claims were pending in six cases.

(2) YB 10 II, pp. 760-831.

The cases of 36 persons have been referred to the Commission. The Commission has examined (below pp. 441-442) one of these cases in detail as an illustrative case. This case related to August 1971. It has considered another five cases, included in the 41 cases on which the Parties were invited to comment (below pp. 442-443). These cases related to later periods up to January 1972. It has finally referred to the remaining cases which were included in the application (below p. 443).

Illustrative Cases

(i) The case of T.16

General remarks

Although this case concerns an arrestee brought to Girdwood, it is mainly about an army assault on the arrestee. It took place on 13 August 1971 during the early days of internment. T.16, a man past 60, a Protestant living in a Catholic area where firing had occurred, was suspected by the troops on patrol there because of an antenna on his roof and some guns in his possession. They were lawful and he did not seek to hide them, but the troops did not wait to verify his explanations. He described severe assaults by soldiers including military police in the street before he was taken to Girdwood Park Holding Centre, and also complained about some of the treatment he received there before he was released home on the same day.

The main allegations are corroborated by the other evidence and are not disputed by the respondent Government: "There is no doubt, unfortunately, that the troops acted hastily and wrongly here"(1). What is contested are the allegations that the medical care at Girdwood Park was inadequate and that the case as a whole is an example of toleration of ill-treatment.

The evidence of the case-witness and another witness

T.16 told about his arrest by about 7 or 8 soldiers at his house and about being rushed out to an armoured car and taken to Feller Road. There he was ill-treated in the street while up against a military jeep, by the same soldiers who had arrested him and by some military policemen. Besides being physically ill-treated, he was abused and threatened. Another witness, T.23, who had also been arrested (and was also later to be released without any charges being laid against him), was already inside the jeep and heard him apparently being banged against it.

After being driven in the jeep to Girdwood Park and, inter alia, made to sing "God Save the Queen", they were on arrival more or less dragged out on all fours. While made to stand against the wall at Girdwood in the presence of army and police, T.16 (as well as T.23) said in evidence that they were kicked from behind by some of the personnel present. When T.16 later was interviewed by the

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(1) VR 12, p. 223.

Special Branch of the police, however, there was no further ill-treatment. A complaint was met with the comment "There is a war on", but he was taken to the doctor when telling about his diabetes. He had not asked for treatment for his injuries or pointed them out to the army doctor but said they should have been obvious to him. He did not make any major complaints concerning the rest of the events that day until he was released home. The estimates of time, and of the degree of the violence, by T.16 and T.23 are, of course, subjective, but their general credibility as witnesses is not in doubt.

Medical evidence

Dr. I, who gave evidence, had examined T.16 in hospital on the fourth day after the event. His family doctor, the late Dr. S, had seen him immediately and made a sketch of the injuries. His findings were similar to Dr. I's findings which were not in dispute (1).

There were numerous bruises and lacerations on T.16's back, arms, and, in particular, on the legs, and he could not stand or walk for weeks.

The army doctor (Witness 21 A) who at first had dealt briefly (3 to 5 minutes) with T.16 at Girdwood because of his diabetes complaint, had not noted any of this. But he had later made a considerable effort to be informed about his diabetic condition and to get him the necessary tablets for it.

The allegation of medical neglect is disputed.

T.16's diabetes (and heart condition) were commented upon by both doctors who gave evidence. It seems that they assessed the added risk differently (2). The Commission is satisfied that the variety of diabetes makes a difference here, and that T.16's kind was the less serious one. Nevertheless, it was not only serious enough to warrant the medical treatment given to him at Girdwood Park but it makes it even more difficult to understand that the army doctor did not notice anything "out of the ordinary" about his physical appearance. The likelihood is that this doctor, who had not slept for about 72 hours, limited himself to taking care of the specific complaint which obviously was out of the ordinary. In these circumstances, his evidence that he did not remember having seen the other injuries, does not have to mean, as suggested by the applicant Government (2), that either he or T.16 are not telling the truth.

The witness Dr. I. had complained about the medical aspects of the case to the General Medical Council and the army but without result, as no specific enquiry on this point had taken place.

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(1) VR 8, p. 156.
(2) VR 8, p. 167 and VR 10 II, p. 1215.
(3) VR 12, p. 95.

Findings of the Commission

T.16 was very severely injured by army personnel.

This happened after he had been arrested, while he was at the hands of the security forces. It must be taken as established that T.16 was assaulted and insulted substantially in the way he described, which was corroborated by T.23. The assaults included in particular the ill-treatment (butting of head against the jeep, kicks and beatings by batons) by soldiers and military policemen in the Falls Road, the rough handling when arriving to Girdwood Park (dragging by hair) and while wall-standing there (kicks etc.).

This ill-treatment was not connected with the formal interrogation which later was conducted at Girdwood by the Special Branch in a correct way.

T.16's own behaviour in no way seems to have given any cause to over-react. His age and his state of health makes the ill-treatment more serious and difficult to understand even when taking suspicion into account.

It cannot be established with certainty whether at the moment the army doctor saw him, T.16 was actually bleeding from the head and a black eye had already developed. But in view of his diabetic condition coupled with his heart condition the medical examination at Girdwood seems to have been clearly inadequate, since no notice was taken of any of his injuries, although his specific diabetes complaint was dealt with as well as the circumstances permitted.

From the 41 Cases

Short description

There are five cases within this group which concern allegations about incidents at Girdwood Park (1).

Four of these cases are documented by both the alleged victim's statement and a medical report. One case (T.33) has been submitted by means of a medical report only, but the doctor in that case (Dr. L.) described what T.33 told him as to how he had come by his injuries.

In the remaining four cases, which include the case of T.23 who was heard by the Delegates in connection with the case of T.16, all except one (T.49) concern persons who were arrested, questioned and then released. T.49, who was arrested in January 1972, was then charged at Townhall Street

(1) The cases of T.23, T.30, T.32, T.33 and T.49.

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Police Station and presumably detained thereafter. Two further persons were arrested in August 1971 and one in November 1971. All persons alleged that they were assaulted by army personnel upon their arrest and during transport to the Police Holding Centres. Only one person (T.49) alleged ill-treatment by Special Branch officers of the RUC at Girdwood Park. In all cases the persons were medically examined within 24 hours of their release or detention and injuries were found on them.

Short assessment

No evidence has been obtained from the respondent Government. Nevertheless, it is fairly safe to conclude from the statements of T.23 and T.50 combined with the medical reports that at least certain of the injuries suffered by them were caused in the way in which they said they were caused. This is particularly true for the case of T.23, who was arrested together with T.16, where the circumstances of their joint arrest and the subsequent events were examined by the Delegates in connection with T.16's case (see above). This is probably also true in the case of T.50 who, according to his own statement, was accused of having run away from the arresting soldiers and of having started a fight with them. A strong probability also exists in the case of T.32 if one takes into account the fact that his claim was subsequently settled for £750 damages.

On the other hand, it would be difficult to consider the facts in the case of T.33 to have in any way been established simply on the strength of Dr. I.'s medical report, and all that can be said about that case is that injuries have been found on T. 33 on 25 January 1972.

As regards the case of T.49, it would appear that the allegations and injuries are comparable with those in the Palace Barracks cases and the Commission refers to the assessment made in connection with some of the 41 cases relating to that place (cf. above p.439).

Remaining cases

The Commission takes note of the fact that another 30 cases have been referred to it containing further allegations of ill-treatment at Girdwood Park.

In the absence of any evidence corroborating these allegations, including medical evidence, the Commission has not found it possible to examine these cases further and therefore refrains from making any findings in respect of them other than confirming that such allegations have been made and that in some cases compensation has been paid (1).

(1) By March 1975 compensation had been paid in 13 cases and claims were pending in five cases.

d) Cases relating to Ballykinler Regional Police Holding Centre

The Ballykinler Weekend Training Centre in County Down was used in August 1971 partly as one of the three Regional Centres for holding and interrogating persons arrested during "Operation Demetrius" on 9 August 1971, being as will be recalled the military operation in execution of the political decision to use again in Northern Ireland the powers of detention and internment under the Special Powers Act.

The military leadership was organised in the following way: General Sir Harry Tuzo was in August 1971 General Officer Commanding in Northern Ireland. Immediately under him was another General, being the Commander Land Forces. Under him served three Brigade Commanders, each being responsible for a particular part of Northern Ireland, and under them regiment commanders normally in the rank of Lieutenant Colonel.

About 48 hours before "Operation Demetrius" started, the Brigade Commanders received orders from the Commander Land Forces to arrest certain people. The Brigade Commander responsible for the region from where arrested persons were to be brought to Ballykinler then [illegible] for the construction of a double perimeter fence around the camp and towers for lights at the corners. All furniture was to be removed from the huts which were to hold the prisoners so that nothing could be used as weapons.

The Regiment Commander came to Ballykinler on 7 August 1971. At about 20.15 he [illegible] "orders group" meeting at which about twelve officers and NCOs were informed of the purpose of the operation and their task.

Later in the evening the senior police officer arrived who confirmed the orders already given by the military commander. The RUC has overall authority over the holding centre which they exercised with the assistance of the army. Thus the RUC were responsible for the interrogation of the prisoners whereas the army were responsible for arresting them and keeping them in custody for a maximum of 48 hours. The army were also there for security purposes, both internal and external.

The bulk of the soldiers, consisting of one battery of about 90 men, including 30 military policemen, and the regimental headquarters consisting of about 40 administrative army personnel, arrived on 8 August 1971 at about 2300 hours. They were briefed at 0400 hours on the following morning and began with the clearing of the huts and the erection of fences at 0430 hours.

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The prisoners arrived shortly thereafter, the arrest operation having started at about 0500 hours. They were taken to the reception hut where identification and medical examination took place. Some were waiting in waiting huts for their reception, others were sitting outside on the grass. After reception the prisoners were brought to the accommodation huts, about 15 in each hut, where they waited until they came to be interviewed by Special Branch Police Officers in the interrogation huts. Interrogation went on all day and night. It was material for deciding whether a prisoner was going to be interned or not.

By the evening of 10 August 1971, only four prisoners were left out of a total of 89 who had been brought to Ballykinler. These were taken to their place of detention in the morning of 11 August 1971, bringing the total of persons detained up to 80. The other nine persons were released.

Altogether 18 cases concerning the treatment of prisoners at Ballykinler have been referred to the Commission which examined one of them.

The case of T.3

General remarks

T.3's case relates to the treatment of detainees at Ballykinler when Operation Demetrius was put into effect. Both parties have gone broadly into the conditions in this army camp, which was then used as a Regional Holding Centre

The evidence concerning some particulars of T.3's own experience and allegations is disputed on certain points which are not of primary interest to the enquiry.

Apart from certain particular incidents alleged by him, the treatment of which T.3 complains was, however, to some extent applied in common to all detainees. The dispute in this regard is partly about its purpose and partly about its conformity with the Convention.

Enquiries into the conditions at Ballykinler on this occasion have also been made by the Compton Committee and by the County Court in the case of Moore v. Shillington, and the findings made in these enquiries have often been relied upon by the parties in connection with the T.3 case.

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These enquiries are comparable with the Commission's enquiry as to the factual findings and, although indirectly only, relevant for the opinion which the Commission has to express.

T.3's main allegations concern the general conditions at Bellykinler, the orders to perform certain exercises and their enforcement, and the existence of a deliberate policy to prevent the detainees from sleeping.

T.3's evidence

As regards T.3's evidence (1) the Commission only refers to a number of points relevant to the above allegations.

It is not disputed, and there is no inconsistency in T.3's evidence that, after a search on his arrival he was put into a hut and made to sit on the floor, first with the back to the wall, and then with the feet to the wall. The exercises he described are consistent with a general sitting or kneeling position.

The effects of the exercises are likely to be such as described by him, namely very strenuous and painful.

The alleged duration of the exercises and the absence of interruptions except for meals in the daytime seems to be unlikely as it appears physically impossible, but allowance must be made for the subjective character of the notion of time.

As to the enforcement of the exercises he has not directly witnessed that people were hit with a knee or a baton. He relies only on sounds, which may have been caused otherwise. As to the allegation that a foot was put on the knees in order to keep legs tight to the floor, T.3 does not say that it happened to himself and he cannot, therefore, judge the amount of pressure applied.

Both the allegation that another detainee was beaten and tied to a beam because he had collapsed during one exercise, and the allegation that he himself was put to the wall and assaulted for speaking to his neighbour were not contained in his original statement.

His explanation that he was afraid of the RUC applied only to the second incident when he was allegedly put in a position to witness the first one. Judging from the assured way in which T.3 gave evidence before the Delegates, it is not a very convincing explanation and only leads to

(1) Cf. YB 4 II, pp. 30-65.

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the conclusion that both incidents are probably invented, the second one in order to support the first one. T.3 appeared to be prepared to say things to the discredit of the security forces, even if they were not true, or to be carried away by his imagination.

As to the question of his signature on the medical examination form, he may have forgotten it or have felt embarrassed to admit that he signed it although he had complaints.

All this reduced his credibility, but does not allow the rejection of his allegations as far as they are corroborated by other evidence.

As to the medical care, T.3's evidence that he was convinced there was no real doctor, but, possibly, a corporal, who did not take seriously his complaints about the food and the exercises, must be contrasted with his evidence that he was sounded, asked about medical ailments, and given tablets.

His impression that there was no real doctor present may be wrong. His evidence, that he was examined at about 1900 hours is confirmed by the time indicated on the form he signed after the examination. His evidence that they had to do exercises until he was called for interrogation at about 0300 hours, but with rests between exercises, does not allow judgment whether the exercises were intended to prevent prisoners from sleeping or to keep them warm on the bare floor.

