Judgement of the European Court of Human Rights, Ireland v. the United Kingdom (18 January 1978)

Caption: First judgment given by the European Court of Human Rights concerning an inter-state case. The Court rules that there has been violation of Article 3 of the European Convention on Human Rights (prohibition of torture and inhuman or degrading treatment or punishment).

Source: European Court of Human Rights (ECHR), Case of Ireland v. the United Kingdom. Judgement of 18 January 1978 (N° 91). HUDOC - Human Rights Documentation. [ON-LINE]. [Strasbourg]: [30.05.2003]. Available on http://hudoc.echr.coe.int/hudoc/default.asp?Language=en&Advanced=1.

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Judgement of the European Court of Human Rights of 18 January 1978
Case of Ireland v. the United Kingdom

In the case of Ireland v. the United Kingdom,

The European Court of Human Rights, taking its decision in plenary session in application of Rule 48 of the Rules of Court and composed of the following judges:

Mr. G. BALLADORE PALLIERI, President,
Mr. G. WIARDA,
Mr. M. ZEKIA,
Mr. J. CREMONA,
Mr. P. O'DONOGHUE,
Mrs. H. PEDERSEN,
Mr. THÓR VILHJÁLMSSON,
Mr. R. RYSSDAL,
Mr. W. GANSHOF VAN DER MEERSCH,
Sir Gerald FITZMAURICE,
Mrs. D. BINDSCHEDLER-ROBERT,
Mr. D. EVRIGENIS,
Mr. P.-H. TEITGEN,
Mr. G. LAGERGREN,
Mr. L. LIESCH,
Mr. F. GÖLCÜKLÜ,
Mr. F. MATSCHER,

and also Mr. M.-A. EISSEN, Registrar, and Mr. H. PETZOLD, Deputy Registrar,

Having deliberated in private on 10 and 11 February, 22 and 25 to 27 April, 25 to 28 July and 6 to 13 December 1977,

Delivers the following judgment, which was adopted on the last-mentioned date:

Procedure

1. This case was referred to the Court by the Government of Ireland ("the applicant Government"). It originated in an application against the Government of the United Kingdom of Great Britain and Northern Ireland ("the respondent Government") lodged by the applicant Government with the European Commission of Human Rights ("the Commission") on 16 December 1971 under Article 24 (art. 24) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). The report drawn up by the Commission concerning the said application (Article 31 of the Convention) (art. 31) was transmitted to the Committee of Ministers of the Council of Europe on 9 February 1976.

2. The Irish Government's application to the Court was lodged with the registry on 10 March 1976, within the period of three months laid down by Articles 32 para. 1 and 47 (art. 32-1, art. 47) of the Convention, and referred to Article 48 (art. 48). Its object is "to ensure the observance in Northern Ireland of the engagements undertaken by the respondent Government as a High Contracting Party to the Convention and in particular of the engagements specifically set out by the applicant Government in the pleadings filed and the submissions made on their behalf and described in the evidence adduced before the Commission in the hearings before them". "To this end", the Court is invited "to consider the report of the Commission and to confirm the opinion of the Commission that breaches of the Convention have occurred and also to consider the claims of the applicant Government with regard to other alleged breaches and to make a finding of breach of the Convention where the Court is satisfied that a breach has occurred".

The United Kingdom is one of the States which have declared that they recognise the compulsory

jurisdiction of the Court (Article 46) (art. 46).

3. The Registrar received twenty-five copies of the Commission's report from its Secretary on 17 March 1976.

4. The Chamber of seven judges to be constituted included, as ex officio members, Mr. P. O'Donoghue, the elected judge of Irish nationality, and Sir Gerald Fitzmaurice, the elected judge of British nationality (Article 43 of the Convention) (art. 43), and Mr. G. Balladore Pallieri, the President of the Court (Rule 21 para. 3 (b) of the Rules of Court). On 20 March 1976, the President of the Court drew by lot, in the presence of an official of the registry, the names of the four other members, namely Mr. H. Mosler, Mr. M. Zekia, Mr. S. Petrén and Mrs. D. Bindschedler-Robert (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

Mr. Balladore Pallieri assumed the office of President of the Chamber (Rule 21 para. 5).

5. On 29 April 1976, the Chamber decided under Rule 48 to relinquish jurisdiction forthwith in favour of the plenary Court, "considering that the case raise[d] serious questions affecting the interpretation of the Convention".

6. At a meeting held on 18 May 1976, the President ascertained the views of the Agents of the Parties and of the delegates of the Commission regarding the procedure to be followed. He decided by an Order of the same date that the applicant Government should have until 2 August 1976 to file a memorial, that the respondent Government should then have until 30 October 1976 to file a memorial in reply and that the delegates of the Commission should be entitled to present their written observations, if any, within one month of the receipt of the said memorial in reply. By an Order of 19 November 1976, the President extended the last-mentioned time-limit until 15 December.

The memorials of the applicant Government, the respondent Government and the delegates of the Commission were received at the registry on 30 July, 28 October and 15 December 1976, respectively.

7. By an Order of 26 July 1976, the President of the Court, having regard to Rule 29 para. 3 and with the agreement of the two Governments concerned and of the Commission, instructed the Registrar to make the Commission's report public only after incorporation of changes approved by the President and having the sole purpose of protecting the identity of certain persons. The report was so made public as from 2 September 1976.

8. The President met the Agents of the Parties and the delegates of the Commission on 7 December 1976 in order to consult them on the organisation of the hearings. On 7 January 1977, he decided, with the agreement of the Court, that the first part of the oral proceedings would open on 7 February and would concern the following questions:

"(a) Is the jurisdiction of the Court to examine any particular issue of fact or law limited by the original allegations of the Government of Ireland and/or by the decision of the Commission on the admissibility of application no. 5310/71? In the affirmative, do certain issues of fact or law fall outside this jurisdiction in the present case?

(b) Has the Court jurisdiction to pronounce on the existence of the violations of the Convention found by the Commission in its report and which are not contested by the United Kingdom Government? In the affirmative, should the Court exercise that jurisdiction?

(c) Should the Court examine the cases mentioned in paragraphs 2.30 and 2.31 of the memorial of the delegates of the Commission?

(d) Is it proper in the circumstances of this case for the Court, without further enquiry into the facts, to:

(i) confirm the conclusions of the Commission to the extent that they are not contested?

(ii) deal only with the substance of those questions which give rise to dispute between the Parties?

(e) Has the Court jurisdiction to review the procedural decisions of the Commission as such and/or should the Court, when assessing the conclusions of the Commission, have regard to the procedure followed by the latter body?

(f) Does Article 1 (art. 1) of the Convention create any rights in addition to those defined in Section I and can it be the subject of a separate breach?"

Oral hearings were accordingly held in public at the Human Rights Building, Strasbourg, from 7 to 9 February. Immediately afterwards, the Court deliberated in private. At its request, the President, by Order of 11 February, advised the Parties and the Commission of the following matters to be taken into account by them during the further procedure:

"1. In the circumstances of this case, the Court does not consider that the reasons which have been given why it should refrain from pronouncing on the non-contested allegations of violation of Article 3 (art. 3) of the Convention are such as to preclude it from so pronouncing. However, the Court considers that it is already in possession of sufficient information and materials to enable it to make such a pronouncement.

2. The Court takes note of the fact that it is no longer invited by the applicant Government to examine the cases mentioned in paragraph 2.30 of the memorial of the delegates of the Commission; it does not deem it necessary to examine them proprio motu.

3. The Court finds that is has jurisdiction to take cognisance of the other contested cases of violation of Article 3 (art. 3) (paragraph 2.31 of the memorial of the delegates of the Commission) if and to the extent that the applicant Government put them forward as establishing the existence of a practice.

4. The Court finds that it does not have jurisdiction to rule on the correctness of the procedure followed by the Commission for hearing the witnesses G 1, G 2 and G 3 in London on 20 February 1975, but that it is empowered to assess the relevance and probative value of the evidence so obtained."

After consulting the representatives of the two Governments concerned and of the Commission, the President, by the same Order, fixed 19 April 1977 as the date for resumption of the hearings.

The second part of the hearings was held in public at the Human Rights Building, Strasbourg, from 19 to 22 April.

9. At the hearings of February and/or April 1977 there appeared before the Court:

– for the applicant Government:

– Mr. F.M. HAYES, Legal Adviser, Department of Foreign Affairs, Agent,

– Mr. D. COSTELLO, S.C., Attorney General,

– Mr. A.J. HEDERMAN, S.C.,

– Mr. R.J. O'HANLON, S.C.,

– Mr. A. BROWNE, S.C.,

- Mr. J. MURRAY, Barrister-at-Law,

Counsel,

– Mr. L. LYSAGHT, Chief State Solicitor,

– Mr. P.P.D. QUIGLEY, Legal Assistant, Attorney General's Office,

– Mr. M. BURKE, First Secretary, Department of Foreign Affair (February hearings only),

– Mrs. J. LIDDY, Assistant Legal Adviser, Department of Foreign Affairs (February hearings only),

– Mr. P. HENNESSY, First Secretary, Department of Foreign Affairs,

- Mr. D. WALSHE, Office of the Chief State Solicitor,

Advisers;

– for the respondent Government:

- Mr. D.H. ANDERSON, Legal Counsellor, Foreign and Commonwealth Office,

Agent,

- Mr. I.K. MATHERS, Assistant Legal Adviser, Foreign and Commonwealth Office,

Assistant Agent,

– The Rt. Hon. S. SILKIN, Q.C., M.P., Attorney-General,

– Mr. J.B.E. HUTTON, Q.C.,

– Mr. A. LESTER, Q.C.,

- Mr. N. BRATZA, Barrister-at-Law,

Counsel,

– Sir Basil HALL, K.C.B., M.C., T.D., Treasury Solicitor,

– Mr. C. LEONARD, Treasury Solicitor's Department,

– Mr. M.L. SAUNDERS, Law Officers' Department (February hearings only),

– Mr. W.C. BECKETT, Law Officers' Department (April hearings only),

– Mr. A.P. WILSON, Northern Ireland Office,

– Mr. N. VARNEY, Northern Ireland Office,

– Mr. N. BRIDGES, Northern Ireland Office (February hearings only),

- Mr. R. SEAMAN, Northern Ireland Office (April hearings only),

Advisers;

– for the Commission:

– Mr. G. SPERDUTI, Principal Delegate,

– Mr. C. NØRGAARD, Delegate,

– Mr. T. OPSAHL, Delegate.

The Court heard addresses by Mr. Costello for the applicant Government, by Mr. Silkin, Mr. Hutton and Mr. Lester for the respondent Government and by Mr. Sperduti, Mr. Nørgaard and Mr. Opsahl for the Commission, as well as their replies to a question put by the Court.

10. In the course of the hearings and during the interval between the two parts thereof those appearing before the Court produced various documents including written submissions on Article 1 (art. 1) of the Convention. The Commission subsequently furnished to the Registrar other documents which he had requested on the instructions of the Court or its President.

As to the facts

I. The emergency situation and its background

11. The tragic and lasting crisis in Northern Ireland lies at the root of the present case. In order to combat what the respondent Government describe as "the longest and most violent terrorist campaign witnessed in either part of the island of Ireland", the authorities in Northern Ireland exercised from August 1971 until December 1975 a series of extrajudicial powers of arrest, detention and internment. The proceedings in this case concern the scope and the operation in practice of those measures as well as the alleged ill-treatment of persons thereby deprived of their liberty.

12. Up to March 1975, on the figures cited before the Commission by the respondent Government, over 1,100 people had been killed, over 11,500 injured and more than £140,000,000 worth of property destroyed during the recent troubles in Northern Ireland. This violence found its expression in part in civil disorders, in part in terrorism, that is organised violence for political ends.

A. Social, constitutional and political background

13. Prior to 1922 the whole of the island of Ireland formed part of the United Kingdom. In that year, following a treaty of 1921, legislation was passed which endorsed the setting-up, with self-governing status within the British Commonwealth, of the Irish Free State comprising initially all of the island's thirty-two counties. Provision was made for six of the nine counties of the province of Ulster in the north to opt out and remain within the United Kingdom and they did this in 1922. Thereafter, the Irish Free State became responsible for the government of the remaining twenty-six counties and, in 1937, a new Constitution was introduced proclaiming the independence and sovereignty of the State of what is now known as the Irish Republic. After the Second World War it left the Commonwealth and declared itself a republic.

14. From the 1920's onwards, Northern Ireland, that is the above-mentioned six counties, had a separate Government and Parliament of its own. In addition, the electorate of the province (meaning in this judgment the six counties) returned twelve members to the United Kingdom Parliament. With certain defined matters excepted, the Northern Ireland Parliament and Government were the legislative and executive authorities for the six counties until 30 March 1972 when the United Kingdom authorities resumed "direct rule" of the province (see paragraph 49 below).

15. Northern Ireland is not a homogeneous society. It consists of two communities divided by deep and long-standing antagonisms. One community is variously termed Protestant, Unionist or Loyalist, the other is generally labelled as Catholic, Republican or Nationalist. About two-thirds of the population of one and a half million belong to the Protestant community, the remaining third to the Catholic community. The majority group is descended from Protestant settlers who emigrated in large numbers from Britain to Northern Ireland during the seventeenth century. The now traditional antagonism between the two groups is based both on religion and on social, economic and political differences. In particular, the Protestant community has consistently opposed the idea of a united Ireland independent of the United Kingdom, whereas the Catholic community has traditionally supported it.

16. The Irish Republican Army (IRA) is a clandestine organisation with quasi-military dispositions. Formed

during the troubles prior to the partition of the island and illegal in the United Kingdom as well as in the Republic of Ireland, the IRA neither accepts the existence of Northern Ireland as part of the United Kingdom nor recognises the democratic order of the Republic. It has periodically mounted campaigns of terrorism in both parts of the island of Ireland and in Great Britain. After 1962, the IRA was not overtly active for some years.

During the time covered by the complaints of the applicant Government, that is from 1971 to 1975, virtually all those members of the IRA living and operating in Northern Ireland were recruited from among the Catholic community.

17. Legislation designed to deal with matters affecting law and order and the security of the State was first enacted by the Northern Ireland Parliament in 1922 in the form of the Civil Authorities (Special Powers) Act (Northern Ireland). This legislation (hereinafter referred to as "the Special Powers Act") was an enabling Act under which Regulations were from time to time made and brought into operation. Thus, for instance, a Regulation dating from before 1949 declared illegal certain organisations, including the IRA. In 1950 and 1954, following raids carried out by the IRA in Great Britain and Northern Ireland, Regulations were introduced granting powers of entry and search. In 1956 and 1957, in order to combat an IRA campaign then being launched, further Regulations were made dealing with internment, curfew, special trial procedures, firearms and explosives control, and restriction on movement. An account of the particular Regulations at issue in the present case, namely Regulations 10, 11 (1), 11 (2) and 12 (1), appears below at paragraphs 81 to 84.

18. The differing 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 within the United Kingdom, whilst the Catholic community in general supported candidates favouring a united, independent Ireland. 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. The abolition of proportional representation in the early 1920's and the geographical arrangement of constituencies effected a great increase in the size of the Parliamentary majority. This situation understandably disenchanted the Catholic community.

19. Thus, whilst only a small minority of the latter community has ever actively supported the IRA, a very much greater proportion had always been discontented with Unionist government and the effects of its in-built majority. The Catholics in the population regarded themselves as discriminated against on various counts. The Cameron Commission, a body appointed by the Northern Ireland Government in March 1969 to report, inter alia, on the causes of disturbances in the six counties in 1968-1969 (see paragraph 23 below), considered justified many of the grievances then felt by the Catholics, in particular those concerned with the allocation of houses, local authority appointments, limitations on local electoral franchise and deliberate manipulation of ward boundaries and electoral areas. The European Commission of Human Rights itself came to the conclusion that there certainly was an element of inherent bias in the whole political system in Northern Ireland in favour of one community.

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.

B. Development of the crisis up to 1969

20. In 1963 the first moves towards a campaign for "civil rights" for the Catholic community began to be made. The objectives of this campaign were, broadly speaking, the removal of the discrimination referred to above.