Also, after that interrogation he was in a hut without beds. If he heard dogs and other noises, it does not indicate an intentional disturbance.

The evidence of the security force witnesses

Although one military witness could not say whether the huts were swept out, the evidence given by the others was that they had been swept out and this is not inconsistent with T.3's allegations that there was some dust left.

All witnesses agreed that some exercises or changes of position were performed by the prisoners.

One spoke of orders, one of exercises they were allowed to do, one of positions of discipline. None of them described any compulsion; one referred to the senior police officer's decision that the detainees should exercise to relieve stiffness, which he forwarded to the military policemen.

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The doctor who refused to give oral evidence, swore an affidavit, which in the main confirms T.3's evidence concerning the medical examination.

The military witnesses agreed that beds were removed from the huts for security reasons, that bedding was also taken out or not available. Three out of four mentioned a police decision to that effect. The senior army officer agreed that the army had assisted the interrogation process by not supplying beds and bedding. He supposed there had not been enough.

Findings of the Commission

T.3 being one of those arrested in August 1971, exclusively drawn from the minority community, was subjected to interrogation related to the activities and organisation of the IRA. Its purpose was to help determine whether the particular prisoner interrogated should be interned or released, and also to compile information about the IRA.

Throughout the day the prisoners, including T.3, were made to do certain exercises on a wooden floor which had been swept superficially, some even before they were medically examined. This has been confirmed by the Compton Report (para. 159) and by the judgment of Judge Conaghan in the case of Moore v. Shillington delivered on 18 February 1972, p. 8.

It may be assumed that the exercises were not only intended for the benefit of the detainees and that some degree of compulsion was used to enforce them. However, the evidence does not disclose that the force used was particularly severe. Incidents such as they have been described by T.3, where a considerable degree of force was alleged to have been used in order to enforce the exercises in individual cases, have not been established.

As the huts had been stripped of all fittings, the detainees had no beds or bedding for the night. Interrogation took place throughout the night. The night interviews can be explained by the time-limit of 48 hours which was imposed by the Special Powers Act, but it is difficult to explain the absence of beds and beddings. Two different explanations are possible: shortage of bedding or a deliberate interrogation policy. Although it cannot be established beyond a reasonable doubt that the absence of bedding was the result of a deliberate interrogation policy, the fact remains that no sufficient explanation has been given as to why the detainees who had not yet been interviewed were not provided with bedding.

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e) Cases relating to various other places

Allegations have also been made about ill-treatment at various police stations and army posts, at the homes of the victims, in the street and elsewhere.

121 such cases have been referred to the Commission, 65 cases containing allegations of ill-treatment in connection with the interrogation of the victims concerned, and 56 cases which did not involve such interrogation.

The Commission has examined (below pp. 449-455) three of these cases in detail as illustrative cases. These related to October and December 1971 and also to August 1972. It has considered another 28 cases included in the 41 cases on which the Parties were invited to comment (below pp. 455-457). It has finally referred to the remaining cases included in the application (below p. 457).

Illustrative cases

(i) The Case of T.7

General remarks

This case of an assault on a civilian in the street by a soldier (corporal) on 28 October 1971 is relatively simple. The main facts are not contested.

T.7's own account of what happened is not disputed, nor is the medical evidence, and no witnesses were called by the respondent Government.

The decision on admissibility speaks about the treatment of people in the custody of the security forces. T.7's main complaint relates to an assault which took place before he was, strictly speaking, taken into custody. But the difference does not seem to bring the case outside a reasonable interpretation of this decision, and no objection has been taken by the respondent Government on this point. Its relevance as an example of alleged ill-treatment by the security forces should be accepted. The dispute now only concerns its implications or value as evidence of a practice.

T.7 has instituted court proceedings for damages and his claim was settled by the payment of a sum of £600.

The evidence of T.7

T.7 described how during a shooting episode near the school where he was working, he came to the door and wanted to assist a distressed woman, but was then called out by the corporal who hit him violently in his face with a rifle so that he fell. He was then kicked repeatedly by the same soldier. He was taken away, threatened and humiliated by several soldiers in various ways until it was realised that a mistake had been made and he was given some medical treatment and discharged with apologies. The details of his account (1) were not challenged on any important point during cross-examination. ./.

(1) VR 3 II, pp. 259-270.

The witness told that he had been called a gunman, but denied suggestions that there were any grounds on which he could have been taken for one, even mistakenly.

The witness seemed completely credible and his story appears to be accurate on all relevant and important points.

The medical evidence

Physical injuries

The injuries found on 29 October 1971 on T.7 when he was examined the day after the event by Dr. S (who gave evidence) and after X-Ray examination, included a broken left cheekbone and jaw, a wound behind the right ear, gross swelling and bruising of the face with the left eye closed, as well as swelling, bruising and tenderness over various parts of the body (neck, chest, forearm and leg). The face injuries were described as severe in Dr. S's report of 2 December 1971. That he had been sent home on the day of the event after army medical care, and after having i.a. the wound behind his ear stitched was in order in the circumstances. But his pain became worse and he had to spend some days in hospital.

The doctor accepted that T.7's continued complaint, when he gave evidence (November 1973) of face numbness etc. so that he could no longer wear his upper false teeth, had some foundation. This evidence has not been contested and can be relied on.

Mental effects

A psychiatric report by Dr. Daly of November 1973 stated inter alia that T.7 was still severely depressed, was unable to sleep without alcohol and needed treatment.

This evidence was not challenged in cross-examination and may be relevant insofar as T.7 claims that he has not obtained satisfaction through the settlement of his claim in court for £600 compensation.

Other information

The respondent Government, during cross-examination and in their conclusions, furnished certain relevant information concerning the assailant. This soldier had said that he thought he had seen T.7 twice before, near the scene of explosions, and that he thought he was aiding the gunman.

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The soldier had been "dealt with" by his commanding officer in the form of an admonition after having been detained for 4 or 5 days (1).

This information is not inconsistent with T.7's allegation that the soldier appeared on the street again on 7 November and made a remark about him to other soldiers, although the respondent Government appeared to deny this (2).

Findings of the Commission

In circumstances where a genuine mistake from the outset could not be excluded, it is established that T.7 was very severely assaulted by the arresting soldier without provocation or resistance in a manner which the suspicion against him could not explain. The assault caused severe injuries.

(ii) The Case of T.11.

General remarks

This case concerns an assault committed on an arrested civilian by army personnel. The main facts are not disputed, but the suggestion that they form part of a pattern or an "administrative practice" of brutality is contested. Even here, however, it seems that the dispute is more on the legal than on the factual side, apart from the question whether the development of this case is exceptional or typical.

The case also concerns allegations of harassment of T.11 by soldiers after the incident. The position being as described, it will suffice to restate the relevant findings.

There is some disagreement among the medical witnesses concerning the mental after-effects.

T. 11 instituted court proceedings for damages and his claim was settled by the payment of £500.

The evidence of T.11

T.11 was arrested by a patrol of soldiers in the night of 20 December 1971 when he was getting his motorcycle started. Papers (in themselves innocent) were found on him and a suspicion arose that he could be involved with the IRA.

He was taken to Musgrave Street Police Station and then moved to Albert Street Barracks where he was interviewed. After this first interview he was put against the wall leaning

(1) YB 12 p. 197.
(2) Ibid.

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on his forehead with his hands behind his back and his feet kicked back as far as possible and then crossed. During further questioning his feet were kicked away, so that he fell and rubbed down the wall. At the same time the soldiers pulled his hair and banged his head against the wall several times. Then one of them put his head back and hit him on the nose, which was broken and started bleeding. Another soldier hit him with his fist on the cheek and when he fell he was pulled up by his hair onto his feet.

T.11 was emotionally affected by the whole case, but his credibility should not be put in question, as also confirmed by the respondent Government which described him as a "perfectly respectable young man" (1).

Medical evidence

Physical injuries

The injuries found on T.11 when he was examined the day after the event by Dr. I (who gave evidence) and after X-Ray examination included: swelling and underlying abrasion of the forehead, two lacerations on the face, swelling on the scalp, bruising round the right eye, bruising and tenderness of right cheekbone, swelling and tenderness of right big toe, and fractures of nose and toe.

Apart from the injury to his toe, which he had before, it has not been disputed that this evidence proved the injuries he suffered.

Mental effects

A psychiatric report by Dr. Daly from 3 November 1973 states that T. 11 has continuous symptoms of anxiety, depression and suspiciousness, that he continues to harbour an understandable resentment, and has had what seems to have been rage reaction on reliving his experience.

Dr. Daly's evidence was cross-examined.

Dr. Lh, however, said that he could find no evidence during nearly two hours of interview of any psychiatric abnormality. He concluded that T.11 was a perfectly normal boy and a pleasant young man.

Evidence of the security force witness.

The respondent Government have called no witnesses to rebut the charges of ill-treatment by the security forces. They just called one witness (150) to challenge the charges of harassment. This witness only described the situation in the Divis Flats area, leading to numerous searches and spot checks. This general information is only indirectly relevant to the allegations of harassment in T.11's particular case. They

(1) YB 12 p. 214. ./.

remain neither proved nor disproved. What may be seen as a normal carrying out of duties from one side, may easily in these circumstances have seemed as harassment from the other side.

Findings of the Commission

It is established beyond doubt that T.11 was very severely assaulted by a number of soldiers during his interrogation. The assault caused severe injuries.

(iii) The case of T.5

General remarks

The case of T.5 dates from a later period, August 1972, while all the other "illustrative" cases examined relate to events in 1971.

Again the allegations concern various kinds of ill-treatment by members of the army, this time at St. Genevieve's School. T.5, then too young to be detained, was arrested and after questioning taken around to various army posts to be seen by the soldiers stationed in the area. The purpose was said to be to enable them to recognise him in the future as an IRA suspect. There is also reliable army evidence that at that time there was a policy of deterrence in such cases, although this was denied by another army witness. This policy may not have meant more than that the risk of identification would in itself have a deterrent effect, but it has also been suggested that such a policy implied an element of intimidation - which seems to be very likely - and that this in turn would mean a hostile reception by the soldiers, who might feel that he could be deterred even more by ill-treatment. These are only inferences, however, and concerning the alleged ill-treatment the evidence is so conflicting that there is little which can be said with certainty.

T.5 instituted court proceedings for damages and received £236.79 in settlement of his claim.

Medical evidence

Dr. A. was the family doctor who saw T.5 five days after the alleged assaults and found some bruisings. They do not appear to have been very severe, but it may be taken as established that they were recent, probably four to six days

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old. These injuries are consistent with some of T.5's allegations (below). The doctor also found fourteen linear weals on his back. This finding must be checked against other medical evidence. One medical officer of the army told that he had noticed eight old scars the day T.5 was arrested in August, before he was taken around to the army posts, and another army doctor confirmed having seen a number of old scars on his back also in December. The number of these scars at different stages in August being thus established, other details such as their age are unclear. Much attention has been given to this point, which has become one of the main issues regarding the credibility of T.5's story of ill-treatment. In connection with the court settlement of T.5's claim he withdrew his allegation that the weals noted by Dr. 4 had been caused by the soldiers.

Other possible causes of the injuries

As T.5 was released home after the alleged ill-treatment and was not medically examined again until five days after the events, any number of possible explanations of the then existing injuries exist. This applied also to the particular issue of the weals and their causes, although it can be accepted that there were new ones when Dr. 4 saw him, caused either when T.5 was taken around or later. The possibility of an IRA-type or other "punishment" was suggested and cannot be excluded in this case. What is probable therefore seems to depend entirely on the credibility of the other evidence, which is also conflicting.

The evidence of the security force witnesses

The numerous witnesses put forward by the respondent Government mainly gave circumstantial evidence, some of which has already been referred to. It is not in dispute that T.5 was taken around for the purpose or purposes described, but there is little evidence of what actually happened to him except his own. Only one of the security force witnesses, a senior non-commissioned officer, possibly was present in the school where the alleged events took place and where 100 men were stationed of which 50 or 60 would have seen T.5 (1). But this witness did not remember T.5 or any such incident, which he said would have come to his notice. The argument that there must have been many other witnesses is correct, but assuming that nothing unusual happened this is not of much help.

The evidence of T.5

It is recalled that T.5's allegations before the Commission were that he was kicked, punched, hooded and dragged around the school, shown to soldiers, hooded again and repeatedly assaulted

(1) VR 1? p. 100

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causing the bruises on his legs and shoulders and the fourteen weals on his back. He could not explain how the latter had been caused. Otherwise his allegations seem largely consistent with the medical evidence, but many other explanations are possible in this case because of the time which went by before the doctor saw him.

The credibility of the allegations is uncertain. An argument based upon T.5's preference for giving a solemn declaration instead of taking an oath (1) and the way in which this argument was presented (2), should not be accepted. In the circumstances this point deserves no weight.

However, there are various inconsistencies and improbabilities in his story.

Most important, perhaps, the fact that he was not seen by a doctor until five days later means that there is little or nothing to corroborate his evidence. Some of it may be true, but there is no way to establish it.

Finding of the Commission

The ill-treatment alleged by T.5 is not sufficiently established by the evidence.

From the 41 Cases

Short description

Five cases concern allegations about incidents at Blacks Road Military Post in August 1972.