At the same time, though, manifestations of Protestant violence began to emerge. In 1964 there was serious rioting in Belfast following a Protestant march. In March 1966, several petrol bombs were thrown at Catholic schools and property. In May 1966, a body calling itself the Ulster Volunteer Force (UVF), previously unknown to the police, issued a statement declaring war on the IRA and warning of its intention to execute all IRA men. Shortly thereafter, two Catholics were murdered and two others seriously wounded in Belfast. Three Protestants, members of the UVF, were subsequently charged and convicted for these attacks. The UVF, believed by the police to have consisted of only 5 to 6 persons, was declared illegal in June 1966 and seems to have remained inactive from then until 1969.

During this period, there was no violent activity of significance by the IRA, who, after 1962, appear to have concentrated on political activity.

21. Throughout 1967, the movement for "civil rights" for the Catholic community gathered momentum. The first civil rights march took place in August 1968 without incident, but in October a clash with the police and two days' rioting ensued after a march in Londonderry.

22. On 22 November 1968, the Northern Ireland Government announced a reform programme to deal with the Catholic grievances. Nevertheless, the civil rights movement continued its campaign and marches. The marches again led to clashes with the police and to violent confrontation with Protestant counter-demonstrators, often armed with cudgels, stones and the like.

23. The demonstrations, disturbances and rioting continued in various places into 1969. In paragraph 226 of its report, presented to the Northern Ireland Parliament in September 1969, the Cameron Commission expressed the view that certain Protestant extremist organisations "must ... bear a heavy share of direct responsibility for [certain of] the disorders ... 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". Police conduct in handling certain disturbances was also criticised by the Cameron Commission.

24. In March and April 1969, five major explosions thought to have been caused by the UVF occurred at water and electricity installations in three counties. Units of British troops were flown into the province.

The Northern Ireland Prime Minister, whose reform policies were unpopular with many Protestants, resigned at the end of April. A few days later, his successor declared a general amnesty for persons charged with or convicted of offences connected with the recent political protests and demonstrations.

25. Tension remained high; sectarian disturbances continued periodically up to mid-August. On 12 August 1969, a traditional Protestant anniversary parade sparked off several days of large-scale rioting, first of all in Londonderry and thereafter spreading to Belfast and other places. After 10 civilians had been killed and 145 civilians and 4 policemen wounded, it was found necessary to call in aid units of the British army.

The riots in August 1969 greatly exceeded in severity any that had occurred in the previous years. Casualties and damage to property were extensive. In Belfast, for instance, a large number of houses and licensed premises, mostly Catholic owned or occupied, were burnt down, destroyed or damaged.

26. The Northern Ireland Prime Minister called a peace conference on 18 August which was attended by representatives of the two communities. On the next day, the United Kingdom and Northern Ireland Governments issued a joint declaration re-affirming, inter alia, their commitment to reforms in the six counties.

In October, a programme of reform was announced; it included the reorganisation of the police force and local government, measures to prohibit discrimination in public employment, and the establishment of a Community Relations Commission and a central housing authority.

27. However, the publication of a government report into the functions and organisation of the province's police force had produced a violent reaction in Protestant circles. On 11 October, a policeman was shot dead by a bullet fired from a crowd of Protestant rioters in Belfast. He became the first member of the security forces to be killed during the disorders of the past few years.

28. The IRA carried out no major acts of violence in 1969. However, at Easter 1969 they had reactivated their forces, placing all volunteers on full alert. At the same time, the IRA are thought to have gained much more support as a result of the riots and of an accompanying loss of confidence by Catholics in the police.

Towards the end of the year, the IRA split into two wings. For some time there had been dissension in the movement between those who hoped to bring about a form of socialist people's republic for all Ireland and those who considered that such involvement deflected the IRA from its traditional aims. The traditionalists formed themselves into the Provisional IRA whilst the followers of the new political doctrines became the Official IRA. Both factions remained organised along military lines.

C. Situation from 1970 until the introduction of internment on 9 August 1971

29. The situation worsened in 1970. The number of explosions recorded by the police jumped dramatically from a total of 8 in 1969 to 155 in 1970. Some explosions were caused by Loyalists – about 25 according to statistics cited by the Commission – but there is no dispute that the majority were the work of the IRA. In total, 23 civilians and 2 policemen were killed during the course of the year. None of these deaths was attributed by the police to Protestant activity.

30. The terrorist campaign by the IRA appears to have begun in earnest in 1970 and to have been one primarily of bombing buildings and attacking the security forces. There was also undoubtedly some terrorist activity on the part of Loyalists, directed largely against politicians seen as hostile to Unionism and against Catholic owned or occupied property, particularly licensed premises. Responsibility for certain explosions was in fact claimed by the UVF.

31. The sharp increase in what may be termed terrorist-type activity was not accompanied by the cessation of inter-communal street disturbances which continued sporadically during the year of 1970 and accounted for the deaths of a number of people.

32. Between January and July 1971, the violence intensified, being marked by a dramatic upsurge in terrorist activity by the IRA. Police statistics record a total of 304 explosions, including 94 for the one month of July. Shooting at the security forces' patrols built up and for the first time soldiers numbered amongst those killed. By 9 August, 13 soldiers, 2 policemen and 16 civilians had died since the beginning of the year. In addition, serious and prolonged rioting occurred in both Catholic and Protestant areas.

Apart from one explosion in which a civilian was killed, there is no evidence of any deaths or even injuries having been caused by Loyalist terrorists. On the applicant Government's own approximate estimate, Loyalist explosions accounted for only 14 out of the overall total of 304. Furthermore, as in 1970, Loyalist terrorists used mainly pipe bombs which were not very powerful in comparison with the devices employed by the IRA.

The Commission stated in its report that the IRA were indisputably responsible for the very great majority of the acts of violence during this period. Loyalist terrorist activity had declined; there is no evidence that such Loyalist terrorism as did exist formed part of a highly organised campaign in the sense that IRA activity did. The Commission's conclusion was that the threat and reality of serious terrorism came almost exclusively from the IRA.

33. On the political front during 1970 and 1971, progress was made in implementing the reforms announced in October 1969 (see paragraph 26 above). The Prime Minister of Northern Ireland, however, resigned in March 1971. In June 1971, his successor proposed a number of further steps designed to provide a positive

rôle for representatives of the minority community in the actual process of government.

D. 9 August 1971 (introduction of internment) until 30 March 1972 (introduction of direct rule)

1. The decision to introduce internment

34. It was against the background outlined above that on 9 August 1971 the Northern Ireland Government brought into operation extrajudicial measures of detention and internment of suspected terrorists. From 9 August 1971 until 7 November 1972, when certain of the Special Powers Regulations were replaced, the authorities in Northern Ireland in fact exercised four such extrajudicial powers: (i) arrest for interrogation purposes during 48 hours (under Regulation 10); (ii) arrest and remand in custody (under Regulation 11 (1)); (iii) detention of an arrested person (under Regulation 11 (2)); and (iv) internment (under Regulation 12 (1)). An account of the operation of these powers and the procedures thereunder is given below at paragraphs 81 to 84.

35. For some time, the possibility of internment had been extensively canvassed in the press and amongst politicians. Pressure had also been mounting within the Protestant community for its introduction; in the early months of 1971 there had been demonstrations against the then Prime Minister because of his Government's alleged failure to deal with the IRA threat.

The decision to introduce a policy of detention and internment was taken on 5 August 1971 by the Northern Ireland Government, following a meeting in London between the Northern Ireland and United Kingdom Governments. Prior to this, the question had been considered at the highest level in Northern Ireland and frequent consultations had taken place between the two Governments.

In the latter half of July 1971, as an apparent last resort to avoid introducing internment, the security forces had intensified operations against suspected terrorists, mounting searches and detaining for questioning what were believed to be key figures in the IRA. Some 90 persons were arrested but no significant results were yielded. Prior to August 1971, the intelligence obtained by the police had failed to provide anything but a very general picture of the IRA organisation.

2. Reasons for the decision to introduce internment

36. The campaign of violence carried out by the IRA had attained unprecedented proportions by the middle of 1971. This was clearly the dominant factor behind the decision to exercise the extrajudicial powers.

Three principal reasons for the decision have been cited by the respondent Government. Firstly, the authorities took the view that the normal procedures of investigation and criminal prosecution had become inadequate to deal with IRA terrorists; it was considered that the ordinary criminal courts could no longer be relied on as the sole process of law for restoring peace and order. The second reason given, which was closely related to the first, was the widespread intimidation of the population. Such intimidation often made it impossible to obtain sufficient evidence to secure a criminal conviction against a known IRA terrorist in the absence of an admissible confession or of police or army testimony. Furthermore, the conduct of police enquiries was seriously hampered by the grip the IRA had on certain so-called "no-go" areas, that is Catholic strongholds where terrorists, unlike the police, could operate in comparative safety. Thirdly, the ease of escape across the territorial border between Northern Ireland and the Republic of Ireland presented difficulties of control.

In addition to the three "security" reasons, there was, in the judgment of both the Northern Ireland Government and the United Kingdom Government, no hope of winning over the terrorists by political means, the reform programme initiated in 1969 having failed to prevent continuing violence.

The authorities therefore came to the conclusion that it was necessary to introduce a policy of detention and internment of persons suspected of serious terrorist activities but against whom sufficient evidence could not

be laid in court. This policy was regarded as a temporary measure primarily aimed at breaking the influence of the IRA. It was intended that a respite would be provided so as to enable the political and social reforms already undertaken to achieve their full effects.

3. The decision whom to arrest, detain and intern

37. The possibility of interning Loyalists was discussed in the preparatory stages. The security forces were aware of some Loyalist terrorist activity in 1971 and also of certain Protestant extremists, described by those forces as "rabble rousers" and suspected by them of acts of violence or intimidation, if not of terrorism strictly speaking. However, the security forces did not judge at this stage that there was any serious threat coming from the Loyalist quarter. There was said to be no army or police intelligence then available which indicated that any organisation other than the IRA had been actively engaged in bombing and killing in the very recent months.

On account of the unprecedented level it had reached, and because of its nature as a highly organised, politically motivated campaign designed to overthrow the State, IRA terrorism was regarded as the real menace to law and order. Protestant terrorist activity, which was in the main directed against the Catholic community and not the State or the security forces, was seen by the authorities more as sporadic and as being on a minute scale in comparison and on a much less organised basis.

38. In the weeks preceding the introduction of internment, the police, in consultation with the army, were preparing lists of persons to be arrested. The lists included not only suspected IRA terrorists but also persons suspected of being involved or associated with the IRA or even, in a few cases, of possessing information about others so involved or associated. It was generally understood that the target of the planned exercise was the IRA.

4. Operation Demetrius

39. Starting at 4.00 a.m. on Monday, 9 August 1971, the army, with police officers occasionally acting as guides, mounted an operation to arrest the 452 persons whose names appeared on the final list. In the event, some 350 persons were arrested in accordance with the Special Powers Regulations. 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) that had been set up to receive the prisoners during 48 hours. All those arrested were subjected to interrogation by police officers of the Royal Ulster Constabulary (RUC). 104 persons were released within 48 hours. Those who were to be detained were sent on to the prison ship "Maidstone" or to Crumlin Road Prison, both in Belfast. Prior to being lodged in detention, 12 individuals were moved to one or more unidentified centres for "interrogation in depth" extending over several days.

Operation Demetrius, as the Commission points out, was not a selective manoeuvre aimed at individuals but a "sweeping-up" exercise directed against the IRA organisation as a whole. It is generally accepted that because of the scale and speed of the operation, some persons were arrested or even detained on the basis of inadequate or inaccurate information.

5. Events subsequent to Operation Demetrius

40. At 11.15 a.m. on 9 August 1971, the Prime Minister of Northern Ireland announced to the public the introduction of internment. He stated, inter alia:

"The main target of the present operation is the Irish Republican Army ... 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."

41. Arrests continued to be made during the rest of the year, partly of persons on the above-mentioned list and partly of persons who came under suspicion thereafter.

The three regional holding centres were closed down in August 1971 shortly after Operation Demetrius was completed, and in September/October 1971 police centres were established at Palace Barracks (Holywood, County Down), Girdwood Park (Belfast), Gough (County Armagh) and Ballykelly (County Londonderry) for the purpose of holding and interrogating persons arrested under the Special Powers Regulations.

42. The introduction of internment provoked a violent reaction from the Catholic community and the IRA. Serious rioting broke out in Belfast and elsewhere, there was a considerable increase in shootings and bombings, and the security situation in general deteriorated rapidly. Within the minority community there occurred a further alienation from the authorities and the security forces, together with a rise in support for the IRA.

43. Although surprised by the extent of this reaction, both the Northern Ireland and the United Kingdom Governments continued their efforts to secure political progress. In London, the Home Secretary announced in September 1971 his Government's determination to ensure that the Catholic population in the province should have an active, permanent and guaranteed rôle in the conduct of public business. In the same month, a meeting took place in England between the Prime Ministers of the United Kingdom, Northern Ireland and the Irish Republic. In October, the Belfast Government published proposals for involving the opposition in government. However, these proposals were considered unacceptable by the political representatives of the Catholic community and nothing came of them.

44. Neither internment nor the political initiatives ended the violence. On the contrary, the numbers of deaths, explosions and shootings recorded by the police for each month throughout the period from August to December 1971 were higher than those recorded in any of the previous seven months of the year. There was a total of 146 persons killed, including 47 members of the security forces and 99 civilians, 729 explosions and 1,437 shooting incidents.

45. Apart from rioting and a small-scale bombing campaign of licensed premises, there was apparently little serious violence by Protestants in 1971. Only one death occurring between August and the end of the year, an assassination of a Protestant in September, was attributed by the police to Loyalists. On the other hand, intimidation of members of the opposite community to move from their homes seems to have become more prevalent on both sides, although the official figures indicate that Catholics were principally affected.

46. On the Protestant side, the increased violence at this time led to the formation of defence associations or vigilante groups which ultimately amalgamated in or about September 1971 to become the Ulster Defence Association (UDA). The UDA did not appear openly on the streets until the spring of 1972. There was also seen the start of a development later to become significant, that is the holding of large, carefully prepared parades by Loyalist organisations (see paragraph 51 below). The latter and in particular the UDA were looked on by the police as primarily political organisations not engaged in violence as such.

47. At the beginning of 1972, despite a small drop, the level of violence remained higher than at any time before 9 August 1971. On 30 January 1972, 13 people were killed by army gunfire in the course of disorders taking place in the predominantly Catholic town of Londonderry. This incident led to a new upsurge in support for the IRA amongst the Catholic community.

In the first three months of 1972, 87 people were killed, including 27 members of the security forces. Two assassinations carried out in March, one of a Protestant and the other of a Catholic, were the only deaths attributed to Loyalist activity. 421 explosions, the vast majority attributed to the IRA, were caused during the same period.

48. From August 1971 until 30 March 1972 there had been in Northern Ireland 1,130 bomb explosions and well 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 injured.

Throughout these months the numbers held under detention or internment orders proceeded to rise until a

total of over 900 persons, all suspected of involvement with the IRA, were held at the end of March 1972. At the same time, the ordinary processes of the criminal law continued to be used, against Protestants as well as Catholics, whenever there was thought to be sufficient evidence to ground a criminal conviction. Thus, between 9 August 1971 and 31 March 1972, over 1,600 people were charged with "terrorist-type" offences.

49. In March 1972, in view of the deteriorating circumstances, the Government in London decided that they should assume direct responsibility for the administration of law and order in Northern Ireland if there was to be any hope of political progress. This decision was unacceptable to the Government of the province and accordingly it was announced on 24 March 1972 that direct rule from Westminster not only on law and order but on all matters was to be introduced.

Under the Northern Ireland (Temporary Provisions) Act 1972 (hereinafter referred to as the "Temporary Provisions Act"), which was passed by the United Kingdom Parliament and came into force on 30 March 1972, temporary provision was made for the exercise of the executive and legislative powers of the Northern Ireland Parliament and Government by the United Kingdom authorities. The Belfast Parliament was prorogued and the Queen empowered to legislate in its stead by Order in Council. The executive powers of the Belfast Government were transferred to the Secretary of State for Northern Ireland. This was a new office created for the purpose; its holder was a member of the United Kingdom Government and answerable to the United Kingdom Parliament. The legislation was enacted for a period of one year but was subsequently extended.

E. 30 March 1972 (introduction of direct rule) until 5 February 1973 (first detention of loyalists)

50. On assuming direct rule, the United Kingdom Government stated that one of their most important objectives was to bring internment under the Special Powers Act to an end and to consider how far the powers under that Act could be dispensed with. On 7 April 1972, the Secretary of State for Northern Ireland announced the immediate release of 47 internees and 26 detainees. By mid-May 259 persons had been released. The decision to phase out internment was not dictated by any fall in the level of violence. Rather it was intended to open the way for political progress by reducing tension as the first step in the process of reconciliation.

On the political level, the United Kingdom was seeking the establishment of an equitable form of government for Northern Ireland, acceptable to both communities.

51. The introduction of direct rule, together with the release of detainees, caused resentment and dismay amongst the Protestant community. A two-day strike, which proved largely effective, was immediately called by the leader of one of the extremist movements on the Loyalist side.

Street demonstrations and marches called by the UDA appear to have begun shortly after 30 March 1972. The UDA was organised on pseudo-military lines, its members, estimated at between 20,000 and 30,000 persons, giving themselves military ranks. The UDA used its forces to erect barricades, set up road blocks and disrupt civil life generally. They paraded in large numbers through the centre of Belfast and elsewhere, many of them masked and dressed in para-military uniforms and on occasions openly carrying weapons such as sticks or cudgels. Such demonstrations, however, seem rarely to have led to physical violence. Whilst it was illegal to block roads, wear uniforms or carry offensive weapons, the security forces did not attempt to arrest those taking part in UDA demonstrations since they feared that major riots would result. Neither were the extrajudicial powers of detention and internment ever used, against either Catholics or Protestants, to combat this kind of illegal activity.

According to the respondent Government, consideration was given to the possibility of proscribing the UDA, but it was decided that on balance no good purpose would be served by doing so, not least because most of its members were not engaged in violence. It is generally accepted, however, that UDA membership overlapped, to some extent at least, with the smaller and more militant extremist bodies which were illegal, such as the UVF (see paragraph 20 above).

52. Other aspects of Loyalist activity during this stage of the crisis included the erection of barricades and the continuing intimidation of Catholics, a problem that became particularly grave in the summer of 1972. There were serious disturbances in Protestant areas in September and October 1972, with Loyalist terrorists exchanging fire with the security forces. The rioting in October ceased after the UDA had ordered the confrontation with the security forces to stop.

53. After the introduction of direct rule, there occurred a marked upward turn in Loyalist terrorism, evidenced by a few bombing attacks, a large-scale build-up of arms and ammunitions, and above all sectarian assassinations.

Sectarian assassinations, which the respondent Government term the outstanding feature of Loyalist violence since 1972, first reached serious proportions in the spring of 1972. Victims seem largely to have been chosen at random on no other ground than their membership of, or links with, the other community. Kidnapping and torturing sometimes accompanied this kind of indiscriminate killing. While both sides committed sectarian murders, it is generally accepted that Protestants were responsible for more than Catholics. The police had difficulty in detecting those responsible for sectarian assassinations. In particular, witnesses were reluctant to come forward and were subjected to intimidation. Accordingly, a confidential telephone system was installed in August 1972, whereby information could be given anonymously to the security forces.

54. Although Loyalist terrorist activity had grown significantly, it nonetheless remained that the great bulk of serious violence in this period was attributed to the IRA (see paragraph 61 below). The high level of IRA terrorism did not at all abate despite the phasing-out of internment. In fact, there was a steady rise in explosions, shooting incidents and casualties amongst the security forces over the period from March until the end of May. However, on 29 May 1972 the Official IRA, who had been responsible for a lesser amount of violence than the Provisionals, declared a truce which they have on the whole respected ever since. On 22 June 1972 the Provisional IRA in their turn announced a truce, becoming effective on 26 June. The Provisionals' truce was, however, called off on 9 July following an incident arising out of a communal argument between the UDA and Catholics about the allocation of accommodation on a Belfast housing estate.

55. After the breakdown of the ceasefire, Provisional IRA violence was resumed at an increased level. In July 1972 alone, 21 members of the security forces and 74 civilians were killed; in addition, there were nearly 200 explosions and 2,800 shooting incidents. These figures were the highest for any month in the entire emergency up to the end of 1974. Responsibility was attributed to Loyalists for 18 deaths and only 2 explosions.

56. Faced with the mounting tide of violence, the United Kingdom Government decided to restore the presence of the security forces in the "no-go" areas. After due warning had been given to the civilian population, a large-scale manoeuvre, known as Operation Motorman, was mounted on 31 July beginning at 4.00 a.m.

Even after Operation Motorman the police were still not able to function properly in Catholic areas. Access to Protestant areas remained easier for the police and they were not subject there to the same risk of attack. The army operated principally, and was employed to carry out police duties, in those areas where the minority community predominated.

57. Nevertheless, the level of violence, although still high, immediately fell. In August, September and October, there was an overall total of approximately 2,200 shooting incidents as opposed to 2,800 for July alone. The monthly average of deaths was less than half the July total, and the number of explosions became progressively less.

According to the respondent Government, a development contributing to the maintenance of this gradual reduction was the institution in November 1972 of a revised system for the detention of terrorists.

In the months following the introduction of direct rule – including July, the worst of these months for violence – no new internment orders were made and fresh detentions virtually ceased. From September onwards, after the breakdown of the attempted ceasefire, the number of detention orders – as before, against IRA suspects only – increased, while the rate of releases fell. There was, however, no large-scale operation to re-detain and re-intern people.

58. The political gesture of phasing out internment had not, as hoped, elicited a positive response from the IRA; on the contrary, violence had mounted to fresh heights. Furthermore, the authorities judged that the capability of the ordinary processes of law to counter IRA terrorism continued to be impeded by a number of circumstances such as the intimidation of potential witnesses and the difficulty of bringing to trial those responsible for directing terrorist operations.

The United Kingdom Government therefore became convinced that it was necessary to find fresh means of separating known terrorists from the population at large. On 21 September 1972, the Government announced that it was to set up a Commission, subsequently appointed in October under the chairmanship of Lord Diplock,

– 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 make recommendations".

Without waiting for the report of the Diplock Commission, the Government brought into effect on 7 November 1972 the Detention of Terrorists (Northern Ireland) Order 1972 (abbreviated hereafter to the "Terrorists Order"), an Order made in exercise of the powers conferred by the Temporary Provisions Act (see paragraph 49 above). This Order, which was of a temporary nature, revoked Regulations 11 (2) (detention) and 12 (1) (internment); in replacement it instituted, with further procedural guarantees for the protection of the individual concerned, a new system of "interim custody" and "detention" for persons suspected of participation in terrorist activities. Regulations 10 and 11 (1) (arrest) remained. Further details on the Order are given below at paragraphs 85 to 87.

59. The report of the Diplock Commission was presented to the United Kingdom Parliament in December 1972. This report analysed the minimum requirements of a judicial process, the effects of intimidation, possible changes in the rules of evidence and the need for detention without trial. It stated, inter alia:

"The fear of intimidation is widespread and well-founded. Until it can be removed and the personal safety of witnesses and their families guaranteed, the use by the Executive of some extrajudicial process for the detention of terrorists cannot be dispensed with."

The European Commission of Human Rights, on the basis of the evidence it had itself obtained, accepted that the findings of the Diplock report as to the level of intimidation were generally warranted.

60. Another contributory factor invoked by the respondent Government in connection with the fall in violence (see paragraph 57 above) was the intensive programme of consultations which they undertook with the political parties in Northern Ireland on the question of the future government of the province. These consultations, first commenced in July and August 1972, continued throughout the last weeks of 1972 and the early months of 1973. Apart from the steps taken on the security front, the United Kingdom Government thus maintained the new emphasis placed, since the introduction of direct rule, on attempting to find a solution to the crisis through political means (see paragraph 50 above).

61. The gradual reduction in the level of violence was maintained until the end of this period. The figures for deaths and explosions for January 1973 were, with one slight exception, lower than for any month since the

introduction of internment. Despite this general reduction, though, the development of Loyalist militancy and terrorist activity continued.

From 1 April 1972 until 31 January 1973, 398 persons were killed, 72 of these deaths being attributed to Loyalists. The overall total included 123 members of the security forces, the vast majority of whom were considered to have been killed by the IRA, and an equal number of victims of "factional or sectarian" assassinations. Of these assassinations, 69 were ascribed to Loyalists, 34 to the IRA, with no attribution being possible in the remaining 20 cases.

For their part, explosions totalled 1,141; no more than a small percentage – for example, 29 out of 691 explosions recorded between 1 July 1972 and 31 January 1973 – were regarded as being the work of Loyalists.

The increasing Protestant militancy was further evidenced by the statistics on intimidation, arms and ammunitions recovered, and charges brought for "terrorist-type offences". Thus, between 31 July 1972 and 31 January 1973, charges of the kind just referred to were laid against 640 persons, namely 402 Catholics and 238 Protestants; within this total, 45 individuals – 24 Protestants, including 16 in the one month of January 1973, and 21 Catholics – were charged with murder or attempted murder.

62. Loyalist terrorism was linked by the police with Protestant extremist organisations, notably the UVF. The police considered that the UVF's membership and acts of terrorism had increased from 1972 onwards following a period of relative inactivity after its 1969 bombing campaign (see paragraphs 24 and 30 above). It was looked on as a well-armed and organised body. In general, by about the middle of 1972 the police had reasonably good intelligence as to the identity of the violent elements on the Protestant side, but there were cases in 1972 in which it was impossible to procure sufficient evidence to bring such persons before the ordinary criminal courts. Nevertheless, none of the extrajudicial orders made between the introduction of direct rule and 5 February 1973 (see paragraph 64 below) applied to Loyalists.

63. Loyalist violence, however, remained on a far smaller scale than that of the Provisional IRA who, as the above-cited figures show, were still responsible for the great bulk of the terrorist deeds recorded.

In the view of the respondent Government and of the Commission, Loyalist and IRA violence were to be distinguished in further respects in addition to volume. Loyalist terrorism consisted largely of intimidation and sectarian assassinations, whereas the IRA campaign also included attacks on members of the security forces and the bombing of public places. As indicated earlier (paragraph 37 above), the character, aims and background of the various organisations engaged in terrorism on the two sides differed. The evidence suggests that the Loyalist terrorist groups were at the time more amorphous than the IRA. Within the security forces there was a tendency, which the Commission regarded as justified in many ways, to look on Loyalist terrorists as "criminals" or "hooligans" and on the IRA as the organised "terrorist" enemy. The prospects of obtaining sufficient admissible evidence for a criminal prosecution were, it seems, judged by the security forces as being better in relation to Loyalists than to IRA suspects. Given the continued inability of the police to operate normally in Catholic areas and the greater extent and organisation of the IRA campaign, the Commission found such an attitude "not surprising".

Finally, the statistics referred to above at paragraph 61 indicate that action, in the form of searches, recovery of arms and the bringing of criminal charges, was being taken by the authorities against both sides.

64. From 30 March until 7 November 1972 no new internment orders were made, although it was considered necessary to make 107 detention orders under Regulation 11 (2). By the latter date 628 men had been released from internment and 334 from detention, leaving 167 still interned and 119 still detained. Between the entry into force of the Terrorists Order and 31 January 1973, 166 interim custody orders and 128 detention orders were made while 94 persons were released.

65. In the context of the period from 30 March 1972 to 5 February 1973, the Commission noted in its report that subsequent to the introduction of direct rule the extrajudicial powers appear to have been exercised on a

more selective basis and, broadly speaking, in accordance with the following criteria:

(i) extrajudicial orders were served only on persons suspected of involvement in serious and organised terrorism;

(ii) they were used solely as a "last resort", that is only in cases where sufficient evidence was not available to justify prosecution before the ordinary courts;

(iii) as a general practice, they were not made against a person in respect of matters for which he had been tried and acquitted by an ordinary court, provided that it had been possible to put before the court all the relevant evidence.

66. At the beginning of February 1973, a British soldier was shot dead in a Protestant part of Belfast. Shortly afterwards, on 5 February 1973, two interim custody orders were made in respect of Loyalists. These two men were the first Loyalists against whom the extrajudicial powers were exercised. According to the applicant Government, the specific act of which one of these men was suspected – the bombing of a bus, responsibility for which had been claimed immediately after the event by the UVF – had caused a public outcry and had actually forced a decision to "intern" the first suspected Protestant terrorist. The decision itself had been the subject of discussions between the Secretary of State for Northern Ireland, the General Officer Commanding the British forces in the province and high ranking civil servants. The relevant higher authorities are noted in the Commission's report as recognising that the detention of Loyalists would lead to repercussions in the security situation. The Commission accepts that the risk of a severe outbreak of Protestant violence in response was clearly a very real one.

Prior to February 1973, it seems, no recommendations had been made to the Secretary of State for the detention or internment of Loyalists.

F. 5 February 1973 onwards

67. According to the applicant Government, the exercise of the extrajudicial powers against Loyalists brought in its wake widespread threats from the UDA. In general, however, the pattern of violence from February 1973 onwards can be said to have followed the previous pattern, although at a somewhat lower level than in 1972. The bulk of the terrorist acts, that is most of the bombing and shooting attacks on members of the security forces were still perpetrated by the Provisional IRA, with the Loyalists committing the majority of the sectarian assassinations.

From 1 February 1973 until 31 October 1974, the police registered 403 deaths, of which 116 were considered to be the responsibility of Loyalists. Of the 145 "factional or sectarian" murders recorded, 95 were ascribed to Loyalists and 40 to the IRA and in 10 cases no attribution was possible. In these twenty-two months, the number of explosions dropped to less than 1,600 – about 330 being attributed to Loyalists – as compared with approximately 1,400 in the one year of 1972. For their part, shootings fell from 10,628 to 7,112, although an increase occurred in punishment shootings such as "executions" and "knee-cappings".

68. On 8 August 1973, the Northern Ireland (Emergency Provisions) Act 1973 (hereafter abbreviated to the "Emergency Provisions Act") came into force. This Act, which was based mainly on the recommendations of the Diplock Commission (see paragraphs 58 and 59 above), repealed the 1922 Special Powers Act, Regulations 10 and 11 (1) and the 1972 Terrorists Order, while retaining in substance the procedure laid down in the latter Order. Briefly, the extrajudicial powers introduced under the Emergency Provisions Act were: (i) arrest and detention for 72 hours; (ii) interim custody for 28 days; and (iii) detention (see paragraphs 88 and 89 below for a fuller explanation). These emergency powers remained in force for a period of one year unless renewed. The Act also dealt with the trial and punishment by the ordinary courts of certain scheduled offences, for the most part offences concerned with violence. One provision, section 6, is referred to below at paragraph 136.

69. Between 1 February 1973 and 31 October 1974, interim custody orders were served on 99 Protestants and 626 Catholics; at all times many more Catholics than Protestants were actually held. Shortly before Christmas 1973, 65 detainees, 63 of whom were Catholics, were released.

70. During the same period, 2,478 persons were charged with "terrorist-type offences", the total being made up as follows: 1,042 Protestants, 1,420 Catholics and 16 soldiers. These figures included 60 Protestants and 66 Catholics charged with murder. In addition, searches were being conducted and arms recovered in relation to both sides.

71. While the level of violence was reduced in the years 1973 and 1974, progress on the political front was somewhat erratic. In March 1973, the United Kingdom Government published a White Paper setting out proposals for the constitutional future of the six counties. These proposals envisaged a new regional government with participation at "cabinet" level by representatives of both communities. A 1973 Act provided for the election of a Northern Ireland Assembly before the main constitutional legislation was enacted. Elections, based on the principle of proportional representation in order to ensure a fair representation for the Catholic minority, were held on 30 June 1973. Of the 78 members elected to the Assembly, 51 were in favour of the proposed constitutional changes, even though the extreme Loyalist parties had conducted a campaign of opposition.

72. The White Paper proposals were enacted in July 1973 in the form of the Northern Ireland Constitution Act 1973. This Act empowered the Assembly to legislate within certain limits and established an Executive. A Standing Advisory Commission on Human Rights was instituted to advise the Secretary of State. The Act also specifically provided that legislation passed by the Assembly would be void if it discriminated on the ground of religious belief or political opinion; in addition, discrimination by public authorities on such grounds was expressly rendered unlawful.

The provisions of the Act relating to legislative and executive powers required the passing by the United Kingdom Parliament of a Devolution Order. The Order was made on 19 December 1973 and the devolution became effective on 1 January 1974. This devolution, which was based on the principle of "power-sharing" between the two communities, marked for a certain time the end of direct rule.