All except one (T.51) concern persons who were arrested, questioned and then detained. T.51 was released after questioning. All persons alleged that they were assaulted by the army during their arrest, during transport to the Post, and at the Post. Some also allege that they were beaten during questioning in a tent and in a cellar, but it is not clear whether these allegations concern the army or the police.

All, except T.51 were medically examined by Dr. 8 at Long Kesh on 4 September 1972, being in most cases several days after their commital. T.51 was seen by the doctor (Dr. 10) a day after his release. Injuries were found on all of them.

Then there are three cases involving Black Mountain Military Post in October and November 1972. All three persons were arrested, questioned and then released. They alleged ill-treatment by the arresting soldiers and by the police during questioning. They were medically examined within 24 hours of their release and injuries were found on them.

(1) VR 8 pp. 11-14
(2) VR 12 p. 221

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The next four cases concern Springfield Road Barracks in August and November 1971, October 1972 and January 1974. In two of these cases (T.53 and T.52) only medical reports have been supplied and the doctor gives an account of the events as they have been told to him.

In the remaining two cases the situation is similar to that of the Black Mountain Military Post cases.

With regard to the next three cases concerning the Maze Prison at Long Kesh in September 1972 the file contains medical certificates only. As has been explained the injuries were apparently suffered in the course of certain disturbances at the prison on 22 September 1972.

The cases concerning the Newry RUC Station and Banbridge are submitted only in the form of medical reports which simply describe injuries by means of sketches without giving any indication as to the events that might have caused the injuries.

Four further cases concerning (1) Fort Monagh Military Post in February 1973, (2) Musgrave Park Army Post in August 1972, (3) Crossmaglen Police Barracks in May 1973, and (4) Grand Central Hotel Army Post in June 1973 contain allegations similar to those made in the other cases. The last case is presented in the form of a medical certificate only. In all the remaining cases except one (T.54 at Musgrave Park) the persons were released after questioning and the allegations are that they were assaulted by the arresting soldiers and during transport. However, it emerges from their own statements that apparently there had been some sort of trouble when these persons were arrested or while they were held in custody.

The final six cases concern allegations of assault by soldiers at home or in the street. These cases do not relate to persons under arrest or otherwise in custody. Apart from the fact that some of the incidents described (rubber bullet incidents) must be regarded as purely accidental, these cases are not really relevant to the present enquiry which concerns the treatment of persons in custody.

Short assessment

These cases have not been examined by delegates. They have, however, been commented upon by the parties in accordance with the Commission's request.

The evidence consists in some cases of statements and medical reports and in other cases of medical reports only. It would not be safe to make findings in most of these cases as it is impossible to conclude with some degree of certainty from the statements and the medical reports submitted in what way the injuries were received.

In particular, for the reasons already given, the medical reports alone cannot be regarded as evidence of the facts alleged, but only of the injuries sustained.

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The indication of persons having received the injuries at the hands of the security forces is stronger where such persons have been detained immediately following interrogation and where the period which has elapsed between the occurrence of the incident complained of and the medical examination is short.

None of the above cases satisfies both of these conditions and it cannot therefore be established beyond a reasonable doubt in what way the injuries were caused.

Remaining Cases

The Commission takes note of the fact that another 90 cases have been referred to it which contain further allegations of ill-treatment.

In the absence of any evidence corroborating these allegations, including medical evidence, the Commission has not found it possible to examine these cases any further and therefore refrains from making any findings in respect of them other than confirming that such allegations have been made and that in some cases compensation has been paid (1).

(f) Summary of the Commission's Findings of Fact

As regards the cases relating to the unknown interrogation centre, it has been established in the "illustrative" case of T.6 that certain injuries have been inflicted on him by the security forces at the centre in addition to his having been subjected to the five techniques. In this respect the Commission finds it probable that physical violence was sometimes used in the forcible application of the five techniques.

As regards cases relating to Palace Barracks it has been established beyond a reasonable doubt in all but two of the nine "illustrative" cases that the injuries were caused by the security forces. The significant features of the two cases where the causes of the injuries have not been sufficiently established (T.1 and T.4) are twofold: firstly, these two case witnesses were not detained following their interrogation. Secondly, there was a certain time-lag before they were medically examined. These features do not disprove the allegations and it is still possible that the injuries may have been caused by ill-treatment as described by the case-witnesses. But the Commission cannot consider this possibility as sufficient evidence.

As regards the "illustrative" cases relating to Girdwood Park and other places which involve allegations of physical violence committed by members of the army, the facts alleged have been established in all but one case (T.5).

As regards the case of T.3 involving the conditions of detention and special exercises at Ballykinler the facts alleged have been established insofar as they concern the conditions and special exercises concerned but not insofar as they related to specific incidents of physical violence.

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(1) By March 1,'75 compensation had been paid in ten ./. of these cases and claims were pending in fourteen cases.

3. OPINION OF THE COMMISSION

a) General considerations

The Commission is called upon to express an opinion as to whether or not the facts established in the illustrative cases and the evidence otherwise obtained, including in the 41 cases, reveals that the treatment of persons in custody, in particular the methods of interrogation of such persons, constituted a practice in breach of Art. 3 of the Convention.

The Commission has explained, in the introduction to this part of its Report (cf. pp 370-388 above), how it views the concept of "practice" in breach of Art. 3 and its function under the Convention. It considers that the elements constituting a practice are repetition of acts and official tolerance and that, whilst the prima facie existence of an administrative practice at the admissibility stage of an application affects the applicability of the domestic remedies rule, the legal significance of a practice found to exist at the merits stage is mainly that it constitutes a relevant feature in the description of the individual breaches otherwise found to exist.

It is within the latter framework that the Commission will examine the facts and express an opinion as to the existence or non-existence of a practice in breach of Art. 3 of the Convention in the light of the facts established above and the further evidence adduced with regard to this question.

(i) The approach to the evidence

Not unexpectedly there has been an outstanding difference between the parties as regards their approach to the evidence regarding practice. The applicant Government have proposed that the Commission should draw its conclusions from the facts found in the illustrative cases, which were representative of many others, and should draw certain inferences from the failure on the part of the respondent Government to produce evidence, while not ignoring the "sheer number of complaints". They have submitted that the individual acts in breach of Art. 3, taken together, provided overwhelming evidence of an (administrative) practice.

The respondent Government have proposed that the Commission should examine the directions, instructions, orders and regulations for the treatment of prisoners in general, the machinery available for the investigation of complaints

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and for the prosecution of those responsible where unlawful acts have occurred. It should further examine the administrative arrangements made for arresting and holding the persons concerned and for the medical care given to them when it was needed. They have submitted that an approach to the evidence in that way would clearly show the non-existence of any (administrative) practice contrary to Art. 3 of the Convention in Northern Ireland.

The Commission has followed both approaches in its collection of the evidence in this case. It has found that often the parties have spoken about different matters, rather than directly disagreeing on the facts. It is now for the Commission to co-ordinate its findings on such points. Thus, the evidence on behalf of the respondent Government by so-called "general practice" witnesses and referring to statistics, standing orders and instructions, the number of men involved in investigating complaints etc. has sometimes not been borne out in a convincing manner when it was applied to the "illustrative" cases, where the system of prevention and punishment described in the general evidence could be observed in its actual working. For example, in none of the illustrative cases has there been anything like a thorough investigation by the authorities of the respondent Government of these allegations of ill-treatment and of the prima facie evidence presented in that connection.

It should be made clear at the outset that the Commission's enquiry concerned mainly the situation in the autumn of 1971. Material has also been submitted regarding later periods, such as further cases of alleged ill-treatment as well as evidence regarding subsequent improvements of the procedures relating to the arrest, interviewing and interrogation of terrorist suspects and of the arrangements for the investigation of complaints against the security forces. However, the enquiry has not focused on these matters although their indicative value has been considered.

The Commission has examined in detail 16 illustrative cases and has made findings in them. In the other cases which were referred to the Commission, and in particular in the 41 cases, the examination by the Commission does not permit analogous findings. This is even more so in the other "paper cases", more than 150, which have been submitted by the applicant Government. This material may nevertheless be considered for the purpose of expressing an opinion as to the issue of a practice under Art. 3 insofar as it offers indications as to the representativity of the cases

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examined in detail. Some estimates of probabilities in the "average" case of allegations have been made, but a finding based on such "abstract" probabilities can only be used as a corrective to, or further support of, the main findings in the 16 cases examined.

(ii) The general evidence concerning "repetition of acts"

In its examination of the question of whether or not there has been "repetition of acts" the Commission had regard to two factors, namely: the actual number of substantial complaints and the link or connection between them.

As a background to the evidence concerning the actual number of substantiated complaints the Commission observed the following facts:

(1) In all 3,276 prisoners were processed at the police holding centres while they were in operation in August 1971 and again from September/October 1971 until June 1972. About 2,000 persons passed through Palace Barracks, Holywood, and the remainder through the other police holding centres at Girdwood Park, Gough (Co. Armagh) and Ballykelly (Co. Londonderry). It will be recalled that the holding centres were replaced in July 1972 by police offices at Castlereagh Police Station in Belfast and at Ballykelly Military Barracks, but the number of persons passing through these police offices is not known. In view of the respondent Government's policy to phase out internment it may be assumed. however,that they were considerably less in number.

(2) Between August 1971 and November 1974,a total of 1,105 complaints alleging ill-treatment or assault by the RUC were received by the investigation department set up under the Police Act (Northern Ireland) 1970 to investigate complaints against police officers. During that period there were 23 prosecutions against police officers for assault, of which 6 resulted in a conviction (1).
Statistics up to April 1975 show 27 prosecutions for assault but still only 6 convictions and reveal that the 6 convictions led only to fines or, in one case, a conditional discharge (2).

(3) Between 31 March 1972 to 30 November 1974, altogether 1,078 cases of assault alleged to have been committed by army personnel were submitted to the Director of Public Prosecutions. By January 1975 directions to prosecute had

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(1) Cf. YB 18 II, pp. 750 et seq.

(2) Mr. R. Moyle, Answer to written question in Parliament 25 April 1975; Hansard (Commons) pp. 407-408.

been given in 86 cases, no prosecution had been directed in 952 cases, and 40 cases had not yet been dealt with. The number of cases before 31 March 1972 involving such assaults are not known (1).

(4) Between 9 August 1971 and 31 January 1975 damages have been paid in respect of 473 claims for false arrest, false imprisonment and assault and battery. 1,193 such claims were still outstanding. Compensation has been paid in 45 of the cases which have been cited by the applicant Government in this case (2).

These numbers show that the Commission's enquiry related only to a very small fraction of all the complaints made and, as has been said before, to a limited period of the emergency situation in Northern Ireland. No findings can therefore be made with regard to the general overall situation. However, in the Commission's opinion an examination of the overall situation in Northern Ireland is not strictly necessary for the purpose of establishing the existence or non-existence of a practice. The Commission is rather concerned, as it was in the Greek Case, with the situation at particular places during particular periods, and in this connection with "repetition of acts" at the relevant place and time.

(iii) The general evidence concerning "official tolerance"

In its examination of the question of whether or not there has been "official tolerance" the Commission had regard to two factors which must be considered in relation to each other, namely knowledge on the part of the superior officers of those having committed the acts in question or at higher levels, and action taken which might have prevented their occurrence or repetition, including punitive or disciplinary action.

In regard to the evidence concerning knowledge on the part of the authorities in Northern Ireland and action taken by them, the Commission observed the following facts:

(1) Newspaper reports containing allegations of ill-treatment and prima facie evidence in relation thereto appeared within a few days of the operation on 9 August 1971 and throughout the following months;

(2) The Compton Committee was set up on 31 August 1971 to investigate allegations against the security forces of physical brutality in Northern Ireland arising out of the events on 9 August 1971; reports were submitted in November 1971.

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(1) Cf. YB 10, pp. 686 et seq.

(2) Letter of 12 March 1975 from the [illegible] respondent Government.

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(3) In November 1971 provision was made to ensure that every person brought to a police holding centre was examined by a doctor on arrival and again before leaving.

(4) In April 1972 a special order was issued within the RUC relating to the proper treatment of persons in custody.

(5) In July and August 1972 the army and police respectively issued further directives setting out the procedures relating to the arrest, interviewing and interrogation of terrorist suspects and emphasising that prisoners must be properly treated.

(6) In August 1973, following the enactment of the Northern Ireland (Emergency Provisions) Act 1973, the Director of Operations issued new instructions about the making of arrests by the army and re-emphasised the need for correct behaviour when arresting suspects.

(7) In September 1973 new disciplinary regulations came into force for the RUC, bringing the arrangements for the investigation of complaints in that force into line with the arrangements existing elsewhere in the United Kingdom.

(8) Compensation has been paid to persons having complained of acts of ill-treatment and continues to be paid in accordance with the procedures of domestic law.

b) The categories of cases examined by the Commission

In the light of these considerations the Commission has examined the illustrative cases and the evidence otherwise obtained, including the 41 cases. It should be recalled that the 16 illustrative cases relate to different categories. Two of them relate to the practice, including the five techniques, applied at the unknown interrogation centre and the Commission refers in this respect to its opinion stated on pp. 399-407 above. It merely repeats here its conclusion, namely that the use of the five techniques in the two cases examined, and in the other cases referred to in the Compton Report, constituted a practice in breach of Art. 3 of the Convention. In the context of its present examination of the other forms of alleged ill-treatment it should only be added that the facts established in the illustrative case of T. 6 point to the probability that physical violence was sometimes used in the forcible application of the five techniques.