73. The Northern Ireland Executive came into office on 1 January 1974. For the first time, a Northern Ireland Government contained representatives of both the majority and minority communities, but its life proved to be very brief. In May 1974, Protestant extremist groups combined to organise a politically motivated strike which brought about the downfall of the Executive and a return to direct rule from Westminster. On 29 May, Her Majesty, acting under the Constitution Act referred to in the preceding paragraph, 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 by the United Kingdom Parliament in order to make temporary provision for the government of the six counties. This Act suspended the functions of the above-mentioned Assembly and enabled laws to be made by Order in Council, enacted that no appointments to the Executive were to be made, and made the province's departments subject to the direction and control of the Secretary of State for Northern Ireland.

74. In 1974, the United Kingdom Government appointed the Gardiner Committee whose terms of reference were to consider what provisions and powers, consistent to the maximum extent practicable in the circumstances with the preservation of civil liberties and human rights, were required to deal with terrorism and subversion in Northern Ireland, including provisions for the administration of justice; to examine the working of the 1973 Emergency Provisions Act; and to make recommendations.

The report of the Gardiner Committee was presented to the United Kingdom Parliament in January 1975. This report critically examined trial procedures before the ordinary courts, existing and proposed offences connected with terrorism, the powers of the security forces, prison accommodation, special category prisoners and detention. When dealing with the question of detention, the Gardiner Committee noted at

paragraph 143:

"... We have detailed evidence of 482 cases of intimidation of witnesses between 1st January 1972 and 31st August 1974: and there must be many more. Civilian witnesses to murder and other terrorist offences are either too afraid to make any statement at all, or, having made a statement identifying the criminal, refuse in any circumstances to give evidence in court. The prevalence of murder and knee-capping make this only too easy to understand."

The Gardiner Committee, while making certain recommendations about detention and existing detention procedures, concluded at paragraphs 148 and 149:

"After long and anxious consideration, we are of the opinion that detention cannot remain as a long-term policy. In the short term, it may be an effective means of containing violence, but the prolonged effects of the use of detention are ultimately inimical to community life, fan a widespread sense of grievance and injustice, and obstruct those elements in Northern Ireland society which could lead to reconciliation. Detention can only be tolerated in a democratic society in the most extreme circumstances; it must be used with the utmost restraint and retained only as long as it is strictly necessary. We would like to be able to recommend that the time has come to abolish detention; but the present level of violence, the risks of increased violence, and the difficulty of predicting events even a few months ahead make it impossible for us to put forward a precise recommendation on the timing.

We think that this grave decision can only be made by the Government ..."

75. The Emergency Provisions Act of 1973, the main subject of the examination by the Gardiner Committee, was extended by Orders of 17 July 1974, 17 December 1974 and 27 June 1975. On 7 August 1975, the United Kingdom Parliament, acting on the recommendations of the Gardiner report, passed the Northern Ireland (Emergency Provisions) (Amendment) Act 1975 (hereafter abbreviated to the "Emergency Provisions Amendment Act"). This Act, which came into effect on 21 August 1975, amended the law relating to detention without trial (see paragraph 90 below), as well as containing further provisions concerned with criminal proceedings, the maintenance of order and the detection of crime in Northern Ireland. The Emergency Provisions Amendment Act is still in force, having twice been continued by Parliamentary Resolution.

76. No detailed statistics for the year 1975 are before the Court, although a few figures as to murder charges appear in the Commission's report. By 19 June, the police had been able to bring criminal charges against a total of 73 Protestants and 20 Catholics in respect of 49 sectarian murders.

On 5 December 1975, the Secretary of State for Northern Ireland signed orders for the release from detention of the last 75 individuals held under the emergency legislation. Since December 1975, according to the data before the Court, no person has been held in detention under the extrajudicial measures in Northern Ireland.

The terrorism and violence in the province have persisted through 1976 until the present day, accounting, for instance, for the murders of 173 persons and injuries to 770 others between 1 January and 28 June 1976.

77. The respondent Government have drawn attention, before both the Commission and the Court, to the continuous programme of reform implemented in Northern Ireland since 1969 in order to tackle the problems of unfair discrimination which had prompted the civil rights movement. Radical changes have been made in the structure of local government in the province: universal suffrage was introduced in 1969, proportional representation in 1972, local government boundaries were revised in 1973, and many important functions such as education and housing were transferred to special area boards or to central government bodies in the hope of ending or reducing the fear of discrimination in the social field. In 1969, the Northern Ireland Government established a Parliamentary Commissioner (i.e. Ombudsman) for Administration and a Commissioner for Complaints. The provisions of the Northern Ireland Constitution Act of 1973 directed against discrimination have already been referred to (paragraph 72 above). The Standing Advisory

Commission on Human Rights, set up under the last-mentioned Act, began in 1975 a detailed study of the extent to which the existing legislation provides a sufficient protection for human rights in the six counties. Legislation making discrimination unlawful in the private sector was introduced in 1976.

II. Extrajudicial deprivation of liberty

78. During the period under consideration, in addition to the ordinary criminal law which remained in force and in use, the authorities had various special powers to combat terrorism in Northern Ireland. These were all discretionary and underwent modification from time to time, as is described below; they enabled the authorities to effect extrajudicial deprivation of liberty falling into the following three basic categories:

– initial arrest for interrogation;

– detention for further interrogation (originally called "detention" and subsequently "interim custody");

– preventive detention (originally called "internment" and subsequently "detention").

79. In accordance with Article 15 para. 3 (art. 15-3) of the Convention, the United Kingdom Government sent to the Secretary-General of the Council of Europe, both before and after the original application to the Commission, six notices of derogation in respect of these powers. Such notices, of which the first two are not pertinent in the present case, were dated 27 June 1957, 25 September 1969, 20 August 1971, 23 January 1973, 16 August 1973 and 19 September 1975 and drew attention to the relevant legislation and modifications thereof.

A. The special powers act and regulations thereunder

80. The Special Powers Act empowered the Minister of Home Affairs for Northern Ireland, until 30 March 1972, or, thereafter and until 8 August 1973, the Secretary of State for Northern Ireland to take all such steps and issue all such orders as might be necessary for preserving peace and maintaining order. It was an enabling Act whose substantive provisions were contained in Regulations made thereunder. Before direct rule, either House of Parliament of Northern Ireland could, at the time Regulations were made, request the Governor to annul them; subsequently, new Regulations were subject to approval by the United Kingdom Parliament.

The number and scope of the Regulations in force varied over the years; they could be brought into use without any legislative act or proclamation. Those relevant to the present case were made in 1956 (Regulations 11 and 12) and 1957 (Regulation 10). They were utilised to implement the policy of internment introduced on 9 August 1971 and advice of their use was given to the Secretary-General by the United Kingdom Government's notice of derogation of 20 August 1971 (Yearbook of the Convention, volume 14, page 32). They conferred the four powers described below.

1. Arrest under Regulation 10

81. Under this Regulation

– any individual could be arrested without warrant and detained for the purpose of interrogation;

– the arrest could be authorised by any officer of the RUC;

– the officer had to be of the opinion that the arrest should be effected "for the preservation of the peace and maintenance of order";

– the detention could not exceed forty-eight hours.

Exercise of the power was not conditional on suspicion of an offence and, following a practice originating in instructions issued to the military police in May 1970, the individual was not normally informed of the reason for his arrest. Although looked upon in principle as a preliminary to detention and internment (see paragraphs 83 and 84 below), arrest sometimes had the object of interrogating a person about the activities of others. Some arrests, and some subsequent detention orders, seem to have been made on the basis of inadequate or inaccurate information.

The individual could not apply for bail (see the judgment of 12 October 1971 delivered by the High Court of Justice in Northern Ireland in the case of In Re McElduff). Moreover, arrests under this Regulation could not as a general rule be questioned in the courts but it was held in the judgment of 18 February 1972 delivered by the Armagh County Court in the case of Moore v. Shillington and Ministry of Defence that failure to comply with the proper procedure, including certain fundamental principles of the common law, invalidated exercise of the power.

On 8 August 1973 the Emergency Provisions Act (see paragraph 88 below) repealed Regulation 10. 2,937 persons had been arrested thereunder prior to 30 March 1972, of whom 1,711 had been released within forty-eight hours and 1,226 had had their detention prolonged under other Regulations.

2. Arrest under Regulation 11 (1)

82. Under this Regulation

– any individual could be arrested without warrant;

– the arrest could be effected by any police constable, member of the forces or person authorised by the "Civil Authority" (i.e. the Minister of Home Affairs or his delegates);

– the person making the arrest had to suspect the individual of acting, having acted or being about to act in a manner prejudicial to the preservation of the peace or maintenance of order or of having committed an offence against the Regulations;

– the duration of the arrest was unlimited in law but limited in practice to seventy-two hours.

Arrest under this Regulation could follow arrest under Regulation 10, giving a total of at most one hundred and twenty hours. The individual was not normally informed of the reason for his arrest.

Judicial decisions show that review by the courts of the exercise of this power was limited. They could intervene if there had been bad faith, absence of a genuine suspicion, improper motive or failure to comply either with the statutory procedures or with such principles of the common law as were held not to be excluded by the language of the Regulation; however, they could not in general enquire into the reasonableness or fairness of the suspicion or of the decision to exercise the power (see the McElduff case and the judgment of 11 January 1973 delivered by the High Court of Justice in Northern Ireland in the case of Kelly v. Faulkner and others).

Under Regulation 11 (4), the individual could apply to the Civil Authority for release on bail and, if that Authority so directed, might be conditionally discharged from custody by a magistrate; however, this right was abolished on 7 November 1972 with the revocation of Regulation 11 (4) by the Terrorists Order (see paragraph 85 below).

Regulation 11 (1) was repealed on 8 August 1973 by the Emergency Provisions Act (see paragraph 88 below).

3. Detention under Regulation 11 (2)

83. Under this Regulation

– any individual arrested under Regulation 11 (1) could be detained in prison or elsewhere on the conditions directed by the Civil Authority;

– the power to make detention orders was vested in the Civil Authority and the initiative for them came from the police. The respondent Government said that they were always made on the personal decision, before direct rule, of the Prime Minister of Northern Ireland or, thereafter, of the Secretary of State for Northern Ireland or two other Ministers;

– detention continued until the individual was discharged by the Attorney-General or brought before a court. Its duration was unlimited in law but limited in practice, generally, to twenty-eight days.

The respondent Government said that detention orders were made to enable the police to complete enquiries. If they had sufficient evidence to secure a conviction, the individual would be brought before an ordinary court in which event he was entitled to at least twenty-four hours' notice of the charge. Alternatively, he might be released after a limited period or be the subject of an internment order (see paragraph 84 below).

The detainee had the limited right to apply for bail afforded by Regulation 11 (4) (see paragraph 82 above). The position concerning supervision by the courts was the same as under Regulations 10 and 11 (1) (see the McElduff and the Kelly cases) and there was no other procedure for review of the detention.

More than 1,250 detention orders were made under Regulation 11 (2), the vast majority before 30 March 1972. Nearly 120 orders were still in force on 7 November 1972 when the Regulation was revoked by the Terrorists Order (see paragraph 85 below).

4. Internment under Regulation 12 (1)

84. Under this Regulation

– any individual could by order be subjected to restrictions on movement or interned;

– the power to make such orders was vested before direct rule in the Minister of Home Affairs for Northern Ireland on the recommendation of a senior police officer or of an advisory committee. The respondent Government said that they were always made on the personal decision of the Prime Minister of Northern Ireland;

– the Minister had to be satisfied that for securing the preservation of the peace and the maintenance of order it was expedient that a person suspected of acting, having acted or being about to act in a manner prejudicial te peace and order be subjected to such restrictions or interned;

– the duration of internment was unlimited. In many cases, after prolongation under later legislation (see paragraphs 85 and 88 below), it lasted for some years.

Every order had to provide for the consideration by and advisory committee of representations made by the individual. In fact it reviewed the position of all internees whether they made representations or not. The committee, composed of a judge and two laymen, could recommend, but not order, release.

The individual had no right in law to appear or be legally represented before the committee, to test the grounds for internment, to examine witnesses against him or to call his own witnesses. In fact, he was allowed to appear and be interviewed and every effort was made to trace witnesses he proposed. The committee required the security forces to produce the information in their possession but statements of evidence against the internee so obtained remained anonymous, apparently to avoid retaliation. According to the Commission, the committee probably relied on evidence not admissible in a court of law.

The position concerning the review of internment orders by the courts was the same as under Regulations

10, 11 (1) and 11 (2) (see the Kelly case).

796 orders were made under Regulation 12 (1), all before the introduction of direct rule. Nearly 170 orders were still in force on 7 November 1972 when the Regulation was revoked by the Terrorists Order (see paragraph 85 below).

By 30 March 1972, 588 of the 796 cases had been reviewed by the advisory committee (although 451 internees refused to appear) and 69 releases recommended. Of the 69 individuals all were released except 6 who refused to give an undertaking as to future good behaviour.

B. The Terrorists Order

85. The Terrorists Order, a temporary measure made under the Temporary Provisions Act (see paragraph 49 above), introduced an independent review of decisions on detention for further interrogation and on preventive detention whereas, previously, such decisions had been taken by the administrative authority alone. The Order revoked with effect from 7 November 1972 Special Powers Regulations 11 (2) and (4) and 12 (1) – but not 10 and 11 (1) – and converted existing detention or internment orders into interim custody orders (see paragraph 86 below). The Order defined "terrorism" as "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".

The Secretary-General of the Council of Europe was advised of the making of this Order by the United Kingdom Government's notice of derogation of 23 January 1973 (Yearbook of the Convention, volume 16, pages 24 and 26). The Order conferred the powers described below and was repealed by the Emergency Provisions Act on 8 August 1973 (see paragraph 88 below).

1. Interim custody under Article 4

86. Under this Article

– any individual could by an interim custody order be temporarily detained;

– the power to make such orders was vested in the Secretary of State for Northern Ireland;

– the power was exercisable where it appeared to the Secretary of State that the individual was suspected of having been concerned in the commission or attempted commission of any act of terrorism or the organisation of persons for the purpose of terrorism;

– detention was limited to twenty-eight days unless the case was referred by the Chief Constable – or, as regards persons originally held under the Special Powers Regulations, by the Secretary of State – to a commissioner for determination, in which event it could continue only until such determination.

The individual had to be released after twenty-eight days if his case had not by then been referred to a commissioner but, in fact, all cases, including those of persons originally detained or interned under the Special Powers Regulations, were so referred. During the order's initial twenty-eight days and during its extension pending the commissioner's adjudication, which could take up to six months, the individual had no means under the Terrorists Order of challenging the lawfulness of his detention.

Figures for interim custody orders appear in paragraph 89 below.

2. Detention under Article 5

87. Under this Article

– where the case of an individual subject to an interim custody order under Article 4 was referred to a

commissioner, he could make a detention order for that individual's detention;

– the commissioner had first to satisfy himself by enquiry that the individual had been concerned in the commission or attempted commission of any act of terrorism or the organisation of persons for the purpose of terrorism and that his detention was necessary for the protection of the public. If so satisfied, he had to make an order; if not, he had to direct the individual's discharge;

– the duration of detention was unlimited. In many cases, after prolongation under later legislation (see paragraph 88 below), it lasted for some years.

Unlike the recommendation of the advisory committee under Regulation 12 (1), a commissioner's decision to release was binding. The Secretary of State retained independent powers to release detainees with or without conditions and to recall to detention an individual conditionally released by him. He could also at any time refer a detention order case to a commissioner for review; in that event discharge was obligatory unless the commissioner considered continued detention necessary for public protection.

Proceedings before a commissioner took place in private. At least three days before the hearing the individual had to be notified in writing of the nature of the terrorist activities to be enquired into. He had the right to legal aid and to be legally represented and had to be present unless removed on grounds of disorderly conduct or of security. He could be required to answer questions; he had no right to examine or have examined witnesses against him but the respondent Government said that, in practice, cross-examination took place. The individual had to be informed, as far as possible, of matters dealt with in his absence for security reasons but had no right to test evidence given at that time. The commissioner might receive evidence however obtained and irrespective of whether it would be admissible in a court of law. This procedure applied, mutatis mutandis, both to initial references to a commissioner and to later references for review.

Article 6 of the Terrorists Order introduced a right for the individual to appeal within twenty-one days against a detention order to a detention appeal tribunal of at least three members. Procedurally the individual's position before the tribunal was similar to his position before a commissioner; however, he was entitled to be present only when fresh evidence was produced, which was rare as the tribunal generally relied on the evidence furnished to the commissioner.

Both commissioners and members of the tribunal had to have experience of judicial office or at least ten years' experience as a barrister, advocate or solicitor.

Figures for detention orders appear in paragraph 89 below.

C. The Emergency Provisions Act

88. The Emergency Provisions Act, based on the recommendations of the Diplock Commission (see paragraph 59 above), repealed with effect from 8 August 1973 the Special Powers Act, Regulations 10 and 11 (1) and the Terrorists Order but maintained in effect – under its own provisions – the existing interim custody and detention orders. The emergency powers contained in the new Act were to remain in force for one year unless renewed for a period not exceeding one year by an Order of the Secretary of State approved by both United Kingdom Houses of Parliament; they were in fact renewed for six-monthly periods commencing on 25 July 1974, 25 January 1975 and 25 July 1975 and then amended on 21 August 1975 by the Emergency Provisions Amendment Act (see paragraph 90 below). The Secretary-General of the Council of Europe was advised of the new legislation, and of the subsequent renewal and amendment of the emergency powers, by the United Kingdom Government's notices of derogation of 16 August 1973 (Yearbook of the Convention, volume 16, pages 26 and 28) and 19 September 1975 (document DH (75) 5, page 5).

The new Act (section 10 (5) and Schedule 1) re-enacted, in substance, the powers contained in the Terrorists

Order, retaining its definition of terrorism. Accordingly, the powers to make interim custody and detention orders, and the review thereof by a commissioner and the appeal tribunal, continued in the manner, on the conditions and subject to the procedure described in paragraph 86 and 87 above, with the significant differences that:

– the individual had to receive a written statement concerning the terrorist activities to be investigated by the commissioner at least seven (rather than three) days before the hearing;

– in addition to his optional power to refer, the Secretary of State had to refer to a commissioner the case of anyone held under a detention order for one year since the making of the order or for six months since the last review.

Section 10 of the Act also provided that any constable might arrest without warrant a person whom he suspected of being a terrorist; detention after arrest was limited to seventy-two hours. The Act conferred certain other powers of arrest (sections 11 and 12) which are not in issue in the present case.

89. Figures for interim custody and detention orders (under the Terrorists Order and the Emergency Provisions Act) are:

– November 1972 to 1 February 1973: 166 interim custody orders (under the Terrorists Order);

– November 1972 to January 1973: 128 individuals detained under the Terrorists Order and 94 released;

– November 1972 to 5 September 1973: the commissioners reviewed 579 cases (296 interim custody orders made under the Terrorists Order or the Emergency Provisions Act; 165 former internments and 118 former detentions under the Special Powers Regulations); they made 453 detention orders and directed release in the remaining 126 cases;

– November 1972 to 3 October 1973: 44 appeals were lodged with the detention appeal tribunal; 34 had been heard and 25 releases directed.

D. The Emergency Provisions Amendment Act

90. With effect from 21 August 1975, the Emergency Provisions Amendment Act, based on the recommendations of the Gardiner Committee (see paragraph 74 above), made, inter alia, new provisions for the detention of terrorists which have not been the subject of the present case. The Act reverted to the principle of detention by order of the Secretary of State, rather than of a commissioner, such order to be preceded by a report from a legally qualified Adviser.

91. As indicated in the United Kingdom Government's communication of 12 December 1975 to the Secretary-General of the Council of Europe (Yearbook of the Convention, volume 18, page 18), on 5 December 1975 the Secretary of State signed orders for the release of the last 75 persons detained under the emergency legislation; all were released forthwith except those remanded in custody on criminal charges or serving sentences of imprisonment. Since then, according to the data before the Court, the power to make detention orders under the Emergency Provisions Amendment Act has not been exercised.

III. Allegations of ill-treatment

A. Introduction

92. As recounted above at paragraphs 39 and 41, on 9 August 1971 and thereafter numerous persons in Northern Ireland were arrested and taken into custody by the security forces acting in pursuance of the emergency powers. The persons arrested were interrogated, usually by members of the RUC, in order to

determine whether they should be interned and/or to compile information about the IRA. In all, about 3,276 persons were processed by the police at various holding centres from August 1971 until June 1972. The holding centres were replaced in July 1972 by police offices in Belfast and at Ballykelly Military Barracks.

93. Allegations of ill-treatment have been made by the applicant Government in relation both to the initial arrests and to the subsequent interrogations. The applicant Government submitted written evidence to the Commission in respect of 228 cases concerning incidents between 9 August 1971 and 1974.

The procedure followed for the purposes of ascertaining the facts (Article 28, sub-paragraph (a), of the Convention) (art. 28-a) was one decided upon by the Commission and accepted by the Parties. The Commission examined in detail with medical reports and oral evidence 16 "illustrative" cases selected at its request by the applicant Government. The Commission considered a further 41 cases (the so-called "41 cases") on which it had received medical reports and invited written comments; it referred to the remaining cases.

The nature of the evidence submitted by the two Governments and the procedure followed by the Commission in its investigation of such evidence are set out in some detail in the Commission's report. The Commission came to view that neither the witnesses from the security forces nor the case-witnesses put forward by the applicant Government had given accurate and complete accounts of what had happened. Consequently, where the allegations of ill-treatment were in dispute, the Commission treated as "the most important objective evidence" the medical findings which were not contested as such.

The following account of events is based on the information set out in the Commission's report and in the other documents before the Court.

94. In order to protect the identity of certain persons, notably witnesses, the published version of the Commission's report (see paragraph 7 above) incorporated changes to the original text; these changes mainly took the form of designating such persons by letters and/or figures.

95. The Commission grouped the cases into five categories, according to the place where the ill-treatment was said to have been inflicted, namely:

(1) the unidentified interrogation centre or centres;
(2) Palace Barracks, Holywood;
(3) Girdwood Park Barracks;
(4) Ballykinler Regional Holding Centre; and
(5) various other miscellaneous places.

B. The unidentified interrogation centre or centres

96. Twelve persons arrested on 9 August 1971 and two persons arrested in October 1971 were singled out and taken to one or more unidentified centres. There, between 11 to 17 August and 11 to 18 October respectively, they were submitted to a form of "interrogation in depth" which involved the combined application of five particular techniques.

These methods, sometimes termed "disorientation" or "sensory deprivation" techniques, were not used in any cases other than the fourteen so indicated above. It emerges from the Commission's establishment of the facts that the techniques consisted of:

(a) wall-standing: forcing the detainees to remain for periods of some hours in a "stress position", described by those who underwent it as being "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 weight of the body mainly on the fingers";

(b) hooding: putting a black or navy coloured bag over the detainees' heads and, at least initially, keeping it there all the time except during interrogation;

(c) subjection to noise: pending their interrogations, holding the detainees in a room where there was a continuous loud and hissing noise;

(d) deprivation of sleep: pending their interrogations, depriving the detainees of sleep;

(e) deprivation of food and drink: subjecting the detainees to a reduced diet during their stay at the centre and pending interrogations.

The Commissions's findings as to the manner and effects of the application of these techniques on two particular case-witnesses are referred to below at paragraph 104.

97. From the start, it has been conceded by the respondent Government that the use of the five techniques was authorised at "high level". Although never committed to writing or authorised in any official document, the techniques had been orally taught to members of the RUC by the English Intelligence Centre at a seminar held in April 1971.

98. The two operations of interrogation in depth by means of the five techniques led to the obtaining of a considerable quantity of intelligence information, including the identification of 700 members of both IRA factions and the discovery of individual responsibility for about 85 previously unexplained criminal incidents.

99. Reports alleging physical brutality and ill-treatment by the security forces were made public within a few days of Operation Demetrius (described above at paragraph 39). A committee of enquiry under the chairmanship of Sir Edmund Compton was appointed by the United Kingdom Government on 31 August 1971 to investigate such allegations. Among the 40 cases this Committee examined were 11 cases of persons subjected to the five techniques in August 1971; its findings were that interrogation in depth by means of the techniques constituted physical ill-treatment but not physical brutality as it understood that term. The Committee's report, adopted on 3 November 1971, was made public, as was a supplemental report of 14 November by Sir Edmund Compton in relation to 3 further cases occurring in September and October, one of which involved the techniques.

100. The Compton reports came under considerable criticism in the United Kingdom. On 16 November 1971, the British Home Secretary announced 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, which was adopted on 31 January 1972, contained a majority and a minority opinion. The majority report concluded that the application of the techniques, subject to recommended safeguards against excessive use, need not be ruled out on moral grounds. On the other hand, the minority report by Lord Gardiner disagreed that such interrogation procedures were morally justifiable, even in emergency terrorist conditions. Both the majority and the minority considered the methods to be illegal under domestic law, although the majority confined their view to English law and to "some if not all the techniques".

101. The Parker report was published on 2 March 1972. On the same day, the United Kingdom Prime Minister stated in Parliament:

"[The] Government, having reviewed the whole matter with great care and with reference to any future operations, have decided that the techniques ... will not be used in future as an aid to interrogation."

He further declared:

"The statement that I have made covers all future circumstances. If a Government did decide ... that additional techniques were required for interrogation, then I think that ... they would probably have to come to the House and ask for the powers to do it."

As foreshadowed in the Prime Minister's statement, directives expressly prohibiting the use of the techniques, whether singly or in combination, were then issued to the security forces by the Government (see paragraph 135 below).

102. At the hearing before the Court on 8 February 1977, the United Kingdom Attorney-General made the following declaration:

"The Government of the United Kingdom have considered the question of the use of the 'five techniques' with very great care and with particular regard to Article 3 (art. 3) of the Convention. They now give this unqualified undertaking, that the 'five techniques' will not in any circumstances be reintroduced as an aid to interrogation."

103. The Irish Government referred to the Commission 8 cases of persons submitted to the five techniques during interrogation at the unidentified centre or centres between 11 and 17 August 1971. A further case, that of T 22, considered in the Commission's report in the context of Palace Barracks, concerned the use of the five techniques in October 1971. The Commission examined as illustrative the cases of T 6 and T 13, which were among the 11 cases investigated by the Compton Committee.

104. T 6 and T 13 were arrested on 9 August 1971 during Operation Demetrius. Two days later they were transferred from Magilligan Regional Holding Centre to an unidentified interrogation centre where they were medically examined on arrival. Thereafter, with intermittent periods of respite, they were subjected to the five techniques during four or possibly five days; neither the Compton or Parker Committees nor the Commission were able to establish the exact length of the periods of respite.

The Commission was satisfied that T 6 and T 13 were kept at the wall for different periods totalling between twenty to thirty hours, but it did not consider it proved that the enforced stress position had lasted all the time they were at the wall. It stated in addition that the required posture caused physical pain and exhaustion. The Commission noted that, later on during his stay at the interrogation centre, T 13 was allowed to take his hood off when he was alone in the room, provided that he turned his face to the wall. It was not found possible by the Commission to establish for what periods T 6 and T 13 had been without sleep, or to what extent they were deprived of nourishment and whether or not they were offered food but refused to take it.

The Commission found no physical injury to have resulted from the application of the five techniques as such, but loss of weight by the two case-witnesses and acute psychiatric symptoms developed by them during interrogation were recorded in the medical and other evidence. The Commission, on the material before it, was unable to establish the exact degree of any psychiatric after-effects produced on T 6 and T 13, but on the general level it was satisfied that some psychiatric after-effects in certain of the fourteen persons subjected to the techniques could not be excluded.

105. T 13 claimed in addition to have been beaten and otherwise physically ill-treated, but the medical evidence before the Commission, as the delegates explained at the hearing before the Court on 21 April 1977, gave reason to doubt that he had been assaulted to any severe degree, if at all. Accordingly, the Commission treated the allegations in regard to T 13 as concerning the five techniques only.

T 6 similarly alleged that he was also assaulted in various ways at, or during transport to and from, the centre. On 17 August 1971 he was medically examined on leaving the centre and also on his subsequent arrival at Crumlin Road Prison where he was then detained until 3 May 1972. The medical reports of these examinations and photographs taken on the same day revealed on T 6's body bruising and contusions that had not been present on 11 August. While not accepting all T 6's allegations, the Commission was "satisfied beyond a reasonable doubt that certain of these injuries ... [were] the result of assaults committed on him by

the security forces at the centre". As a general inference from the facts established in T 6's case, the Commission also found it "probable that physical violence was sometimes used in the forcible application of the five techniques".

106. Although several other cases were referred to before the Commission by the applicant Government in connection with the unidentified interrogation centre or centres, no detailed allegations or findings are set out in the Commission's report except in the case of T 22 which was one of the "41 cases". The medical evidence established that when leaving the centre and on entering Crumlin Road Prison, T 22 had suffered superficial bruising. The Commission's short assessment of this case, which it described as comparable to the case of T 6, was that "there exists a strong indication that the course of events was similar to that found in the illustrative [case]".

107. T 13 and T 6 instituted civil proceedings in 1971 to recover damages for wrongful imprisonment and assault; their claims were settled in 1973 and 1975 respectively for £15,000 and £14,000. The twelve other individuals against whom the five techniques were used have all received in settlement of their civil claims compensation ranging from £10,000 to £25,000.

C. Palace Barracks

1. Introduction

108. Palace Barracks, a military camp in Holywood, County Down, on the outskirts of Belfast, was used as a holding centre for some days in August 1971 and then from September 1971 until June 1972. During this period, when it was the main interrogation centre in Northern Ireland, some 2,000 persons from all over the province passed through Palace Barracks. The centre was operated jointly by the army and the RUC. Persons held there were photographed immediately after arriving and, from November 1971 onwards (see paragraph 133 below), examined by a doctor on entry as well as departure.

The interrogations – records of which were kept for filing – were conducted solely by police, usually at least two in number, from the Special Branch of the RUC. These men, who were independent of the uniformed RUC, came under the responsibility of an officer in charge with the rank of inspector. Many of them interrogated prisoners both at Palace Barracks and at Girdwood Park on a rotating system.

109. A total of 45 cases concerned with Palace Barracks were submitted to the Commission by the applicant Government. The Commission examined in detail 9 illustrative cases, all relating to the period between September and November 1971. It also considered a further 8 cases, included in the "41 cases"; of these 8 cases, 6 covered the months October to December 1971 while 2 concerned events occurring in January and May 1972.

2. The illustrative cases

(a) The cases of T 2, T 8, T 12 and T 15

110. These four men were all arrested early on 20 September 1971 at their homes in County Tyrone and taken to Palace Barracks for interrogation. They were photographed and examined by an army doctor immediately after their arrest; apart from one small scar, no injuries were apparently found. The next day they were transferred together from Palace Barracks to Crumlin Road Prison. They all alleged that at various times they had been made to stand spreadeagled against a wall and had been severely beaten or otherwise physically ill-treated, particularly during interrogations. On their arrival at Crumlin Road, a prison doctor found contusions and bruising on three of the men; on 23 September, another doctor found similar injuries on the fourth man. In the Commission's view, this medical evidence made "it highly probable that all the four received their injuries while at Palace Barracks".

Despite the absolute denials given in evidence by witnesses from the security forces at Palace Barracks, the

Commission held the following facts, amongst others, to be established beyond reasonable doubt:

"The four men ... were severely beaten by members of the security forces ... The beating was not occasional but it was applied in a sort of scheme in order to make them speak ..."

Each man instituted civil proceedings for damages and rejected the offer of £750 made in settlement of his claim.

(b) The cases of T 9 and T 14

111. T 9 and T 14 were arrested together by an army patrol in a Belfast street on the night of 16 October 1971. They were brought to Palace Barracks for interrogation and held there until the evening of 18 October when they were transferred to Crumlin Road Prison. On arrival at the latter institution, they were examined by a prison doctor. T 14 was immediately transported to the prison hospital wing where he spent the next three weeks. Both men soon made statements alleging ill-treatment at Palace Barracks. T 14, for instance, claimed that he had been made to stand spreadeagled against a wall while being questioned by a Special Branch man who was kicking him continuously on the insides of the legs. They obtained legal assistance and were further medically examined.

The medical evidence disclosed injuries described as "substantial" in T 9's case and "massive" in T 14's case. The Commission concluded that "the proved injuries must have been caused while the two men were at Palace Barracks". Fourteen members of the security forces at the centre gave evidence completely denying any knowledge of the injuries or their causes, but these denials were not believed by the Commission. While viewing certain of the two men's assertions as exaggerated, invented or improbable, the Commission made the following finding:

"T 9 and T 14 ... were subjected to physical violence, especially kicking and beating, during or between a series of 'interviews' conducted by the Special Branch."