The other categories were

- the Palace Barracks cases of police interrogation of prisoners in custody;

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- the different cases of incidents involving the army,

and it is now for the Commission to express its opinion, with regard to each of these categories, whether or not the facts as established disclose that persons in custody were subjected to treatment contrary to Art. 3 of the Convention, and if so, whether or not the treatment concerned constituted a practice in breach of Art. 3 of the Convention.

(i) The Palace Barracks Cases

As to breaches of Art. 3

The Commission has already stated above (pp. 376-379) the main criteria to which it resorts in order to determine the question whether or not there has been, in a given situation, torture or inhuman or degrading treatment or punishment within the meaning of Art. 3 of the Convention.

In applying these criteria the Commission has found that, in the cases of T.2, T.8, T.12, T.15, T.9, T.14 and T.10, the persons concerned were subjected to assaults by members of the RUC during interrogation causing injuries, sometimes severe injuries. In these cases the Commission is satisfied that the treatment of these persons deliberately caused severe suffering, both mental and physical, and therefore amounted to inhuman treatment within the meaning of Art. 3 of the Convention.

The Commission further considers that, whilst some of the injuries sustained by certain persons would indicate that they have been subjected to treatment showing a considerable degree of violence and even brutality, the acts found to be in breach of Art. 3 of the Convention could not be qualified as torture as the term is being used here. The cases involved interrogation, and therefore this question could arise. However, although the violence has been deliberately applied for this purpose in the cases concerned, the evidence obtained does not disclose the application of such premeditated methods or techniques in the infliction of the ill-treatment or to such a degree as would be required in the opinion of the Commission to describe the treatment as torture.

As to the existence of a practice in breach of Art. 3 of the Convention

(1) Repetition of acts

With regard to the question whether or not there was "repetition of acts" the Commission observes that Palace Barracks was the main interrogation centre when it was in

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use as a police holding centre from September 1971 to June 1972, and detainees from all over the province passed through it. It is true that the 45 cases referred to the Commission in respect of Palace Barracks constitute only a small proportion of the 2,000 persons who passed through it. But the question of "repetition" cannot only be one of large numbers but must mainly be whether one or more cases are so related to others that they appear not as isolated events but as expressing tendencies or patterns. This may be so even if inhuman treatment for purposes of interrogation is only resorted to infrequently or in particular circumstances, perhaps sufficient to frighten large numbers of others.

It would therefore not be right only to consider generally the relationship between the total number of persons passing through the centre and complaints referred to the Commission. In order to establish repetition of acts at Palace Barracks it would be necessary that the cases examined or considered by the Commission show an accumulation of comparable acts in the sense that some link or connection exists in the circumstances surrounding the acts.

The Commission is of the opinion that, in this sense, there was repetition in the Palace Barracks cases. In seven out of nine illustrative cases examined in detail, the facts alleged concerning acts of ill-treatment by the police during interrogation in the period between September and November 1971, have been established. Furthermore, among the eight Palace Barracks cases considered by the Commission in connection with the so-called "41 cases", there are six in the period between October 1971 and May 1972 where a strong indication exists that the course of events was similar to that found in the substantiated illustrative cases. Finally, although nothing which might be called reliable evidence has been produced in the remaining 28 cases involving Palace Barracks and the Commission has therefore not further examined these cases nor has it made findings in them; the sheer number of complaints (45) and the high proportion of cases in which compensation has been paid (about 10) cannot be ignored when those which have been examined are substantiated in the majority of cases.

(2) Official tolerance

Considering next the situation at Palace Barracks Holywood in relation to "official tolerance" the Commission observes that the officer in charge of the Special Branch personnel at the relevant time had been witness PO 12B/17B. This witness was heard at length by the Commission's Delegates and he denied having had any knowledge of acts of ill-treatment. Similarly, witnesses PO 21A, PO 21B and PO 21C were engaged in supervising duties of the uniformed

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police at Holywood from September 1971 to May 1972. They were concerned with the reception and the release of the detainees and with their welfare and security during their stay. Each of them also denied that detainees had been ill-treated or had complained of ill-treatment, except in two cases which are not before the Commission in these proceedings. In these two cases complaints had been made by the detainees concerned and the matter had been investigated and dealt with.

In the Commission's opinion it must be assumed that the above officers charged with supervisory duties at Palace Barracks had knowledge of the incidents of ill-treatment which the Commission has found to be established. In the first place there was agreement amongst many security force witnesses that an assault or shouts would have been heard outside the room in which it took place. This would mean that members of the RUC in the office adjacent to the interview rooms were in a position to hear what happened in these rooms.

Furthermore, all detainees were seen by either PO 21A or PO 21B or PO 21C on leaving the centre. It is true that certain of the injuries sustained by the detainees were covered by their clothes, and the detainees were not stripped for medical examination when passing through the reception office before they left. However, any person who was sincerely concerned about the welfare of the detainees must have noticed, by reason of their general behaviour, if they were in physical pain despite the fact that no outward signs of injury were visible. This assumption takes into account the possibility that some detainees may have tried to conceal their pain. Besides, several case witnesses heard by the Commission's Delegates gave evidence that they had made complaints to the uniformed police on leaving the centre but that they had not received any attention from them.

In these circumstances the Commission considers that those in command at Palace Barracks at the relevant time could not have been ignorant of the acts involved. On the basis of the evidence given by those officers, it is clear that they did not take any action to prevent the occurrence or repetition of such acts, such as reporting incidents to their superiors, or themselves carrying out investigations of such incidents, or excluding certain Special Branch officers from further interrogations. The Commission considers that tolerance has therefore been established at the level of the direct superiors of those having committed the acts at Palace Barracks in autumn 1971.

The question then remains whether or not tolerance in relation to the acts at Palace Barracks has also been shown to exist on any higher level, and again it must be asked

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whether the higher authorities in Northern Ireland knew or should have known about the acts involved and what action they took in respect of them.

No evidence has been adduced to show, even by inference, that any person other than the supervisory officers had any direct knowledge of individual incidents at Palace Barracks. Knowledge on the part of the higher authorities of the allegations of ill-treatment must, however, be inferred from the fact that reports were published about them in newspapers from mid-October/beginning of November onwards.

For on 17 October 1971 there appeared an article in The Sunday Times about the treatment of detainees at Palace Barracks and the methods of interrogation used there. This [illegible] report on incidents at Palace Barracks and it was on the basis of this article that Sir Edmund Compton was asked to make further enquiries into three cases concerning Palace Barracks. He went there on 7 November 1971 and carried out a complete inspection of the locality and took evidence from various RUC officers including three controlling and supervisory staff in the security forces (1).

Such knowledge must further be inferred from certain measures taken in respect of the allegations made. Thus, in November 1971 provision was made to ensure that every person brought to a police holding centre was examined by a doctor on arrival and again before leaving, and this decision was implemented on 15 November 1971. Furthermore, in April 1972 a special order was issued within the RUC relating to the proper treatment of persons in custody.

These measures could of course also be seen as indicative of the policy of the authorities not to tolerate any ill-treatment, and indeed that intention may well have been one of the purposes for taking them. However, in the Commission's opinion they were not sufficient in the circumstances. The authorities were aware of the fact that insufficient intelligence was available in the summer and autumn of 1971 about IRA activities and they were under considerable pressure to obtain information on them. Furthermore, they knew of the tension existing at the time between certain parts of the Northern Ireland community and the security forces. They were therefore sufficiently warned that some ill-treatment during interrogation of suspected terrorists might occur. In these circumstances, by inaction, they allowed uncertainties to continue and prevail.

One of these uncertainties relates to the confusion of command at Palace Barracks. The evidence gives no clear indication as to who had been ultimately in charge or

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(1) Cf. Further Compton Report of 14 November 1971. p. 1.

responsible for mistakes. Although it might be understandable that at the beginning of the operation no clear organisational structure existed, an effective prevention of the occurrence or repetition of further acts would have required an improved structure in the autumn of 1971.

Another element of uncertainty relates to the instructions given for the treatment of prisoners. It is clear from the evidence that, at least in the beginning of the operation, no special instructions were given to the police officers concerned, but reliance was placed on the normal police instructions and on the experience of those involved as police officers (1). However, the circumstances prevailing at the time and, in particular, the violent reaction of the population to the exercise of the powers of detention and internment, as well as the complaints received, made it apparent at an early stage that special instructions with a view to prohibiting and preventing acts of ill-treatment were required. In this connection it is at least conceivable that the authorised use of the five techniques in certain cases might have created the impression in some police officers concerned in interrogations that considerable pressure used on the detainees in order to induce them to give information would be tolerated. Although it can clearly not be inferred that the higher authorities in fact authorised other forms of ill-treatment for such purposes, it was possible for them to realise that misunderstandings might arise and to counteract them by clear instructions to the contrary. This was not done, however, until April 1972.

Finally, no investigation reports and no witnesses speaking of investigation by the police into allegations of ill-treatment have been produced in these proceedings. On the other hand, general evidence has been given about the investigation machinery that was available, about the number of complaints received and dealt with during later periods, and about the results of these investigations. In these circumstances, the Commission must conclude that proper police investigations were not carried out during the early stages of the operation. It is true that the Compton Committee was asked to enquire into certain allegations arising out of the operation on 9 August 1971. But these concerned places other than Palace Barracks and no similar enquiry has taken place in respect of allegations concerning later periods, apart from the further report by Sir Edmund Compton to which reference has already been made. Moreover, there is no evidence in these proceedings about any action of a penal or disciplinary nature taken against any of the police officers who either committed the acts established

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(1) Cf. VR II, P. 135 et seq.

or should have reacted against them. In the Commission's opinion, such action would have been required in order to prevent the occurrence or repetition of the acts in question.

It follows that, in the autumn of 1971, the authorities of Northern Ireland showed indifference towards the treatment of prisoners during interrogation at Palace Barracks. Thus tolerance on the part of these authorities of the ill-treatment must be inferred.

It is true that this tolerance can clearly not be seen as amounting to an authorisation of the acts involved, or even of a policy of the Government in relation to them. Indeed, the situation changed as time went on. In July and August 1972, as a result of a direction from the United Kingdom, the army and the police respectively issued further directives setting out the procedures relating to the arrest, interviewing and interrogation of terrorist suspects and emphasising that prisoners must be properly treated. In September 1973 new disciplinary regulations came into force for the RUC bringing the arrangements for the investigation of complaints in that force into line with the arrangements existing elsewhere in the United Kingdom, and recently, a fresh unit has been established within the RUC, under the direct control of the Deputy Chief Constable, to be responsible for the investigation of complaints.

However, these later developments do not affect the situation existing at Palace Barracks in the autumn of 1971. For the reasons given above the Commission considers therefore that, in respect of acts of ill-treatment at Palace Barracks at that time, official tolerance has existed both at the level of the direct superiors of those having committed the acts in question and at higher levels.

Result

It follows that the facts established in the illustrative cases of T.2, T.8, T.12, T.15, T.9, T.14 and T.10, and the evidence otherwise obtained, including in some of the 41 cases, reveals that there has been at Palace Barracks, Holywood, in the autumn of 1971, a practice in connection with the interrogation of prisoners by members of the RUC which was in breach of Art. 3 of the Convention.

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(ii) The cases relating to Girdwood Park and to various places other than Ballykinler

As to breaches of Art. 3

The illustrative cases involving acts of physical violence with which the Commission is concerned here are the cases of T.16, T.7 and T.11.

In these cases the Commission found that the persons concerned were severely assaulted by members of the army. In the cases of T.16 and T.7 the assaults occurred during their arrest, whereas T.11 was assaulted while he was being interviewed.

The assaults committed against T.16 and T.11 were deliberate assaults. In the case of T.7 it cannot be excluded that the first action of the soldier had not been a deliberate assault for the purpose only of striking T.7, but that it had been an accident de guerre when the soldier had acted to prevent T.7 from starting what he might have regarded as being an action directed against him. Nevertheless there can be no reasonable doubt that after the first action the same soldier had kicked T.7 and others have threatened and humiliated him. Since on the basis of the medical evidence it is not possible to say what injuries were the result of the subsequent assaults, the Commission refrains from separating the first from the rest of the treatment.

The assaults caused severe physical suffering. T.16 and T.7 were also humiliated in a way which, in the Commission's opinion, severely interfered with their dignity.

It follows that the treatment of T.16, T.7 and T.11 at the hands of the army amounted to inhuman treatment, and that of T.16 and T.7 also to degrading treatment, within the meaning of Art. 3 of the Convention.

As to the existence of a practice in breach of Art. 3 of the Convention

(1) Repetition of acts

With regard to the question whether or not there was "repetition of acts" the Commission observes that the 36 cases relating to Girdwood Park Barracks and the 121 cases relating to various other places in Northern Ireland concern mainly allegations of ill-treatment by army personnel during arrest and transport of the victim (1).

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(1) Cf. Short description of Girdwood Park cases, p. 442 and of cases relating to other places, pp.455-456

The Commission has examined in detail four of such cases, as illustrative cases, and has found the facts alleged to have been established in three of them. However, the three illustrative cases (T.16, T.7 and T.11) in which ill-treatment has been established differ substantially in regard to the way in which the incidents arose. Perhaps two cases, those of T.16 and T.11, are comparable insofar as both persons had suffered fairly prolonged ill-treatment. But this is probably the only common feature in these cases.