Civil proceedings seeking damages were instituted by T 14 and T 9; their claims were settled for £2,250 and £1,975 respectively. They also, it seems, complained to the police, but no evidence was produced to the Commission of a police enquiry into their complaints.

(c) The cases of T 1 and T 4

112. These two cases, although not directly connected, have certain similarities and were grouped together by the Commission.

113. T 1 was arrested at his home in the early hours of 20 October 1971 and taken by soldiers to Palace Barracks. He was questioned several times that day. At about 6.30 p.m. he was released without being charged. The following morning, he was examined by a general practitioner who found what he considered to be rather superficial injuries.

T 1 alleged that he had been kicked and punched while being made to stand against the wall with his weight on his fingertips. These allegations were completely denied by witnesses from the police. No corroborated evidence was produced by either side to confirm or rebut the suggestion made by police witnesses that T 1 might have received his injuries after his release while being "questioned" by the IRA. T 1 did concede having had some previous contacts, albeit superficial and undesired, with IRA members. The Commission found inter alia:

"It cannot ... be concluded beyond a reasonable doubt that [T 1] ... received these injuries in the way alleged by him."

Although T 1 said that he had brought a civil action for damages, there is no information as to the outcome of those proceedings. He further stated that after complaint to the RUC, he was told that his allegations had

been investigated but found to be unsubstantiated.

114. T 4 was arrested by an army patrol in the street near his home in the afternoon of 2 November 1971. He was taken by army vehicle first to a police station, where he stayed for less than an hour, and then on to Palace Barracks for questioning. He was released the same day. He alleged that he had been kicked and beaten by soldiers when lying on the floor of the army vehicle and thereafter beaten during interrogation by the police at Palace Barracks. Both the army and the police witnesses denied these allegations.

The day after his release, T 4 saw his family doctor who found extensive bruising to his body. On 4 November, he was admitted to hospital where he remained under observation for about two weeks.

The Commission considered that the medical evidence was difficult to reconcile with the account given by T 4 of his alleged ill-treatment. The findings of the Commission included the following:

"Bearing in mind that twelve 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."

There is no evidence of any civil action brought by T 4 or of any army investigation into complaints he apparently made; the results of a police enquiry are not known.

(d) The case of T 10

115. T 10 was arrested at his house early in the morning of 18 November 1971 and subsequently taken to Palace Barracks for interrogation. The next day a detention order was served on him and he was transferred to Crumlin Road Prison. T 10 alleged that while at the interrogation centre he was subjected to what the Commission terms "comparatively trivial beatings".

He was medically examined on arrival at Palace Barracks, when entering Crumlin Road Prison and on 20 November by his family doctor who saw him in prison. The latter two examinations revealed that T 10 had suffered a perforation to the right eardrum and some minor bruising. Despite absolute denials on the part of the five witnesses from the security forces, the Commission found it proved beyond reasonable doubt that T 10's injuries could not have been caused in any way materially different from that described in his evidence. In the Commission's view, it was to be taken as established that the acts complained of occurred at Palace Barracks.

T 10 did not, it seems, institute civil proceedings for damages. On the other hand, he complained through his lawyer against a number of police officers, but no evidence was produced by the respondent Government of any real police investigation.

3. The "41 cases"

116. Within this group, there are 8 cases (T 22, T 27, T 28, T 29, T 30, T 31, T 48 and one other) raising allegations of ill-treatment by the army during transport to Palace Barracks and by the police during interrogation there. The case of T 22 had already been mentioned in connection with the unidentified centre or centres (see paragraph 106 above).

The medical reports show that the persons concerned had sustained injuries in varying degrees. No evidence, though, was obtained from the respondent Government. The Commission, while therefore feeling it unsafe to make any findings on the basis of the medical reports alone, stated in its short assessment:

"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."

T 27, T 30 and T 31 accepted sums of £900, £200 and £750 respectively in settlement of civil claims brought. At the time of the Commission's report, actions for damages were still pending in the cases of T 22 and T 29; a substantial sum was ultimately received by the former person as a victim of the five techniques (see paragraph 107 above).

4. The remaining cases

117. In the absence of corroborative, including medical, evidence, the Commission did not find it possible to examine further another 28 cases concerning Palace Barracks. It merely confirmed that allegations of ill-treatment had been made and that, in some cases, compensation had been paid.

5. General

118. The Commission considered on a number of grounds that the police officers in command at Palace Barracks at the relevant time could not have been ignorant of the acts of ill-treatment found to have been committed. Yet, on their own evidence, these officers took no action to prevent the occurrence or repetition of such ill-treatment.

Knowledge on the part of the higher authorities of allegations regarding this centre was inferred by the Commission from various facts. Nevertheless, no evidence of police investigations into these allegations was produced to the Commission and, apart from Sir Edmund Compton's "supplemental" report into three Palace Barracks cases (see paragraph 99 above), no general enquiry took place. Furthermore, no disciplinary or criminal proceedings seem to have been instituted against any of the police officers who either committed or failed to react against the acts established. No special instructions relating to the proper treatment of persons in custody were issued to the RUC until April 1972 (see paragraph 135 below). Through their inaction, the authorities in Northern Ireland were held by the Commission to have shown indifference towards the treatment of prisoners at Palace Barracks in the autumn of 1971.

D. Girdwood Park Regional Holding Centre

1. Introduction

119. This army camp on the outskirts of Belfast, adjacent to Crumlin Road Prison, was used as a regional centre for holding and interrogating suspects, 186 of whom passed through it in August 1971. It was temporarily closed in that month and re-opened in October 1971 as a police holding centre. The arrangements at Girdwood for receiving, detaining, interrogating and releasing suspects were essentially the same as at Palace Barracks (see paragraph 108 above).

2. Illustrative case

120. Of 36 cases involving allegations of ill-treatment at Girdwood, the Commission examined in detail as illustrative that of T 16. It found that this Protestant, aged over sixty and arrested in connection with the possession of arms and a radio aerial, had been severely injured on 13 August 1971 by army personnel during transport to Girdwood and following his arrival there. He had been insulted, kicked, beaten and dragged by the hair and his evidence had been corroborated by that of T 23 who had been arrested at the same time. T 16's ill-treatment was not connected with his formal interrogation which was correctly conducted by the Special Branch. Although the army doctor at Girdwood treated T 16 for a diabetic condition, the Commission considered the medical examination inadequate since no notice was taken of the injuries which were observed later by other doctors.

T 16 instituted civil proceedings for damages and the respondent Government indicated to the Commission that his action would certainly be settled. He had also complained immediately to the RUC but, according to the applicant Government, some three years elapsed before he was told that no action was going to be taken

against the army; the British Government attributed the impossibility of initiating a prosecution to T 16's inability to identify his assailants.

3. The "41 cases"

121. The Commission also considered, from the "41 cases", the cases of T 23, T 32, T 33, T 49 and T 50, three of which dated from August 1971, one from November 1971 and one from January 1972. All these persons had been released after questioning, except T 49 who had been charged and presumably detained thereafter. They alleged that they had been assaulted by army personnel on arrest and during transport to Girdwood; T 49 also complained of ill-treatment by the Special Branch during interrogation. Each case was submitted by the Irish Government by means of a medical report and also, except for T 33, the complainant's own statement; no evidence was obtained from the respondent Government. A medical examination, made within twenty-four hours of release or detention, revealed injuries to each individual.

In the Commission's view:

(a) it was fairly safe to conclude that certain of T 23's and T 50's injuries had been caused as alleged, particularly in the case of T 23, where the circumstances had been examined in connection with T 16's case (see paragraph 120 above). A strong probability also existed for T 32 whose claim for damages was later settled for £750;

(b) although injuries had been found on T 33, it would be difficult to consider the facts established;

(c) the allegations and injuries in the case of T 49 were comparable to those in the Palace Barracks cases; reference was made to the Commission's assessment of some of the "41 cases" relating to that place (see paragraph 116 above).

4. The remaining cases

122. In the absence of corroborative, including medical, evidence, the Commission did not find it possible to examine further another 30 cases concerning Girdwood. It merely confirmed that allegations of ill-treatment had been made and that, in some cases, compensation had been paid.

E. Ballykinler Regional Holding Centre

1. Introduction

123. Ballykinler was an army camp in County Down used in August 1971 for holding and interrogating some of those arrested during Operation Demetrius (see paragraph 39 above). It was under the overall authority of the RUC, the army being responsible for security and the Special Branch conducting the interrogations. On 9 and 10 August, 89 persons were brought to Ballykinler of whom, by 11 August, 80 had been removed to a place of detention and the remainder released.

The applicant Government requested the Commission to make findings on all the 18 cases in respect of which they had filed statements alleging ill-treatment at the camp.

124. Prior to the Commission's enquiry, conditions at Ballykinler in August 1971 had been examined by the Compton Committee (see paragraph 99 above) and by the Armagh County Court in the Moore case. The Compton Committee considered that certain exercises which detainees had been made to do "under some degree of compulsion" must have caused hardship but were the result of lack of judgment rather than an intention to hurt or degrade; it accordingly made no findings of deliberate ill-treatment. In the Moore case, on the other hand, the judge rejected defence evidence, in particular as to the origin of the exercises, and concluded that the treatment of persons held at Ballykinler was "deliberate, unlawful and harsh"; he awarded the plaintiff £300, the maximum amount within his jurisdiction.

2. Illustrative case

125. The Commission examined, as illustrative, the case of T 3 and found that:

(a) he and other persons arrested were made (in some cases before medical examination) to do exercises which caused considerable strain and hardship, especially to the elderly and those in poor physical condition;

(b) the exercises consisted partly of sitting on the floor with the legs outstretched and the hands raised high above, or clasped behind, the head, and partly of kneeling on the floor with the forehead touching the ground and the hands clasped behind the back;

(c) it was not possible to ascertain the exact length of time during which, or the degree of compulsion with which, the exercises were enforced;

(d) allegations, concerning both T 3 and others, of specific incidents of violence and of the use of considerable force had not been established;

(e) the camp had been swept out, and beds removed for security reasons, before persons arrested arrived; for a purpose not sufficiently explained, bedding was provided only for those who had been interrogated.

3. The "41" and the remaining cases

126. None of the "41 cases" concerned Ballykinler. There is no separate section in the Commission's report on the remaining 17 cases relating to that centre but findings on the general conditions there were made within the context of T 3's case.

F. Miscellaneous places

1. Introduction

127. 121 cases involving allegations of ill-treatment at miscellaneous places were referred to the Commission by the applicant Government. The allegations included beating and assaults by the army or the police at army posts, police stations, a prison, in the street, at home or during transport at dates falling between August 1971 and 1974. 65 of these cases were in connection with interrogation. The Commission examined in detail as illustrative the cases of T 7, T 11 and T 5.

2. The illustrative cases

(a) The case of T 7

128. The Commission found that on 28 October 1971, without provocation or resistance, this civilian had been severely assaulted and injured in a street in Belfast by a corporal effecting his arrest. When it was realised that his arrest had been a mistake, he was discharged with apologies, having been given medical treatment. Neither his evidence nor the medical evidence was disputed and the respondent Government called no witnesses.

The soldier in question was detained for four or five days and then admonished. T 7's claim for damages was settled for £600.

(b) The case of T 11

129. The Commission found that, after his arrest on 20 December 1971, this civilian had been severely

assaulted and injured by a number of soldiers during interrogation at Albert Street Barracks, Belfast. Neither the main facts nor medical evidence of physical injuries were disputed, although medical opinion differed concerning mental after-effects. The respondent Government called no witnesses to rebut the charges of physical ill-treatment. Additional allegations of harassment by soldiers after the event were found by the Commission to be neither proved nor disproved.

T 11's claim for damages was settled for £300. He also lodged a complaint with the RUC which was still under investigation when the Commission heard evidence on his case; the respondent Government stated that they did not know the reason for the delay.

(c) The case of T 5

130. T 5 alleged that he was kicked, punched and hooded by the army at St. Genevieve's School, Belfast, on 13 August 1972. He was too young to be detained but, after arrest and questioning, he was taken, allegedly for identification purposes, to various army posts.

A claim by T 5 for damages was settled in the sum of £236.79. His complaint to the RUC was unsuccessful.

In the light of its review of the medical evidence and the evidence of the security force witnesses and of T 5, the Commission concluded that T 5's allegations were not sufficiently established.

3. The "41 cases"

131. From these cases, the Commission considered 28 on which the Parties had commented. It took the view that the evidence, in the shape of medical reports accompanied in some cases by a statement from the complainant, did not make it possible to establish beyond reasonable doubt the cause of the injuries.

4. The remaining cases

132. In the absence of corroborative, including medical, evidence, the Commission did not find it possible to examine further the remaining 90 cases. It merely confirmed that allegations of ill-treatment had been made and that, in some cases, compensation had been paid.

G. Measures concerning the treatment of persons arrested or held by the security forces

1. Medical and other records

133. From May 1970 onwards, the army rule was that the person arrested and the arresting soldier were to be photographed together. With regard to the practice followed during Operation Demetrius, the Compton Committee noted that a photograph was taken of each person admitted to a regional holding centre and that on entry to Ballykinler and Magilligan, though not to Girdwood Park, a medical examination was carried out and its result recorded.

As from 15 November 1971, every individual brought to a holding centre was medically examined on arrival and departure. Medical staff were instructed to submit reports whenever there was evidence of a complaint of ill-treatment. Furthermore, after a certain time, records were kept of the prisoner's condition during his progress through interrogation.

2. Provisions designed to prevent ill-treatment

134. It would appear that at the beginning of the internment operation reliance was simply placed on the normal regulations requiring humane treatment and forbidding the use of violence.

135. Following the Parker report and the Prime Minister's statement to Parliament (see paragraph 101

above), a directive on interrogation was issued prohibiting the use of coercion and, in particular, of the five techniques. In addition, it made mandatory medical examinations, the keeping of comprehensive records and the immediate reporting of any complaints of ill-treatment. In April 1972, army instructions and the RUC Force Order 64/72, concerning respectively arrests under the Special Powers Regulations and the treatment of prisoners, directed that excessive force should never be used. Shortly after the introduction of direct rule, the United Kingdom Attorney-General gave a ministerial directive on the proper treatment of persons in custody, making it clear that where any form of ill-treatment was reported the Director of Public Prosecutions would prosecute. Further army and RUC instructions of August 1972 in respect of arrest and interrogation enjoined the proper and humane treatment of prisoners; they strictly forbade resort to violence, the five techniques, threats or insults and concluded with a prohibition similar to Article 3 (art. 3) of the Convention. In August 1973 new instructions with regard to arrests by the army re-emphasised the need for correct behaviour.

The respondent Government submitted that steps had been taken for the diffusion and enforcement at all levels of these orders and directives. However, both the Commission and the applicant Government considered that there was a lack of satisfactory evidence as to how the regulations were implemented and obeyed in practice.

136. Section 6 of the Emergency Provisions Act (see paragraph 68 above) contained provisions designed to exclude as evidence before an ordinary criminal court statements by an accused obtained by torture or inhuman or degrading treatment; the section did not apply to the extrajudicial procedures or to statements by third parties.

3. Complaints procedures and criminal prosecutions

(a) The police

137. Under the Police Act (Northern Ireland) 1970, an investigation department within the RUC had been set up to report to the Chief Constable on all complaints against the police whatever their source. An official committee of five members of the Police Authority of Northern Ireland, including two Catholics and two Protestants, examined each month the records of complaints kept by the Chief Constable.

Where a serious criminal offence was disclosed, reports were submitted to the Attorney-General for Northern Ireland or, after the introduction of direct rule, to the Director of Public Prosecutions in Northern Ireland, a newly-created office, for decision whether to prosecute. On 15 June 1972, the United Kingdom Attorney-General instructed the Director of Public Prosecutions to direct the RUC to investigate and report on any circumstances which might involve the commission of a criminal offence by a member of the security forces. From November 1972 onwards, all completed investigations of both police officers and army personnel had to be sent to the Director of Public Prosecutions.

In September 1973, new disciplinary regulations brought the arrangements for the investigation of complaints against the RUC into line with the arrangements existing elsewhere in the United Kingdom. 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.

138. The Gardiner Committee in its report of January 1975 (see paragraph 74 above), while expressing itself satisfied that full investigations were made, nevertheless found a widespread belief in Northern Ireland that complaints against members of the security forces were not taken seriously. It therefore recommended the setting up of an independent means of investigating complaints.

The Police (Northern Ireland) Order 1977 established a completely independent Police Complaints Board for Northern Ireland with supervisory functions in the matter.