Again, the Commission has taken into account the 41 cases in which medical evidence has been submitted, but in addition to making no finding in them, cannot find support in them for the contention that there has been ill-treatment by way of a systematic pattern or method showing some form of link in time, place or the people involved (1). It is true again that the high number of complaints made against the army in Northern Ireland might indicate that the acts referred to the Commission were not simply a number of isolated acts. However, the Commission has taken into account the large number of soldiers acting in an emergency or civil war-like situation as well as the widespread distrust against the army on the part of the minority community in Northern Ireland at the relevant time. These facts and the further fact that soldiers were used for police purposes for which they were not trained and which they themselves resented probably produced tensions between the army and certain parts of the Northern Ireland population which might have caused a number of incidents resulting in insults, rough treatment and even, as has been shown in the illustrative cases, in treatment contrary to Art. 3 of the Convention. However, the link or connection between all these incidents which is required to turn them into a practice of ill-treatment has not been established in these cases.

It follows that these acts cannot be regarded as forming a pattern or system of acts in breach of the Convention but constituted a number of isolated acts which were, in the three illustrative cases established, contrary to Art. 3 of the Convention.

(2) Official tolerance

The question remains, however, whether or not these, and possibly other such individual acts, were officially tolerated with the consequence that

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(1) Cf. Short assessment of the Girdwood Park cases, p. 443 and of the cases relating to other places, pp 456-457

prevention on the part of the authorities of the occurrence and repetition of such acts was inadequate and the violations established are to be regarded as more serious.

However, the Commission considers that official tolerance of acts of ill-treatment by army personnel has not been established in this case. Evidence has been produced showing that soon after complaints had become known in August 1971, 200 officers had been engaged over the next fortnight or three weeks to interview nearly 1,800 soldiers to determine their role in the operation on 9 August 1971. Furthermore, in one of the three illustrative cases (case of T.7), disciplinary measures - though not severe ones - were taken against the soldier implicated by the case witness concerned.

Although it might be true that soldiers could on occasion ill-treat someone and escape with impunity, it is not possible to infer from this alone that any such acts were tolerated either by the direct superior of the person committing the act, or on higher levels.

Result

It follows that no practice in breach of Art. 3 has been found to exist in relation to the facts established in the illustrative cases of T.16, T.7 and T.11 and the evidence otherwise obtained in relation to these cases, including the general conditions at Girdwood Park in August 1971.

(iii) The Cases relating to Ballykinler

The illustrative case in relation to the conditions and special exercises at Ballykinler is the case of T.3. His case had also been examined, together with others, by the Compton Committee (1).

In examining the question as to whether or not there has been a breach of Art. 3 of the Convention in connection with these cases the Commission had regard to two factors. One relates to the conditions of detention at Ballykinler, in particular the untidy condition of the place, and the absence of beds and bedding. The other relates to the exercises which the detainees were required to perform and the degree of compulsion used to enforce them.

(1) As regards the conditions of detention, it has been established that the camp had been swept out before the detainees arrived, that the absence of beds was due to security considerations and that bedding was given to those whose interrogations were terminated. It is true that no sufficient explanation has been given as to why the detainees who had not been interrogated were not provided with bedding. However,

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(1) Cf. Compton Report, paras. 149-160 on pp. 33-36.

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neither this fact nor any other fact established in connection with the conditions at Ballykinler can be regarded, in the circumstances prevailing in Northern Ireland at the time, as amounting to inhuman or degrading treatment within the meaning of Art. 3.

(2) As regards the exercises, they were as follows:

- Sitting on the floor facing the wall with the feet outstretched and knees straight and the arms raised high above the head.

- Sitting on the floor with feet outstretched, the hands clasped behind the head and the chin up so that the head was not bent down.

- Kneeling on the floor with the head bent down so that the forehead touched the floor and the hands clasped behind the back at waist level.

These exercises were compulsory in the sense that every detainee in a hut was required to do a particular exercise at the command of the members of the military police who supervised the huts. No finding has been made as to the exact length of time during which the exercises were performed, nor has it been possible to ascertain the degree of compulsion used to enforce them.

In the Commission's opinion, these exercises certainly caused considerable strain and hardship on the prisoners, particularly elderly persons and those in poor physical condition. Moreover, they were felt by the prisoners to be measures designed to oppress and to degrade them. Although this was not the primary objective of these exercises and although it is conceivable that there was a positive side to them, their compulsory performance in the form of military drill exercises show a great deal of thoughtlessness on the part of those who enforced them, and hardship could perhaps have been avoided if the supervision by those in command had been closer.

Nevertheless, even assuming that the treatment was harsh, deliberate and even illegal, which was also the finding of the County Court in the case of Moore v. Shillington, it did not amount to inhuman or degrading treatment within the meaning of Art. 3 of the Convention.

In these circumstances no further questions arise in relation to this group of cases.

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CONCLUSIONS

The Commission, by unanimous votes, is of the following opinion :

(1) In the cases of

(a) T.6, at the unknown interrogation centre, in August 1971;

(b) T.2, T.8, T.12, T.15, T.9, T.14, T.10, at Palace Barracks, Holywood, in September, October and November 1971; and

(c) T.16, T.7 and T.11, at various places, in August, October and December 1971,

violations of Art. 3 of the Convention occurred by inhuman treatment of the named persons at the hands of the security forces (1);

(2) There has been at Palace Barracks, Holywood, in the autumn of 1971 a practice in connection with the interrogation of prisoners by members of the RUC which was inhuman treatment in breach of Art. 3 of the Convention;

(3) No practice in breach of Art. 3 has been found to exist in relation to the cases of T.16, T.7 and T.11 (point (c) above), including the general conditions at Girdwood Park in August 1971;

(4) The conditions of detention at Ballykinler in August 1971 do not disclose a violation of Art. 3 of the Convention.

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(1) In the case of T.6 this finding is in addition to that on p. 402 in relation to the five techniques.

PART THREE

D U T Y T O S E C U R E H U M A N R I G H T S

(Issues under Art. 1 of the Convention)

INTRODUCTION

1. The issues.

It remains to consider the allegation that the administrative practices complained of also constituted a breach of Art. 1 of the Convention.

Art. 1 provides:

> "The High Contracting Paries shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention."

The submissions of the applicant Government are in essence that a failure to secure the rights and freedoms defined in Section I can be a breach of Art. 1 independent of or prior to violations of the rights of particular individuals; that laws or practices or failures to take effective remedial or preventive action could constitute such a breach; and that certain administrative practices did so in the present case. All this is disputed by the respondent Government. In other words, the parties to the case have argued different interpretations of Art. 1 which will be further examined in this part of the report, and the applicant Government has claimed that on the facts of the case the respondent Government is in breach of that provision.

2. The facts.

The practices referred to are the use of extrajudicial powers, allegedly in violation of Arts. 5, 6 and 14, and the treatment of persons in custody, allegedly in violation of Art.3. The facts established in respect of these issues are set out in Parts One and Two of this Report, where the Commission also has expressed its opinion on violation of these articles. Originally the claim of the applicant Government that the right to life was not sufficiently protected by the respondent Government in Northern Ireland formed part of the basis for its claim under Art. 1. But as this allegation was declared inadmissible under Art. 2 for non-exhaustion of domestic remedies, it has not been examined on its merits and no facts which can be relied on in this respect have therefore been established.

Other relevant facts concerning the claim under Art. 1 do not seem to be disputed. Thus, there has not so far been any legislation in Northern Ireland expressly incorporating the rights and freedoms defined in Section I of the Convention. It has recently been proposed that consideration should be given to the enactment of a Bill of Rights(1). Recent legislative discussion such as

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(1) Report of the Gardiner Committee, January 1975, p. 8.

illustrated by the Diplock Report shows that the need to observe such provisions as Art. 6 of the Convention is recognised in principle. It may, on the other hand, be regarded as established that the laws in force do not in terms prohibit infringements of the relevant rights and freedoms defined in Section I. Nor do they, however, authorise such infringements except for certain emergency provisions examined above in Part One.

3. The proceedings.

The points at issue under Art. 1 being predominantly legal ones, no separate evidence has been investigated for the purpose of these points. In the proceedings before the Commission they were argued both in writing and orally at the stage of admissibility. They have also been argued in the written pleadings on the merits. On the basis of these submissions the Commission considered that no further oral argument was required on this part of the case. However, in a letter to the parties of 16 December 1974 the Commission invited them to make written submissions or conslusions and asked them to deal in particular with the following questions:

(a) Whether, in an application under Art. 24 of the Convention, complaints may be made about the mere existence of legislation, or any particular situation, alleged to be in breach of the Convention, or whether it is necessary for a State to wait until a particular right or freedom contained in Section I of the Convention has been violated to the detriment of an individual ?

(b) What difference would it make under the Convention, if a complaint about legislation or a particular situation as such (i.e. independent of, or prior to, its application to an individual in breach of the Convention) were to be presented as an alleged breach of the particular Article in Section I protecting the right or freedom concerned, and not as an alleged breach of Art. 1 ?

(c) Do the submissions of the parties ... amount to an agreement between them that, in any event, an allegation of a breach of Art. 1 must always relate to a right or freedom mentioned in Section I of the Convention ?

Observations followed in letters of 17 February 1975 from the applicant Government and of 11 February 1975 from the respondent Government.

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I. SUMMARY OF THE SUBMISSIONS OF THE PARTIES

A. Submissions of the applicant Government

The applicant Government maintained that there was a breach of Art. 1 of the Convention by a High Contracting Party through that Party's failure to secure the rights and freedoms defined in Section I of the Convention where:

- the laws in force did not guarantee those rights and freedoms; or
- the laws in force permitted the infringement of those rights or freedoms; or
- the Government failed to take effective action to prevent repeated violations of such rights and freedoms by those persons for whose acts it was responsible.

In the submission of the applicant Government the Convention was a treaty, being an international agreement between the High Contracting Parties in which reciprocal agreement had been reached.

The purpose of the treaty, i.e. the securing of and the enforcement of the rights and freedoms defined in Section 1, was achieved by the acceptance by each High Contracting Party of the inter-State obligation contained in Art. 1. This obligation required not merely non-violation of these rights and freedoms but a positive securing that the legislative measures and administrative practices conform to the Convention. They maintained that this was borne out by a comparison between the present wording of Art. 1: "... the High Contracting Parties shall secure ... "with an earlier version of the same article which reads: "... the High Contracting Parties shall undertake to secure ...". It was submitted that if, for example, legislation were to be enacted clearly in breach of Art. 7, the very existence of such legislation would constitute a breach of Art. 1 which any High Contracting Party could refer to the Commission as a breach of treaty both independent of or prior to its being put into operation. As another example, if an administrative practice in breach of Art. 3 were proved, this would at the same time constitute a separate breach of Art. 1.

A violation of a particular right or freedom defined in Section I accordingly had a two-fold effect. First, it was a breach of the Article defining that right or freedom and, second, it is also proof of a breach of Art. 1 as it demonstrated a failure to secure that right or freedom.

A breach of Art. 1 by a legislative measure or other particular situation did not require that there be a specific violation of a right or freedom contained in Section I to the detriment of an individual, and it was not necessary for a High Contracting Party wishing to refer such a breach to the Commission to await such a violation before doing so.

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Thus, it was not sufficient under the provisions of Art. 1 that people should not be subjected to inhuman or degrading treatment, but freedom from such treatment must be secured to them and they must live with a knowledge of that security. When breaches of Art. 3 were continuing, as it was claimed they were at present in Northern Ireland, friends and relatives of the victims had no such security. In this way, it was submitted, the respondent Government had failed to comply with Art. 1 in failing to secure to persons in Northern Ireland their rights under Arts. 5 and 6.

The interpretation of the Convention advanced by the applicant Government was the only interpretation which is in keeping with the purposes of the Convention as set out in its preamble. The primary purpose of the Convention was to prevent there being victims of violations of the rights and freedoms defined in Section I, and any other interpretation would mean that the Convention could be enforced only by reference to the Commission of violations when there already were victims.

The method of carrying out this purpose was that each High Contracting Party agreed with each other such Party to secure to everyone within their jurisdiction the rights and fundamental freedoms.

This differed from the Universal Declaration which consisted of a joint declaration by the Consenting Parties of the intention of each to promote respect for these rights. In the Preamble of the Declaration the effective word was "proclaim" whereas in the Convention the effective words were "have agreed". Arts. 2 - 18 of the Convention were similar to Arts. 1 - 30 of the Universal Declaration. The difference between the two documents was therefore primarily to be found in Art. 1 of the Convention which expressed a complete obligation to secure the rights and freedoms subsequently defined. This was a concrete obligation as was emphasised by the wording of Art. 19: "To ensure the observance of the engagements undertaken ...".

The Convention being by its express terms an agreement between the High Contracting Parties, the engagements were obligations owed by every such Party to each of the others. If such an obligation existed, there should also be a possibility of its being broken. Therefore a breach of Art. 1 whose provisions created the specific obligation to secure the rights and freedoms subsequently defined must be possible and this was consistent with the jurisprudence of the Commission and the Court.

It was a principle of international law as well as of domestic law that in the interpretation of any written agreement effect must be given to every clause and every provision. To construe the Convention in such a way that breaches could only occur of individual Articles which defined specific rights and freedoms, e.g. Arts. 2 - 14, would be to give no effect at all to Art. 1, for the Convention would have that meaning if the words "have agreed as follows" were immediately followed in the text by Art. 2 and the succeeding Articles.

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That the Convention distinguished between a breach of the treaty entered into by the High Contracting Parties and a violation of a right of freedom defined in Section I was further demonstrated by the difference in wording between Arts. 24 and 25 of the Convention; the first provides for the reference of any alleged breach by a High Contracting Party; the other provides for a petition by a victim of an alleged violation of a right or freedom. This distinction between "breach" and "violation" reflected the difference applied under the Convention between treaty obligations between the High Contracting Parties and the new rights given to every person within the jurisdiction of a High Contracting Party.