(b) The army

139. The policy of the General Officer Commanding, as stated in the evidence before the Commission, was that every complaint should be investigated. An investigator was automatically appointed as soon as an incident was reported, even before a formal complaint had been made. As with the RUC, notice was also taken of allegations in the press or from third parties.

It would seem that in the early stages of the emergency complaints against soldiers were handled by the army authorities themselves; later on, two RUC officers were appointed to oversee army enquiries and subsequently investigations were actually carried out by the RUC, at least where there appeared to be a serious criminal offence. In addition, complainants were encouraged to channel their complaints through the police. On 20 January 1972 a joint army/RUC investigation team was created.

Complaints against the army were referred to an outside authority – the Director of Public Prosecutions as from April 1972 – for directions whether to prosecute.

(c) Statistics relating to complaints and prosecutions

140. Between 9 August 1971 and 30 November 1974, 2,615 complaints against the police were made, 1,105 alleging ill-treatment or assault; the 23 prosecutions for assault resulted in 6 convictions leading to fines and, in one case, a conditional discharge.

As regards the army, from 31 March 1972 to 30 November 1974, 1,268 complaints in respect of assaults or shootings had been received and 1,078 cases of alleged assault were submitted to the Director of Public Prosecutions. By January 1975, directions to prosecute had been given in 86 out of the 1,038 cases then dealt with.

Overall, between April 1972 and the end of January 1977, 218 members of the security forces were prosecuted for assault at the direction of the Director of Public Prosecutions and 155 were convicted.

(d) Particular instances of investigation, disciplinary action or prosecution

141. Soon after complaints relating to the arrests carried out on 9 August 1971 became known, nearly 1,800 soldiers, including 300 or so who had left Northern Ireland, were interviewed in order to determine their rôle in the arrest operation. The Commission's report also mentions a few other specific examples of members of the security forces being investigated or disciplined, but these examples are not connected with the cases submitted by the applicant Government. No information of any investigation into the submitted cases was vouchsafed to the Commission by the respondent Government except in relation to the illustrative cases. Even as regards the illustrative cases, the Commission had before it just one item of direct evidence – the Compton reports, filed by the applicant Government – and it noted that in none of them had the authorities carried out a thorough investigation of the allegations of ill-treatment; evidence as to disciplinary action or prosecution was furnished to the Commission in one case alone, that of T 7 (see paragraph 128 above).

4. Compensation

142. Procedures to obtain compensation were available before the domestic courts to all persons who considered themselves to have been ill-treated by the security forces. There is no suggestion that the domestic courts were or are anything other than independent, fair and impartial. The respondent Government have emphasised the difference between domestic civil and criminal law. Under the former the authorities are liable for any wrongful act, established on the balance of probabilities, committed in the course of their duty by soldiers or policemen, whether individually identified or not. The criminal law, in contrast, requires proof beyond reasonable doubt of the guilt of an identified individual. Like any plaintiff in a civil action, a plaintiff alleging ill-treatment by the security forces was entitled to obtain disclosure of relevant documents, for example medical reports, in the possession of the defendant authorities.

143. Between 9 August 1971 and 31 January 1975, compensation totalling £302,043 had been paid in

settlement of 473 civil claims for wrongful arrest, false imprisonment, assault and battery, leaving 1,193 actions still outstanding. At the time of the Commission's report, compensation, ranging from about £200 to £25,000, had been paid in settlement of 45 of the 228 cases submitted by the applicant Government. In the only case of alleged physical ill-treatment which seems to have been fought, namely the case of Moore v. Shillington (see paragraph 124 above), the judge disbelieved the evidence of the security forces.

Proceedings before the Commission

144. In their original application, lodged with the Commission on 16 December 1971, and later supplemented, the Irish Government made various allegations of violations by the United Kingdom of Articles 1, 2, 3, 5, 6 and 14 (art. 1, art. 2, art. 3, art. 5, art. 6, art. 14) of the Convention.

145. On 1 October 1972, the Commission declared the application inadmissible as regards Article 2 (art. 2) but accepted 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 Article 3 (art. 3);

– internment without trial and detention under the Special Powers Act and the Special Powers Regulations constituted an administrative practice in breach of Articles 5 and 6 in connection with Article 15 (art. 15+5, art. 15+6);

– 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 and thus constituted a breach of Article 14 (art. 14) with respect to the rights and freedoms guaranteed in Articles 5 and 6 in conjunction with Article 15 (art. 15+5, art. 15+6);

– the administrative practices complained of also constituted a breach of Article 1 (art. 1).

146. In addition to receiving written observations and evidence from the two Governments concerned and to hearing their oral submissions, the Commission also heard – through delegates and in the circumstances more particularly detailed in its report – a total of 119 witnesses. One hundred gave evidence in relation to the issues under Article 3 (art. 3) and nineteen in relation to those under Article 14 (art. 14); of the latter, three were witnesses proposed by the respondent Government who were heard by the delegates in London in the absence of representatives of the Parties and without being subjected to cross-examination.

147. In its report, the Commission expressed the opinion:

(i) unanimously, that the powers of detention and internment without trial as exercised during the relevant periods were not in conformity with Article 5, paras. 1 to 4 (art. 5-1, art. 5-2, art. 5-3, art. 5-4), but were "strictly required by the exigencies of the situation" in Northern Ireland, within the meaning of Article 15 para. 1 (art. 15-1);

(ii) unanimously, that Article 6 (art. 6) did not apply to the said powers;

(iii) unanimously, that the facts found in relation to the relevant periods did not disclose any discrimination contrary to Article 14 (art. 14) in the exercise of the said powers;

(iv) unanimously, that the combined use of the five techniques in the cases before it constituted a practice of inhuman treatment and of torture in breach of Article 3 (art. 3);

(v) unanimously, that violations of Article 3 (art. 3) occurred by inhuman, and in two cases degrading, treatment of

– T 6, in an unidentified interrogation centre in August 1971,

– T 2, T 8, T 12, T 15, T 9, T 14 and T 10 at Palace Barracks, Holywood, in September, October and November 1971,

– T 16, T 7 and T 11, at various places in August, October and December 1971;

(vi) unanimously, that there had 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 Article 3 (art. 3) of the Convention;

(vii) unanimously, that no practice in breach of Article 3 (art. 3) had been found to exist in relation to the cases of T 16, T 7 and T 11, including the general conditions at Girdwood Park in August 1971;

(viii) unanimously, that the conditions of detention at Ballykinler in August 1971 did not disclose a violation of Article 3 (art. 3);

(ix) by twelve votes to one, that Article 1 (art. 1), not granting any rights in addition to those mentioned in Section I of the Convention, cannot be the subject of a separate breach. The report contains various separate opinions.

As to the law

148. Paragraph (d) of the application of 10 March 1976 states that the object of bringing the case before the Court (Rule 31 para. 1 (d) of the Rules of Court) is "to ensure the observance in Northern Ireland of the engagements undertaken by the respondent Government as a High Contracting Party to the Convention and in particular of the engagements specifically set out by the applicant Government in the pleadings filed and the submissions made on their behalf and described in the evidence adduced before the Commission in the hearings before them". "To this end", the Court is invited "to consider the report of the Commission and to confirm the opinion of the Commission that breaches of the Convention have occurred and also to consider the claims of the applicant Government with regard to other alleged breaches and to make a finding of breach of the Convention where the Court is satisfied that a breach has occurred".

In their written and oral pleadings before the Court, the Irish Government allege breaches of Articles 1, 3 (art. 1, art. 3), 5 (taken together with Article 15) (art. 15+5), 6 (taken together with Article 15) (art. 15+6) and 14 (taken together with Articles 5 and 6) (art. 14+5, art. 14+6).

They also maintain – though they do not ask the Court to make a specific finding – that the British Government failed on several occasions in their duty to furnish the necessary facilities for the effective conduct of the investigation. The Commission does not go as far as that; however, at various places in its report, the Commission points out, in substance, that the respondent Government did not always afford it the assistance desirable. The Court regrets this attitude on the part of that Government; it must stress the fundamental importance of the principle, enshrined in Article 28, sub-paragraph (a) (art. 28-a) in fine, that the Contracting States have a duty to cooperate with the Convention institutions.

149. The Court notes first of all that it is not called upon to take cognisance of every single aspect of the tragic situation prevailing in Northern Ireland. For example, it is not required to rule on the terrorist activities in the six counties of individuals or of groups, activities that are in clear disregard of human rights. The Court has only to give a decision on the claims made before it by the Irish Republic against the United Kingdom. However, in so doing, the Court cannot lose sight of the events that form the background to this case.

I. On Article 3 (art. 3)

150. Article 3 (art. 3) provides that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment".

A. Preliminary questions

151. In their memorial of 26 October 1976 and at the hearings in February 1977, the United Kingdom Government raised two preliminary questions on the alleged violations of Article 3 (art. 3). The first concerns the violations which they no longer contest, the second certain of the violations whose existence they dispute.

1. Preliminary question on the non-contested violations of Article 3 (art. 3)

152. The United Kingdom Government contest neither the breaches of Article 3 (art. 3) as found by the Commission (see paragraph 147 above), nor – a point moreover that is beyond doubt – the Court's jurisdiction to examine such breaches. However, relying inter alia on the case-law of the International Court of Justice (Northern Cameroons case, judgment of 2 December 1963, and Nuclear Tests cases, judgments of 20 December 1974),they argue that the European Court has power to decline to exercise its jurisdiction where the objective of an application has been accomplished or where adjudication on the merits would be devoid of purpose. Such, they claim, is the situation here. They maintain that the findings in question not only are not contested but also have been widely publicised and that they do not give rise to problems of interpretation or application of the Convention sufficiently important to require a decision by the Court. Furthermore, for them the subject-matter of those findings now belongs to past history in view of the abandonment of the five techniques (1972), the solemn and unqualified undertaking not to reintroduce these techniques (8 February 1977) and the other measures taken by the United Kingdom to remedy, impose punishment for, and prevent the recurrence of, the various violations found by the Commission.

This argument is disputed by the applicant Government. Neither is it accepted in a general way by the delegates of the Commission; they stated, however, that they would express no conclusion as to whether or not the above-mentioned undertaking had deprived the claim concerning the five techniques of its object.

153. The Court takes formal note of the undertaking given before it, at the hearing on 8 February 1977, by the United Kingdom Attorney-General on behalf of the respondent Government. The terms of this undertaking were as follows:

"The Government of the United Kingdom have considered the question of the use of the 'five techniques' with very great care and with particular regard to Article 3 (art. 3) of the Convention. They now give this unqualified undertaking, that the 'five techniques' will not in any circumstances be reintroduced as an aid to interrogation."

The Court also notes that the United Kingdom has taken various measures designed to prevent the recurrence of the events complained of and to afford reparation for their consequences. For example, it has issued to the police and the army instructions and directives on the arrest, interrogation and treatment of persons in custody, reinforced the procedures for investigating complaints, appointed commissions of enquiry and paid or offered compensation in many cases (see paragraphs 99-100, 107, 110-111, 116-118, 121-122, 124, 128-130, 132, 135-139 and 142-143 above).

154. Nevertheless, the Court considers that the responsibilities assigned to it within the framework of the system under the Convention extend to pronouncing on the non-contested allegations of violation of Article 3 (art. 3). The Court's judgments in fact serve not only to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties (Article 19) (art. 19). The conclusion thus arrived at by the Court is, moreover, confirmed by paragraph 3 of Rule 47 of the Rules of Court. If the Court may proceed with the consideration of a case and give a ruling thereon even in the event of a "notice of discontinuance, friendly settlement, arrangement" or "other fact of a kind to provide a solution of the matter", it is entitled a fortiori to adopt such a course of action when the conditions for the application of this Rule are not present.

155. Accordingly, that part of the present case which concerns the said allegations cannot be said to have become without object; the Court considers that it should rule thereon, notwithstanding the initiatives taken by the respondent State.

2. Preliminary question on certain of the contested violations of Article 3 (art. 3)

156. In their memorial of 28 July 1976, the Irish Government invited the Court to hold, unlike the Commission (see paragraphs 125, 130 and 147 above), that violations of Article 3 (art. 3) had occurred in the cases of T 3 (Ballykinler Regional Holding Centre, August 1971) and T 5 (St. Genevieve's School, Belfast, August 1972) as well as in numerous places in Northern Ireland from 1971 to 1974.

In addition to contesting the merits of these claims, the British Government also raised a preliminary question in connection therewith in their memorial of 26 October 1976 and at the hearings in February 1977. They argued that the complaints made did not expressly concern a practice but individual cases in which effective domestic remedies were available to the persons involved. Accordingly, in their submission, the said claims fell outside the area demarcated by the Commission on 1 October 1972 when it accepted the allegation that "the treatment of persons in custody ... constituted an administrative practice in breach of Article 3 (art. 3)".

The Irish Government replied that this line of argument was based on an incorrect interpretation of the above-mentioned decision and of the manner in which the Commission subsequently carried out its rôle.

According to the delegates of the Commission, the Irish Government had not made clear whether they were asking the Court to censure a practice or merely to hold that certain persons had been subjected to treatment contrary to Article 3 (art. 3). In the former case, but not in the latter, their request would, in the delegates' view, be in conformity with the decision of 1 October 1972.

157. The Court recalls that its jurisdiction in contentious matters is limited to applications which have first of all been lodged with and accepted by the Commission; this is perfectly clear from the structure of Sections III and IV of the Convention. The Commission's decision declaring an application admissible determines the object of the case brought before the Court; it is only within the framework so traced that the Court, once a case is duly referred to it, may take cognisance of all questions of fact or of law arising in the course of the proceedings (De Wilde, Ooms and Versyp judgment of 18 June 1971, Series A no. 12, pp. 29-30, paras. 49 and 51; Handyside judgment of 7 December 1976, Series A no. 24, p. 20, para. 41; Stögmüller and Matznetter judgments of 10 November 1969, Series A no. 9, p. 41, para. 7, and no. 10, pp. 31-32, para. 5; Delcourt judgment of 17 January 1970, Series A no. 11, p. 20, para. 40).

Again, Article 49 (art. 49) of the Convention provides that the Court shall settle disputes concerning its jurisdiction. It follows that, in order to rule on this preliminary plea, the Court must itself interpret the above-mentioned decision of 1 October 1972, in the particular light of the Commission's explanations (see, mutatis mutandis, the Kjeldsen, Busk Madsen and Pedersen judgment of 7 December 1976, Series A no. 23, pp. 22-24, para. 48).

The allegation accepted by the Commission under Article 3 (art. 3) concerned a practice or practices and not individual cases as such. Accordingly, the Court's sole task is to give a ruling on that allegation.

However, a practice contrary to the Convention can result only from individual violations (see paragraph 159 below). Hence, it is open to the Court, just as it was to the Commission, to examine, as constituent elements or proof of a possible practice and not on an individual basis, specific cases alleged to have occurred in given places.

The Court concludes that it has jurisdiction to take cognisance of the contested cases of violation of Article 3 (art. 3) if and to the extent that the applicant Government put them forward as establishing the existence of a practice.

158. Following the Order of 11 February 1977 (see paragraph 8 above), the Irish Government indicated, at the hearings in April 1977, that they were asking the Court to hold that there had been in Northern Ireland, from 1971 to 1974, a practice or practices in breach of Article 3 (art. 3) and to specify, if need be, where they had occurred. They also declared that they were no longer seeking specific findings in relation to the cases of T 3 and T 5.

159. A practice incompatible with the Convention consists of an accumulation of identical or analogous breaches which are sufficiently numerous and inter-connected to amount not merely to isolated incidents or exceptions but to a pattern or system; a practice does not of itself constitute a violation separate from such breaches.

It is inconceivable that the higher authorities of a State should be, or at least should be entitled to be, unaware of the existence of such a practice. Furthermore, under the Convention those authorities are strictly liable for the conduct of their subordinates; they are under a duty to impose their will on subordinates and cannot shelter behind their inability to ensure that it is respected.

The concept of practice is of particular importance for the operation of the rule of exhaustion of domestic remedies. This rule, as embodied in Article 26 (art. 26) of the Convention, applies to State applications (Article 24) (art. 24), in the same way as it does to "individual" applications (Article 25) (art. 25), when the applicant State does no more than denounce a violation or violations allegedly suffered by "individuals" whose place, as it were, is taken by the State. On the other hand and in principle, the rule does not apply where the applicant State complains of a practice as such, with the aim of preventing its continuation or recurrence, but does not ask the Commission or the Court to give a decision on each of the cases put forward as proof or illustrations of that practice. The Court agrees with the opinion which the Commission, following its earlier case-law, expressed on the subject in its decision of 1 October 1972 on the admissibility of the Irish Government's original application. Moreover, the Court notes that that decision is not contested by the respondent Government.