The objective of the Convention in this regard was demonstrated by the provisions of Art. 57 under which the Secretary General may call upon a High Contracting Party to furnish an explanation of the manner in which its internal law ensures the effective implementation of the provisions of the Convention. The clear purpose of this Article was to provide a means of supervising the carrying out by each High Contracting Party of its treaty obligation under Art. 1 to secure the rights and freedoms.

In support of these submissions the applicant Government referred to certain decisions of the European Court of Justice;

Re: Payment of Export Rebates: EEC Commission v. Italy; Case 31/69 - Reports Vol. XVI 1970-1 p. 25 (p33 at para. 9) and
Re: French Merchant Seamen; EEC Commission v. France; Case 167/73 - Reports 1974-3 p. 359 (pp. 367 at para. 6 and 373 at para. 48).

The judgments in these cases showed that in interpreting treaty provisions of a nature similar to those created by Art. 1 the European Court of Justice held that with regard to such obligations both an abstention to act and permitting a legal measure to exist even though not put into effect constitute breaches of the obligation.

The differences it would make under the Convention if a complaint about legislation or a particular situation as such (i.e. independent of, or prior to, its application to an individual in breach of the Convention) were to be presented as an alleged breach of the particular Article in Section I protecting the right or freedom concerned, and not as an alleged breach of Art. 1 were as follows:

Reference of a breach of a particular Article in Section I could not be made prior to a breach of that Article, i.e. until there was a victim, and could not have prevention of a

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breach as an object. A reference of a breach of Art. 1 on the other hand could have a legal measure or a particular situation condemned before it was put into operation, i.e. before there was a victim as a result of its being put into operation.

Only a High Contracting Party could refer a breach of Art. 1 to the Commission under Art. 24 as a breach of Treaty.

Evidence of violations of an Article in Section I could be given to prove a breach of Art. 1. In this event, the Convention would not require of necessity that the cases of individual violations be followed up in the same way as if there had been a direct reference to the Commission of the individual violations, e.g. the Court under Art. 50 need not consider affording just satisfaction to the injured parties if the violations in their cases were brought forward only to prove a breach of Art. 1.

The applicant Government affirmed that, in any event, an allegation of a breach of Art. 1 must always relate to a right or freedom mentioned in Section I of the Convention. As already pointed out, however, the reference of a breach of Art. 1 made under Art. 24 while related to a right or freedom defined in an Article contained in Section I needed not await the existence of a violation of an article in Section I and the coming into being of a victim thereof.

B. Submissions of the respondent Government

It was not disputed by the respondent Government that Art. 1 was in terms an obligation to secure rights and freedoms. They contended, however, that neither the Articles, nor the obligation could be considered in isolation. Both were incomplete; the subject-matter of the obligation was to be found elsewhere, namely in Section I of the Convention. Conversely, the provisions of the Articles of Section I conceived of as obligations were incomplete. They defined particular rights and freedoms. Art. 1 identified the nature of the obligation assumed by States Parties under Art. 1. It was submitted that there could be no separate breach of the obligation assumed by Art. 1 which was not a breach of a particular right secured by a relevant Article in Section I of the Convention.

Replying to the applicant Government's contention that under the Convention a State Party had a treaty obligation towards other States Parties, which might as such be invoked before the Commission, the respondent Government submitted that it was well settled in the Commission's case-law that there was no

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separate treaty obligation (see decisions on the admissibility of Application No. 788/60, Austria v. Italy, Yearbook 4, p. 116 at pp. 138 and 140; and of the First Greek Case, Yearbook 11, p. 720 at p. 762). They summarised their arguments in support of this submission as follows:

(i) the Convention was designed to secure certain rights and freedoms for persons within the jurisdiction of States Parties; it was not designed to secure reciprocal rights and obligations for States Parties;

(ii) the function of a State Party, as an applicant, was to "refer" to the Commission alleged breaches of the Convention; it was not to exercise "a right of action for the purpose of enforcing its own rights";

(iii) it followed, therefore, that there could be no separate claim under the Convention of a breach of an obligation as between the States Parties.

The respondent Government submitted further that the obligation under the Convention to secure a particular right was not a separate obligation from that which a State had not to infringe that right. Thus where it was alleged that a State had both failed to secure a right and had infringed it, the allegation was no more than a reference to different aspects of the same obligation.

In the light of the analysis summarised above, the respondent Government submitted that no separate issue arose under Art. 1 of the Convention. The only question the respondent Government considered that might conceivably arise in connection with Art. 1 was whether it was in breach of its obligations under Arts. 3, 5, 6 and 14 (as read with Art. 1) by reason of a failure to secure rights of the description set out in those Articles. Insofar as this question might be given consideration by the Commission, the respondent Government denied that there had been any breach of Arts. 3 or 14 and referred to their detailed submissions under those Articles; they also maintained that in view of the emergency in Northern Ireland and of their derogation under Art. 15 (1) they were entitled to take measures derogating from their obligations under Arts. 5 and 6.

In conclusion, the respondent Government made the following submissions under Art. 1:

(a) that no issue arises, or can arise, under Art. 1 of the Convention separate from an issue under a relevant Article of Section I of the Convention;

(b) that the allegation of an administrative practice complained of does not constitute a breach of Art. 1.

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In reply to the Commission's questions it was submitted that, in principle, no complaint under Art. 24 may be made about the mere existence of legislation, or of any particular situation, alleged to be in breach of the Convention.

A High Contracting Party might, under Art. 24, refer to the Commission any alleged breach of the provisions of the Convention. The subject matter of an alleged breach was to be found only in Section I of the Convention; the existence of a breach, and therefore the circumstances in which an allegation of an alleged breach could be made, was dependent upon action being taken in relation to one of the rights and freedoms contained in Section I to the detriment of an individual or individuals to whom protection was accorded by Art. 1.

So far as concerns legislation, a distinction was to be drawn between two differing kinds of provision. The first was a provision of a normative character, enjoining or inhibiting a course of action by those to whom the provision applied, and having direct and immediate effect without the interposition of any action or process of an executive, judicial or legislative nature. The second was a provision which conferred powers which might be exercised in relation to an individual or individuals, but which did not directly or immediately affect the individual unless or until some action was taken to bring the power into operation or to apply it to a specific person; the action in such a case might be of an executive, judicial or legislative nature (e.g. the making of an Order in Council to bring the power into operation) or, indeed, a combination of such action (e.g. the making of an Order in Council to bring the power into operation and the exercise of the judicial or executive function to apply it to a specific case).

The existence of provisions of the former kind had not been put in issue in the present application and, accordingly, the respondent Government reserved their position on the question at what point and in what circumstances in relation to such a provision an application might be made alleging a breach under Art. 24. The legislative provisions of which complaint was made in the present application were of the latter variety. So far as concerned such a provision, it was submitted that no complaint might be made until the relevant provision was operative both in law and in fact and, dependent on whether the provision was self-executing or not, was operative or operated to the detriment of an individual. To take an obvious example, a power to intern or detain might be contained in a Statute, but it might depend upon a legislative act (the making of an Order in Council) or an executive act (the giving of an administrative order) whether or not the power was operative; and it might depend upon a further executive act (the decision to use the power in a specific case) whether or not the power was operated to the detriment of an individual. So far as making the power operative was concerned, it made no difference

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whether the necessary implementation procedure was legislative or executive; whichever procedure was appropriate under the statute concerned, practice might indicate that the power was only made operative in objectively justifiable conditions (see for example the notices filed by the United Kingdom Government under Art. 15 (3) of the Convention on 25 September 1969 and on 20 August 1971). Accordingly, the respondent Government submitted that unless the power was both operative and operated, any application to the Commission was premature.

The reference in question (a) to "any particular situation" was not altogether clear to the respondent Government. If it was a reference to a specific issue declared admissible relating to administrative practices, it was submitted that, of its very nature a practice could only be put in issue if it were in fact a practice, that is to say the matter referred to consisted of things done with sufficient frequency or regularity to constitute a practice, and that those things in fact operated in the context of one or more provisions of Section I of the Convention, to the detriment of persons within the protection of Art. 1. A practice had no separate existence from the incidents of which it was constituted. In the absence of such incidents (i.e. acts of a relevant kind to the detriment of an individual) there was no practice or situation on which to base a complaint under Art. 24.

It had at all times, been the contention of the respondent Government that Art. 1 of the Convention and the relevant Article of Section I of the Convention could only be read together. The one indicated by and to whom obligations were owed, the other the nature of the obligations. A complaint under Art. 1 was defective if it failed to identify the particular right or freedom alleged to have been violated. But a complaint under one of the Articles of Section I also implied a reference to Art. 1. So long as the particular right or freedom was identified, it made no difference if the complaint was made under Art. 1, a specific Article of Section I, or a combination of the two. The manner in which the complaint was pleaded did not alter the obligations or the basis on which an allegation might be made under Art. 24, or under Art. 25. In particular the presentation of a complaint under an Article of Section I did not enable an issue to be impleaded in relation to legislation or a particular situation in circumstances other than those referred to in the answer to question (a) above.

The respondent Government maintained that an allegation of a breach of Art. 1 must always relate to a right or freedom mentioned in Section 1 of the Convention.

II. OPINION OF THE COMMISSION

1. Under Art. 1 of the Convention

The Commission has considered the submissions of the parties and observes that there is agreement between them that, in any event, an allegation of a breach of Art. 1 must always relate to a right or freedom mentioned in Section I of the Convention.

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This means that Art. 1 - and more generally, the duty to secure human rights - can only be invoked together with, and in relation to, other Articles. The issue which remains is whether Art. 1 can at all be violated.

Here what may seem to be in principle different interpretations must not necessarily lead to different results in practice. It may make little or no difference whether a breach of the Convention is described by reference to Art. 1, in conjunction with another Article, or in another way.

The French text shows better than the English text the real purpose of that Article. In recognising the rights of the Convention to everyone within their jurisdiction the High Contracting Parties made it clear that this treaty by its ratification creates rights of individuals under international law. These rights are protected by the organs of the Convention. Of course, States may also secure human rights by incorporating the Convention into their domestic law.

Art. 1, even in conjunction with other Articles, should not be seen as a provision which can be the subject of a separate breach. The main problem of interpretation appears to be whether a State may be in breach of the Convention independent of, or prior to, violations of the rights of particular individuals, for instance, through the existence of a law which is directly contrary to a provision of the Convention, independently of its application. There is no need here to go into the details of this general problem which does not arise in the present case in the form just mentioned. The Commission observes, however, that individuals could in such cases often claim to be victims already before the law was directly enforced to their detriment. Be this as it may, such a result could be said to depend, procedurally, on the interpretation of Art. 25, and substantively, on the interpretation of the relevant Article in Section I. Furthermore, any difference in position between States and individuals as applicants would depend on the interpretation of Art. 24.

Applications of States under Art. 24 and petitions of individuals under Art. 25 must always relate to the alleged interference with the rights and freedoms of individuals set out in Section I, the only difference being that the State cannot be a victim of that interference. This explains the different wording of the two Articles. It is true that a State application will most likely be concerned with a general practice, specific laws, a system or pattern of treatment rather than with one individual case. That, however, is only the result of practical considerations whereby States will take up an issue under Art. 24 only if specific reasons of a more general nature exist. As the application Austria v. Italy (1) shows these reasons may sometimes exist where only one individual case is in issue. Consequently, the Commission considers that the extent of the duty to secure human rights in this or similar respects does not depend on Art. 1 and that this Article cannot be the subject of a separate breach.

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(1) Application No. 788/60

CONCLUSION

The Commission, by a vote of 12 against 1, is of the opinion that Art. 1, not granting any rights in addition to those mentioned in Section I, cannot be the subject of a separate breach.

2. Significance of preventive and remedial action already taken

The present emergency situation in Northern Ireland which gave rise to the application before the Commission continues to the present day. Incidents of violence, affecting individuals and even the public at large are reported almost every day.

Various political solutions have been put forward by the respondent Government which have been continually in contact with the applicant Government. They have been tried out, but they have not yet succeeded in settling the political differences existing between the various groups of the Northern Irish community.

It is of course not the task of the Commission to deal with the political situation in Northern Ireland. Its task, as has been stated on several occasions in this Report and elsewhere, is to "ensure the observance of the engagements undertaken by the High Contracting Parties in the ... Convention" (Art. 19 of the Convention). To some extent the Commission has found it necessary to consider the security situation during its enquiry. But its only concern is the safeguard of the rights and freedoms defined in the Convention.

In this respect the Commission notes that the respondent Government have taken since December 1971 a considerable number of measures which are likely to secure the protection contemplated by the Convention.

In regard to the problems of detention without trial (issues under Arts. 5, 6, 14 and 15 of the Convention) they have revoked the Special Powers Act which had been in force since 1922 and had given rise to much criticism. They have introduced legislation in its place which, while maintaining detention by means of extra-judicial procedures, has given the individual concerned greater protection by fixing clear time-limits and introducing a right of appeal against detention orders and systems for reviewing them. Furthermore, the respondent Government announced on 5 December 1975 that all persons detained under the emergency legislation would be released at once. This decision was put into effect.

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In regard to the treatment of detainees (issues under Art. 3 of the Convention) a number of measures have been taken to prevent the occurrence and repetition of the acts complained of. Thus,

a) in November 1971, i.e. about three months after the introduction of internment, provision was made to ensure that every person brought to a police holding centre was examined by a doctor on arrival and again before leaving;

b) in April 1972 a special order was issued within the RUC relating to the proper treatment of persons in custody;

c) in July and August 1972, as a result of a direction from the respondent Government, the army and the police respectively issued further directives setting out the procedures relating to the arrest, interviewing and interrogation of terrorist suspects and emphasising that prisoners must be properly treated;

d) new instructions, which were issued by the Director of Operations in August 1973, following the enactment of the Northern Ireland (Emergency Provisions) Act 1973, about the making of arrests by the army, re-emphasised the need for correct behaviour when so arresting suspects;

e) in September 1973 new disciplinary regulations came into force for the RUC, bringing the arrangements for the investigation of complaints in that force into line with the arrangements existing elsewhere in the United Kingdom;

f) in 1975 a fresh unit was established within the RUC under the direct control of the Deputy Chief Constable to be responsible for the investigation of complaints.

Furthermore, the respondent Government have informed the Commission of two further measures which are presently being considered by them, namely

(i) a new procedure involving some form of independent commission for the investigation of complaints against the police; and

(ii) a Bill of Rights to be added to the existing legislation for the protection of human rights in Northern Ireland.

Finally, compensation, sometimes involving very substantial sums, has been paid to the victims of the acts in question in accordance with the normal procedures of the

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domestic law, and the respondent Government have indicated that these procedures are similarly available to all others who consider themselves to have been ill-treated by the authorities, whether or not they have been mentioned in the present case.

In the light of these developments the Commission considers that important measures have been taken to meet the complaints of the applicant Government, in particular as regards the individual victims who have been cited in the application. It is true that in most cases no criminal or disciplinary punishment has been imposed on persons who have committed acts of ill-treatment. However, the respondent Government have repeatedly manifested their intention and good will to do anything that is reasonably possible in order to ensure the observance of their obligations under the Convention.

The applicant Government have stated that they are unable to regard the above measures already taken by the respondent Government, and those being considered by them for the future, as satisfactory, and that they are not ready to discuss them with a view to a settlement under Art. 28. The Commission has therefore found that no friendly settlement has been reached between the parties.

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SURVEY OF THE COMMISSION'S OPINION WITH CONCLUSIONS

I. As to Arts. 5, 6 and 14 in conjunction with Art. 15 of the Convention concerning detention without trial (Part One)

A. As to the issues under Arts. 5, 6 and 15 of the Convention (Part One, Chapter 1: The Justification Issue)

The Commission considers that the powers as they were exercised under the emergency legislation during each phase concerned were not in conformity with Art. 5 (1)-(4) of the Convention. However, the finding of a breach, and thus the applicability of Art. 5 (5), also depends on whether or not derogation from Art. 5 was justified under Art. 15 to the same extent (cf. p. 92).

The Commission considers that Art. 6 of the Convention does not apply to the extrajudicial procedures concerned and no further question arises in this respect (cf. p. 94).

The Commission is of the opinion, by a unanimous vote, that in the situation in Northern Ireland the measures for detention without trial in derogation from Art. 5 of the Convention were, during each phase of the operation of the legislation concerned, measures "strictly required by the exigencies of the situation" within the meaning of Art. 15 (1) (cf. p. 103).

B. As to the issues under Art. 14 of the Convention (Part One, Chapter 2: The Discrimination Issue)

The Commission is of the opinion, by a unanimous vote, that the facts found in relation to the relevant periods do not disclose that the powers of detention and internment have been applied with discrimination, on any ground, contrary to Art. 14 (cf. p. 220).

II. As to Art. 3 of the Convention concerning the treatment of detainees (Part Two)

A. As to general matters of interpretation

The Commission maintains its understanding of the basic elements of Art. 3, expressed in earlier cases, in particular as regards "inhuman treatment", and confirms that there cannot be any justification under the Convention for treatment contrary to this provision (cf. p. 379).

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The Commission considers that it is necessary to distinguish between an administrative practice tending to render domestic remedies ineffective; and a practice in breach of the Convention. Thus:

(i) the role of an administrative practice is for the Commission procedural in that it involves the rule of exhaustion of domestic remedies and its applicability;

(ii) the role of a practice in breach of the Convention belongs essentially to the merits and where such a practice is found, involving acts in breach of Art. 3, the violation of the Convention is that much more serious;

(iii) there can be circumstances where a practice in breach of the Convention constitutes also an administrative practice tending to render domestic remedies ineffective (cf. p. 388).

B. As to the "Five Techniques"

The Commission holds that it is not only competent but also bound under the Convention to express an opinion on the question whether or not the use of the five techniques constitutes a practice in breach of Art. 3 of the Convention, despite the fact that the Prime Minister declared in Parliament in March 1972 that their use had been discontinued (cf. p. 395).

The Commission is of the opinion, by a unanimous vote, that the combined use of the five techniques in the cases before it constituted a practice of inhuman treatment and torture in breach of Art. 3 of the Convention (cf. p. 402).

C. As to the other forms of alleged ill-treatment

The Commission, by unanimous votes, is of the following opinion:

(1) In the cases of

(a) T.6, at the unknown interrogation centre, in August 1971;

(b) T.2, T.8, T.12, T.15, T.9, T.14, T.10, at Palace Barracks, Holywood, in September, October and November 1971; and

(c) T.16, T.7 and T.11, at various places, in August, October and December 1971

violations of Art. 3 of the Convention occurred by inhuman treatment of the named persons at the hands of the security forces(1)

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(1) In the case of T.6 this finding is in addition to that above in relation to the five techniques.

(2) There has been at Palace Barracks, Holywood, in the autumn of 1971, a practice in connection with the interrogation of prisoners by members of the RUC which was inhuman treatment in breach of Art. 3 of the Convention;

(3) No practice in breach of Art. 3 has been found to exist in relation to the cases of T.16, T.7 and T.11 (point (c) above), including the general conditions at Girdwood Park in August 1971;

(4) The conditions of detention at Ballykinler in August 1971 do not disclose a violation of Art. 3 of the Convention (cf. p. 473).

III. As to Art. 1 of the Convention concerning the duty to secure human rights (Part Three)

1. Under Art. 1 of the Convention

The Commission, by a vote of 12 against 1, is of the opinion that Art. 1, not granting any rights in addition to those mentioned in Section I, cannot be the subject of a separate breach (cf. p. 485).

2. Significance of preventive and remedial action already taken

The Commission considers that important measures have been taken to meet the complaints of the applicant Government, in particular as regards the individual victims who have been cited in the application (cf. p. 487).

Secretary to the Commission Acting President of the Commissi

(A.B. McNULTY) (G. SPERDUTI)

SEPARATE OPINION OF MR. M. TRIANTAFYLLIDES ON ART. 14 OF THE CONVENTION

I cannot agree that there has not been at any time any discrimination at all, contrary to Art. 14, in the manner in which the powers of detention and internment were resorted to, but any breach of such Article was in my opinion within the limits of the derogation, permissible under Art. 15, in view of the emergency prevailing at the material time.

SEPARATE OPINION OF MR. K. MANGAN ON ART. 14 AND CERTAIN OTHER ASPECTS

1. I have joined with the other members of the Commission in adopting, under rule 52.1 of the Rules of Procedure of the Commission, "the parts of the Report in which it establishes the facts and sets out the submissions of the parties." I have also joined with them, under paragraph 2 of the same Rule, in the various votes on "whether the facts found disclose any violation by the State concerned of its obligations under the Convention." I have found myself in general agreement with them on the opinions expressed by those votes.

2. I wish to express, in this separate opinion under Article 31 of the Convention and Rule 53.1.g of the Rules of Procedure of the Commission, my opinion on certain aspects of the process of investigation of this petition under Article 28 (a) of the Convention and the preparation of the Report under Article 31, and the effect which these aspects inevitably have had on the conclusions of the Commission and my agreement therewith.

3. My comments relate, particularly, to the investigation of, and the expression of the opinion of the Commission on, the issues arising concerning Articles 5 and 6 in conjunction with Article 14 of the Convention, dealt with in Part One, Chapter 2, pages 105 to 220 (Discrimination Issues).

4. The "Discrimination Issues" dealt with in that portion of the Report concern, very much more than issues dealt with in other parts of the Report, motives and policies of persons involved, from the lowest up to the highest levels, of the public administration of the United Kingdom, and especially in Northern Ireland, at the relevant times.

5. The Report contains ample details of the manner in which the Commission carried out its tasks, under Article 28 of the Convention, of undertaking an examination of the petition and, as far as needed, an investigation, with a view to ascertaining the facts, "for the effective conduct of which the States concerned shall furnish all necessary facilities, after an exchange of views with the Commission."

6. I would refer, particularly, to the description in the Report, at pages 110 to 122, of the various exchanges of views and discussions which the Commission and its delegates had with the representatives of the two States concerned, with a view to obtaining direct evidence of the manner in which the powers of detention and internment were applied by the relevant authorities and their reasons for so applying them. The views of the other members of the

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Commission are expressed at pages 156 to 159 of the Report, where it is said that "where the authorities deny that differentiation has been made between different terrorist suspects in the application of the powers, it is unlikely that an applicant could ever produce direct evidence to show that the authorities had in fact, contrary to what they avowed publicly, unjustifiably differentiated between different groups of terrorists .....The evidence as to levels of terrorism ...may well be open to many interpretations .... and other evidence throwing light on the motives of the authorities may be of critical importance in interpreting it." (p. 156) and (p. 157) "At the same time the Commission has attached considerable importance to obtaining the best possible direct evidence of the manner in which the powers of detention and internment were applied by the relevant authorities and their reasons for so applying them. It was for this reason that the Commission's delegates decided to hear three high ranking witnesses proposed by the respondent Government." ...(p. 158) "It is true that in their initial informal approach to the respondent Government, the Commission's delegates indicated that they were interested in hearing the evidence of a person or persons responsible for the policy leading to the introduction of internment in 1971 and its subsequent application. It is also true that the persons eventually proposed by the respondent Government were two senior officers of the security forces and a senior official, none of whom was himself responsible for the taking of policy decisions ... they were persons who ... were capable of throwing light on the considerations surrounding relevant policy decisions and on the nature of the decisions themselves. It should also be noted that neither the Commission nor its delegates at any time made a formal request to the respondent Government asking them to make available any particular person or class of person ... the fact that the ... Government did not propose such witnesses in response to the delegates' approach does not ... constitute a breach of ... obligations under Article 28(a). It is also true that the ... Government refused to allow these three witnesses to be cross-examined. Whilst it might have assisted the Commission's investigation if (p.159) they had been heard under the same conditions as the other witnesses ... the procedure which was adopted after an extensive exchange of views ... did not in any way hinder the delegates in obtaining ... such information as they thought relevant ... The Commission does not ... consider that the ... Government failed in this respect to furnish any facilities necessary for the effective conduct of the investigation."

7. I am not qualified (I do not think anyone yet is) to write a history of recent events in Northern Ireland. Neither am I qualified to surmise what information of use to the Commission might have been ascertained if other witnesses, more exalted

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in rank or more candid in expression, had been made available to the delegates or if they, or those who were in fact made available to the limited extent described in the Report, had been examined by the delegates and by counsel in the same manner as other witnesses in the case. It might not have led to any different, or clearer, conclusions. I go further on this aspect and accept the assessment by my colleagues in the Report that, in the end, the procedure adopted did not in fact hinder the delegates in obtaining any evidence they thought relevant.

8. The Commission has not at its disposal the powers and sanctions which such a domestic tribunal as a Royal Commission in the United Kingdom or a Congressional Committee of Inquiry in the United States of America would have. It can only function effectively if it obtains the co-operation of the States concerned and for this reason I think that it is important that any failure to furnish necessary facilities should be expressly adverted to in a Report, so that it may come to the notice of all Governments and others concerned with supporting the aims of the Convention.

9. I consider that the attitude consistently adopted (no doubt for what that Government considered good and sufficient reasons) by the United Kingdom Government, as described in the pages of the Report to which I have referred, hampered, to a significant extent, the effective conduct of the investigation by the Commission and its delegates into the facts so far as they related to the motives and policies on which various administrative decisions, which prima facie might appear discriminatory, were based. While this attitude, in the end, did not prevent the delegates or the Commission from obtaining any evidence which they thought relevant, it amounted, at the time it was adopted, in my opinion, to a failure by the United Kingdom to furnish all necessary facilities within the meaning of Article 28.

10. I feel I should, also, comment on some passages of that portion of the Report dealing with the opinion of the Commission on the "Discrimination Issues" which describe matters as being "clear", or "clear beyond doubt", which seem to me rather to be matters still open to doubt which it was not possible for the Commission to clarify further. It does not make an unclear issue any clearer to call it clear.

11. As one instance of what I refer to, I cite the three paragraphs on page 212 dealing with the distinction made, on the introduction of internment in August, 1971, between two classes of extremists. The first paragraph expresses a view that different criteria were applied to the Loyalist side in

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deciding whether anybody from it should be arrested with a view to internment. This is, rightly, said to be clear, supported, as it is, by the evidence summarised on the previous page. The justification of that distinction in the next two paragraphs is not made clear, to me at any rate, by the quotation of remarks made by the then Northern Ireland Premier in announcing the introduction of internment, nor is it, to my mind, "clear beyond doubt" that the threat and reality of serious terrorism present at that time "came almost exclusively" from one terrorist element. I find the clarity of this hard to reconcile with the following sentence("There may have been, and indeed having regard to subsequent events there probably was, an under-estimation of the danger from extremists on the Loyalist side ...").

12. The Commission's functions under the Convention are (a) investigation, (b) conciliation, (c) reporting to the Committee of Ministers the facts ascertained by it, its opinion as to whether those facts disclose a breach of the Convention and making any proposals it thinks fit to make to that Committee, (d) bringing a case before the Court in the circumstances prescribed in the Convention.

13. If the Commission, having completed an investigation, finds it is left in doubt as to the establishment of any alleged facts in issue or relevant to the issues investigated by it, it cannot report that those alleged facts have been found to be established. In my opinion, it should, in such a case, report accordingly, in a negative form, that the alleged facts have not been established and, where the non-establishment of any alleged fact leaves positive proof of a breach of the Convention incomplete, it must report accordingly that the facts found do not disclose a breach by the State concerned of its obligations under the Convention.

14. Having said that much as to my lack of clarity on these issues, I am quite satisfied to resolve my continuing doubts thereon by concurring with the conclusions reached by the Commission in its Report.

SEPARATE OPINION OF MR. J.E.S. FAWCETT ON ART. 3 OF THE CONVENTION

1. I agree with the opinion of the Commission that the combined use of the five techniques was a practice in breach of Art. 3 of the Convention, and with the opinion that instances of certain other forms of ill-treatment were breaches of Art. 3, but for reasons which differ in part from those expressed in the opinion of the Commission. My reasons follow.

2. The prohibition of inhuman treatment or torture in Art. 3 is absolute under the Convention. However, what ill-treatment constitutes inhuman treatment or torture will depend upon

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its character and the circumstances in which it is inflicted; the notion of inhuman treatment or torture is not then absolute.

3. The descriptions of inhuman treatment and torture adopted by the Commission contain two critical elements: severity and unjustifiability. So it has to be asked whether the ill-treatment found in the present cases reached a level of severity that could constitute inhuman treatment; and, if so, whether it was in all the circumstances justifiable, so that it did not in fact constitute inhuman treatment under the Convention. Given the findings of fact, including the level of severity of ill-treatment in the present cases, with which I agree, I have only to answer the second question.

4. Severe physical suffering, deliberately imposed, by medical and particularly surgical treatment, may be justifiable; again if killing can sometimes be necessary in riot control: Art. 2 (3) of the Convention, it must follow a fortiori that severe wounding is in such circumstances justifiable. In other words, there are situations in which severe ill-treatment is justifiable in the individual interest or the public interest.

Is then ill-treatment, so severe as to be capable of being inhuman treatment, justifiable for any purposes of interrogation?

5. The Parker Report stated in regard to the five techniques that what is inhuman treatment falls to be judged:

> "... in the light of the circumstances in which the techniques were applied, for example, that the operation was taking place in the course of urban guerrilla warfare in which completely innocent lives are at risk; that there is a degree of urgency; and that the security and safety of the interrogation centre, of its staff and of its detainees are important considerations".

This suggests that the irregular fighter - to use the expression of Colonel G.I.A.D. Draper - may, at least where the first two conditions in this passage are found, be subjected to ill-treatment and even inhuman treatment, so that critical information can be obtained.

6. I reject this, with one qualification. In my opinion, ill-treatment which in other circumstances would not be justified and which can be regarded as constituting inhuman treatment, cannot ever be justified for any purpose of interrogation, because it degrades the system of service administration and discipline in the police or security forces, and the personnel concerned, and can undermine the whole administration of criminal justice.

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However, there can be situations of urban guerrilla conflict where information is urgently needed to save lives, and if this is obtained by such ill-treatment, I think that disciplinary punishment or judicial sentence imposed on those who inflicted it, could be mitigated.

SEPARATE OPINION OF MR. F. ERMACORA ON ART. 3 OF THE CONVENTION

In regard to the conclusion at page 402, although being in agreement with its merits, I, in the context of the findings of the Commission and of Article 1 of the Declaration on the Protection of All Persons from being subjected to Torture and Other Cruel, Inhuman or Degrading Treatment (GA Res. 3453 (XXX) of 9 December 1975), prefer to say that the five techniques constitute a practice of torture in breach of Art. 3 of the Convention being an aggravated form of inhuman and degrading treatment.

SEPARATE OPINION OF MR. G. SPERDUTI, JOINED BY MR. T. OPSAHL, ON THE INTERPRETATION OF ART. 1 OF THE CONVENTION (1)

My participation in the Commission's vote on the applicant Government's complaint under Art. 1 of the Convention, should be understood as meaning that I do not consider that the respondent Government can be held to be in violation of its obligations under the Convention except insofar as the Commission has found such violations in relation to Art. 3.

In relation to the administrative practice in violation of that Article, the very nature of the violation, which consists of an area of conduct stretched over a considerable period, does not appear to leave any room for the violation of a duty other than one not to allow such conduct. It is true that the Commission has found tolerance to exist at a high level in the State organisation. However one cannot in this respect find a separate fault: this tolerance constitutes an element in the practice in question, the effect of which is to give the practice the character of a particularly grave violation of the Convention.

In relation, further, to the emergency legislation which was applied by the United Kingdom in Northern Ireland and which the Commission has considered as being in itself contrary to Art. 5 (1)-(4) of the Convention, it is necessary to bear in mind the historical reasons for the adoption of this legislation and, equally, the following factor: the emergency legislation already existing in Northern Ireland at the time of the exercise by the United Kingdom of the power of derogation

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(1) Translated from the original text in French.

under Art. 15 of the Convention, namely the Civil Authorities (Special Powers) Act.1922 and the Regulations and Orders under it, was brought into operation as from 9 August 1971, that is to say in the exercise, considered as justified by the Commission, of the said power of derogation.

Having said this I must add, as a matter of principle, that in my opinion the States Parties to the Convention have not only a duty to abstain from all action involving a violation of any of the rights and freedoms listed in Section I of the Convention and the additional Protocols, which they recognise to "everyone within their jurisdiction", but that they are equally obliged - and this is a duty which appears particularly from the use of the words "shall secure" in the English text of Art. 1 of the Convention - to ensure the enjoyment of the rights and freedoms in their internal legal systems in such a way as to prohibit all action, whether taken by the organs and agents of the State or by individuals or private organisations, which would infringe these rights and freedoms.

Art. 1 of the Convention must certainly always be read in conjunction with an Article in Section I or in an additional Protocol, since, considered only by itself, it does not have any complete meaning. However this does not in any way imply that the only obligation undertaken by the High Contracting Parties is not to infringe, through the conduct of their organs and agents, the individual rights and freedoms recognised in the Convention. In fact such an obligation is equally incumbent on them in relation to individuals concerned as in relation to the other Parties to the Convention. However this obligation, although the most definite and uncontestable one, is not, in view of the powers of the States as also the ties of solidarity which the States Parties intended to create between themselves with a view to establishing a European public order, the only one to be affirmed.

In the present state of development of international law and organisation, it is the States which exercise effective power over human beings, so that the enjoyment by the individuals within their jurisdiction of the rights and freedoms laid down in the Convention depends on their institutional structures and, more generally, on what is laid down in the internal legal systems with which they are provided. The Convention does not formally oblige the States Parties to incorporate it in their domestic legal systems or give it any particular status in the hierarchy of their sources of law. The States are, in principle, free to choose the means which best suit them to ensure the collective enjoyment of the rights and freedoms recognised in the Convention. It is, amongst other things, conceivable that their legal systems, in particular their constitutions, may even go further than the Convention requires. It is however clear, above all from the text of Art. 1 and notably its English text, but also particularly from a comparison of Arts. 24 and 25 and,

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even more, from an examination of other Articles of the Convention such as Arts. 50 and 57, that the High Contracting Parties also each accepted an obligation towards all the others together, to guarantee respect of the Convention through their internal legal systems. Men live within the confine of domestic law and it is domestic law which should, by its rules and principles, including the general principle of foreseeability and legal certainty, ensure effective enjoyment of the benefits of the Convention. A State which does not discharge this obligation of guarantee, infringes the Convention by this fact alone even before an individual personally undergoes the consequences through a concrete violation of one of his rights or freedoms.

To sum up, it can be said that whilst individuals can only seize the Commission under the conditions laid down in Art. 25, and thus only if they allege that they have already been victims of a violation of the rights and freedoms recognised in the Convention, any High Contracting Party may, under Art. 24, refer to the Commission any alleged breach of the Convention by another High Contracting Party, including a failure to ensure and to guarantee through adequate measures in its domestic legal system, the effective respect of the said rights and freedoms both by the organs and agents of the State and, equally, by other individuals.

SEPARATE OPINION OF MR. F. ERMACORA ON ART. 1 OF THE CONVENTION (1)

I cannot follow the majority of the Commission saying that Art. 1 of the Convention cannot be the subject of separate breach. Although I am of the opinion that Art. 1 has not been violated in the present case, I think that Art. 1 could be the subject of a separate breach in regard to State applications under Art. 24. Mr. Sperduti, in his opinion, developed the scope of treaty obligations very clearly. By Art. 1 of the Convention States Parties to the Convention oblige themselves collectively to create conditions only by which the rights and freedoms defined in Section I of the Convention (and in the different Articles of the additional Protocols) can be secured. How a State system should be organised so that the rights and freedoms may be secured is expressed in the Preamble of the Convention and in the Statute of the Council of Europe. But also in the Universal Declaration of Human Rights of the United Nations to which reference is made in the Preamble of the Convention as well.

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(1) Separate opinion expressed in accordance with Rule 52 (3) of the Commission's Rules of Procedure (see footnote on page 7 above).

However, Art. 1 of the Convention cannot be violated just by an isolated or single breach of one or other of the Articles of the Convention. Art. 1 can only be violated if a breach of those Articles from which no derogation may be made in any circumstances is established. That is the right to life, the freedom from torture (as an aggravated form of inhuman treatment, as stated in para. 2 of Art. 1 of the United Nations Declaration on the Protection of All Persons from being subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 9 December 1975, Res. 3452 (XXX) of the General Assembly), the right not to be subjected to slavery or servitude and the right not to be subjected to retroactive laws (see Art. 15 (2) of the Convention). But even if some or only one of these rights are violated, as the Commission has found in the present case, Art. 1 of the Convention is not violated ipso jure.

There must be - in my opinion - a consistent pattern of violation of these rights which, in regard to other international instruments, are considered as "grave breaches" or as "flagrant and massive violations" of human rights, against which no effective remedy is available and possible. In such a situation which creates a system by which the rights and freedoms cannot be considered secured, Art. 1 could be violated and then, but only then, Art. 1 of the Convention can be considered as violated. This interpretation - in my opinion - is in conformity with the aims of member States and in conformity with the international standard as to violations of human rights as it is exemplified by the ECOSOC Res. 1503. In the present case, Art. 1 is not violated because the violation of Art. 3 of the Convention found by the Commission does not concern a consistent pattern of violation and could not be considered as a massive violation of human rights inflicted upon a part of the population as a whole.

DISSENTING OPINION OF MR. K. MANGAN ON ART. 1 OF THE CONVENTION

I consider that the duty to secure human rights can be distinguished from the obligation not to infringe them, and that the other States Parties are under Art. 24 entitled to invoke the former duty without having to wait until the Convention has actually been violated to the damage of an individual.

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It is true that it is always necessary to invoke another Article in conjunction with Art. 1, but once violations are threatening because of a failure to secure a right, one of the differences between the position of a State under Art. 24 and an individual is exactly that the State may take action against anticipated breaches. Action by another State in order to succeed cannot, however, be based solely on the absence of positive guarantees for the right concerned. In this respect the fact that the Convention does not explicitly prescribe the ways and means of its implementation is decisive. However, States cannot be free to enact legislation directly contrary to the Convention, and the mere existence of such legislation - e.g. authorising torture, or prohibiting freedom of expression - must be sufficient for other States to take action under Art. 24, without waiting until they have been put into operation. The mere existence of such laws can have a deterrent effect so that the enjoyment of rights in fact is frustrated. The same is true of practices contrary to the Convention and of failures to protect against them. It is possible that this could in the circumstances also be seen as a direct violation of the Article concerned, without resorting to Art. 1 in conjunction with it. This does not matter. What is important is the result, which can be based not only on Art. 1 but on the whole context, including the Preamble to the Convention.

I therefore consider it necessary in principle to determine whether the legislation in Northern Ireland as practised, and other practices found to exist, have represented such a failure to secure human rights that the Convention is thereby breached independently of any individual violations resulting from their operation.

As regards the issues which could arise under Art. 5 in conjunction with Art. 1, it should be noted that the Special Powers Act was in existence from 1922 onwards. It was, however, put in operation only in conditions of grave emergency, which justified derogation from the Convention (above, Part One). It cannot then be said that the existence of such emergency provisions, dormant in normal times, represents a failure to secure human rights in breach of the Convention.

The situation is less clear as regards the inaction, at least in 1971, by higher authorities to prevent ill-treatment by the security forces, which the Commission has established in its opinion on the issues under Art. 3. I consider, however, that the argument that this situation created a general insecurity by exposing others than the actual victim to the risk of ill-treatment, has sufficient force to warrant the conclusion that the situation itself, independently of the violations against individuals, amounted to a failure to provide the protection required by the Convention.

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Measures taken later - and the Commission has recognised that efforts have been made and resources spent since 1972 to secure such protection and to compensate for breaches - are obviously relevant as evidence of attempts to fulfil the obligation during these later phases. But they do not remove the original failure.

I am, therefore, of the opinion that on the basis of Art. 1 seen in its context a State can invoke a failure to secure human rights independently of violations against individuals and that such a breach of the Convention took place in the present case by the failure to secure the right guaranteed in Art. 3.

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