B. Questions of proof

160. In order to satisfy itself as to the existence or not in Northern Ireland of practices contrary to Article 3 (art. 3), the Court will not rely on the concept that the burden of proof is borne by one or other of the two Governments concerned. In the cases referred to it, the Court examines all the material before it, whether originating from the Commission, the Parties or other sources, and, if necessary, obtains material proprio motu.

161. The Commission based its own conclusions mainly on the evidence of the one hundred witnesses heard in, and on the medical reports relating to, the sixteen "illustrative" cases it had asked the applicant Government to select. The Commission also relied, but to a lesser extent, on the documents and written comments submitted in connection with the "41 cases" and it referred to the numerous "remaining cases" (see paragraph 93 above). As in the "Greek case" (Yearbook of the Convention, 1969, The Greek case, p. 196, para. 30), the standard of proof the Commission adopted when evaluating the material it obtained was proof "beyond reasonable doubt".

The Irish Government see this as an excessively rigid standard for the purposes of the present proceedings. They maintain that the system of enforcement would prove ineffectual if, where there was a prima facie case of violation of Article 3 (art. 3), the risk of a finding of such a violation was not borne by a State which fails in its obligation to assist the Commission in establishing the truth (Article 28, sub-paragraph (a) in fine, of the Convention) (art. 28-a). In their submission, this is how the attitude taken by the United Kingdom should be described.

The respondent Government dispute this contention and ask the Court to follow the same course as the Commission.

The Court agrees with the Commission's approach regarding the evidence on which to base the decision whether there has been violation of Article 3 (art. 3). To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the Parties when evidence is being obtained has to be taken into account.

C. Questions concerning the merits

162. As was emphasised by the Commission, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (art. 3). The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc.

163. The Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4 (P1, P4), Article 3 (art. 3) makes no provision for exceptions and, under Article 15 para. 2 (art. 15-2), there can be no derogation therefrom even in the event of a public emergency threatening the life of the nation.

164. In the instant case, the only relevant concepts are "torture" and "inhuman or degrading treatment", to the exclusion of "inhuman or degrading punishment".

1. The unidentified interrogation centre or centres

(a) The "five techniques"

165. The facts concerning the five techniques are summarised at paragraphs 96-104 and 106-107 above. In the Commission's estimation, those facts constituted a practice not only of inhuman and degrading treatment but also of torture. The applicant Government ask for confirmation of this opinion which is not contested before the Court by the respondent Government.

166. The police used the five techniques on fourteen persons in 1971, that is on twelve, including T 6 and T 13, in August before the Compton Committee was set up, and on two in October whilst that Committee was carrying out its enquiry. Although never authorised in writing in any official document, the five techniques were taught orally by the English Intelligence Centre to members of the RUC at a seminar held in April 1971. There was accordingly a practice.

167. The five techniques were applied in combination, with premeditation and for hours at a stretch; they caused, if not actual bodily injury, at least intense physical and mental suffering to the persons subjected thereto and also led to acute psychiatric disturbances during interrogation. They accordingly fell into the category of inhuman treatment within the meaning of Article 3 (art. 3). The techniques were also degrading since they were such as to arouse in their victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance.

On these two points, the Court is of the same view as the Commission.

In order to determine whether the five techniques should also be qualified as torture, the Court must have regard to the distinction, embodied in Article 3 (art. 3), between this notion and that of inhuman or degrading treatment.

In the Court's view, this distinction derives principally from a difference in the intensity of the suffering inflicted.

The Court considers in fact that, whilst there exists on the one hand violence which is to be condemned both on moral grounds and also in most cases under the domestic law of the Contracting States but which does not fall within Article 3 (art. 3) of the Convention, it appears on the other hand that it was the intention that the Convention, with its distinction between "torture" and "inhuman or degrading treatment", should by the first of these terms attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering.

Moreover, this seems to be the thinking lying behind Article 1 in fine of Resolution 3452 (XXX) adopted by the General Assembly of the United Nations on 9 December 1975, which declares: "Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment".

Although the five techniques, as applied in combination, undoubtedly amounted to inhuman and degrading treatment, although their object was the extraction of confessions, the naming of others and/or information and although they were used systematically, they did not occasion suffering of the particular intensity and cruelty implied by the word torture as so understood.

168. The Court concludes that recourse to the five techniques amounted to a practice of inhuman and degrading treatment, which practice was in breach of Article 3 (art. 3).

(b) Ill-treatment alleged to have accompanied the use of the five techniques

169. The applicant Government claim that the fourteen persons subjected to the five techniques, or some of those persons including T 6 and T 13, also had to undergo other kinds of treatment contrary to Article 3 (art. 3).

The Commission has found such treatment only in the case of T 6, although it regarded it as probable that the use of the five techniques was sometimes accompanied by physical violence (see paragraph 105 above).

170. As far as T 6 is concerned, the Court shares the Commission's opinion that the security forces subjected T 6 to assaults severe enough to constitute inhuman treatment. This opinion, which is not contested by the respondent Government, is borne out by the evidence before the Court.

171. In the thirteen remaining cases examined in this context, including the contested case of T 13, the Court has no evidence to support a finding of breaches of Article 3 (art. 3) over and above that resulting from the application of the five techniques.

172. Accordingly, no other practice contrary to Article 3 (art. 3) is established for the unidentified interrogation centre or centres; the findings relating to the individual case of T 6 cannot, of themselves, amount to proof of a practice.

2. Palace Barracks

173. The Commission came to the view that inhuman treatment had occurred at Palace Barracks in September, October and November 1971 in seven of the nine "illustrative" cases it examined, namely those of T 2, T 8, T 12, T 15, T 9, T 14 and T 10. It considered that these cases, combined with other indications, showed that there had been in these Barracks, in the autumn of 1971, a practice in connection with the interrogation of prisoners by members of the RUC which was inhuman treatment.

The British Government do not contest these conclusions; the Irish Government ask the Court to confirm them but also to supplement them in various respects.

(a) Autumn 1971

174. Insofar as the Commission has found that a practice of inhuman treatment was followed in the autumn of 1971, for example in the cases of T 2, T 8, T 12, T 15, T 9, T 14 and T 10, the facts summarised above

(paragraphs 110-111 and 115-116) bear out its opinion. The evidence before the Court reveals that, at the time in question, quite a large number of those held in custody at Palace Barracks were subjected to violence by members of the RUC. This violence, which was repeated violence occurring in the same place and taking similar forms, did not amount merely to isolated incidents; it definitely constituted a practice. It also led to intense suffering and to physical injury which on occasion was substantial; it thus fell into the category of inhuman treatment.

According to the applicant Government, the violence in question should also be classified, in some cases, as torture.

On the basis of the data before it, the Court does not share this view. Admittedly, the acts complained of often occurred during interrogation and, to this extent, were aimed at extracting confessions, the naming of others and/or information, but the severity of the suffering that they were capable of causing did not attain the particular level inherent in the notion of torture as understood by the Court (see paragraph 167 above).

175. In their memorial of 28 July 1976, the applicant Government asked the Court to hold, unlike the Commission, that T 1 and T 4 had also been victims of violations of Article 3 (art. 3) (see paragraphs 112-114 above).

The delegates of the Commission argued that it would serve no purpose to add these two cases to the list since, like the other seven, they date from the autumn of 1971 and there is no longer any dispute between those appearing before the Court as to the existence during this period of a practice in breach of Article 3 (art. 3).

At the hearings in February 1977, the Irish Government acknowledged the validity of this argument. They declared that the Court would not need to make a specific finding on the contested cases of T 1 and T 4 if it confirmed the Commission's non-contested conclusions.

The Court takes note of this declaration. For the reasons given by the delegates, it considers that an examination of these two individual cases would be superfluous.

(b) From autumn 1971 to June 1972

176. Finally, the Irish Government request the Court to hold that the practice complained of continued until June 1972 when Palace Barracks were closed down as a holding centre. In their submission, there is no proof to the contrary and there are indications that the practice did so continue.

The respondent Government state, inter alia, that they do not perceive how, by relying on nothing more than inferences, the Court could on this issue reach a conclusion different from the Commission's.

177. Concurring with the submission made by the delegates of the Commission, the Court finds that, like the Commission, it lacks sufficient evidence on which to decide whether or not the practice in question continued at Palace Barracks beyond the autumn of 1971: the only two cases dating from the first six months of 1972 (T 30 and T 31) figured amongst the "41 cases" and not the "illustrative" cases (see paragraphs 93, 109 and 116 above). For the reasons explained below (paragraph 184), the Court does not consider that it has to try to obtain further evidence. It therefore restricts its findings in the same way as the Commission.

3. Other places

178. According to the applicant Government, a practice or practices in breach of Article 3 (art. 3) existed in Northern Ireland from 1971 to 1974, for example at Girdwood Park and at Ballykinler; this allegation is denied by the respondent Government.

The Commission was of the opinion that T 16 and T 7 had been victims of treatment that was both inhuman and degrading and T 11 of treatment that was inhuman: T 16 on 13 August 1971 at Girdwood Park, T 7 on

28 October 1971 in a street in Belfast and T 11 on 20 December 1971 at Albert Street Barracks, also in Belfast. However, the Commission considered that no practice in breach of Article 3 (art. 3) had been established in relation to these cases, including the general conditions at Girdwood Park (see paragraph 147 above) and, further, that the conditions of detention at Ballykinler did not disclose a violation of that Article (art. 3) (ibid.).

(a) Ballykinler

179. The Court first examined the situation at the Ballykinler military camp. For this purpose, it did not have to investigate separately the individual contested case of T 3 on which the Irish Government are no longer seeking a specific finding (see paragraph 158 above).

180. The RUC, with the assistance of the army, used Ballykinler as a holding and interrogation centre for a few days early in August 1971. Some dozens of people arrested in the course of Operation Demetrius were held there in extreme discomfort and were made to perform irksome and painful exercises; eleven of those persons subsequently received compensation (see paragraphs 123-126 above).

There was thus a practice rather than isolated incidents. The Court found confirmation of this in the judgment of 18 February 1972 in the Moore case.

181. The Court has to determine whether this practice violated Article 3 (art. 3). Clearly, it would not be possible to speak of torture or inhuman treatment, but the question does arise whether there was not degrading treatment. The Armagh County Court granted Mr. Moore £300 by way of damages, the maximum amount it had jurisdiction to award. This fact shows that the matters of which Mr. Moore complained were, if nothing else, contrary to the domestic law then in force in the United Kingdom. Furthermore, the way in which prisoners at Ballykinler were treated was characterised in the judgment of 18 February 1972 as not only illegal but also harsh. However, the judgment does not describe the treatment in detail; it concentrates mainly on reciting the evidence tendered by the witnesses and indicates that the judge rejected that given on behalf of the defence. The Compton Committee for its part considered that, although the exercises which detainees had been made to do involved some degree of compulsion and must have caused hardship, they were the result of lack of judgment rather than an intention to hurt or degrade.

To sum up, the RUC and the army followed at Ballykinler a practice which was discreditable and reprehensible but the Court does not consider that they infringed Article 3 (art. 3).

(b) Miscellaneous places

182. There remain the various other places referred to by the Irish Government (see paragraphs 119-122 and 127-132 above). The information before the Court concerning these places – for example the large number of cases in which compensation was paid by the British authorities and the many criminal or disciplinary sanctions imposed on members of the security forces (see paragraphs 140-143 above) – suggests that there must have been individual violations of Article 3 (art. 3) in Northern Ireland over and above the breaches already noted by the Court (see paragraphs 167, 170 and 174 above). However, the Commission did not regard this information, which it had obtained by using a method accepted by the Parties (see paragraph 93 above), as being sufficient to disclose a practice or practices in breach of Article 3 (art. 3).

The Court shares this view. Admittedly, the evidence before the Court bears out the Commission's opinion on the cases of T 16, T 7 and T 11 which the respondent Government do not contest (see paragraphs 120, 128 and 129 above). However, these were incidents insufficiently numerous and inter-connected to amount to a practice, even if one were to add the contested case of T 5 (St. Genevieve's School, Belfast, 13 August 1972, paragraph 130 above), on which the applicant Government are no longer seeking a specific finding (see paragraph 158 above).

183. The Irish Government stress, inter alia, that interrogations at Palace Barracks and Girdwood Park were conducted by the same members of the RUC on a rotating system (see paragraph 108 above). The

Government regard it as improbable that these men observed Article 3 (art. 3) in the second of these centres when they contravened it in the first. There is some force in this argument, but it is only a presumption and so cannot be taken as conclusive on its own.

184. The Court would be empowered to obtain, if necessary proprio motu, additional evidence (Rule 38 of the Rules of Court). However, such a course would oblige the Court to select a series of further "illustrative" cases and to hear a substantial number of further witnesses, failing which it might well, as the delegates of the Commission emphasised, arrive at extremely tenuous conclusions. It is not essential to re-open the investigation in this way in the present case. Indeed, the preventive measures taken by the United Kingdom (see paragraphs 133-136 above) at first sight render hardly plausible, especially as regards the period after the introduction of direct rule (30 March 1972), if not the suggestion of individual violations of Article 3 (art. 3) – on which the Court does not have to give a specific ruling (see paragraph 157 above) -, at least the suggestion of the continuation or commencement of a practice or practices in breach of that Article (art. 3). Furthermore, anyone claiming to be the victim of a breach of Article 3 (art. 3) in Northern Ireland is entitled to exercise the domestic remedies open to him (Article 26 the Convention) (art. 26) and subsequently, if need be, to apply to the Commission whose competence to receive "individual" petitions has been recognised by the United Kingdom (Article 25) (art. 25); this in fact often happened. Finally, the findings made in connection with the five techniques and Palace Barracks, henceforth embodied in a binding judgment of the Court, provide a far from negligible guarantee against a return to the serious errors of former times.

In these circumstances, the interests protected by the Convention do not compel the Court to undertake lengthy researches that would delay the Court's decision.

185. In conclusion, the Court does not find, as regards the places concerned, any practice in breach of Article 3 (art. 3).

4. The Irish request for a consequential order

186. In a letter dated 5 January 1977, the applicant Government requested the Court to order that the respondent Government

– refrain from reintroducing the five techniques, as a method of interrogation or otherwise;

– proceed as appropriate, under the criminal law of the United Kingdom and the relevant disciplinary code, against those members of the security forces who have committed acts in breach of Article 3 (art. 3) referred to in the Commission's findings and conclusions, and against those who condoned or tolerated them.

At the hearings, the applicant Government withdrew the first request following the solemn undertaking given on behalf of the United Kingdom Government on 8 February 1977 (see paragraph 153 above); on the other hand, the second request was maintained.

187. The Court does not have to consider in these proceedings whether its functions extend, in certain circumstances, to addressing consequential orders to Contracting States. In the present case, the Court finds that the sanctions available to it do not include the power to direct one of those States to institute criminal or disciplinary proceedings in accordance with its domestic law.

II. On Article 5 (art. 5)

188. The substance of the Irish Government's allegations is that

– the various powers relating to extrajudicial deprivation of liberty which were used in the six counties from 9 August 1971 to March 1975 did not satisfy the conditions prescribed by Article 5 (art. 5);

– those powers violated Article 5 (art. 5) since they failed to meet in full the requirements of Article 15

(art. 15);

– those powers were furthermore exercised with discrimination and consequently also violated Article 14 taken together with Article 5 (art. 14+5).

189. The applicant Government are not asking the Court to give a ruling on the legislation subsequent to March 1975, the date of the final hearings of the Parties before the Commission. However, the Emergency Provisions Amendment Act, certain of whose provisions reintroduced the principle of detention by order of the Secretary of State for Northern Ireland, did not enter into force until 21 August 1975 (see paragraph 90 above). An ex officio examination of those provisions is not called for: the information made available to the Court suggests that they have not been used since 5 December 1975 (see paragraph 91 above) and, besides, does not indicate that resort was ever had to them before that date.

190. The legislation prior to March 1975 (see paragraphs 80-89 above) is criticised by the Irish Government as regards both its terms and its application. However, the first aspect is a matter for, and must be dealt with under, Articles 1 and 24 (art. 1, art. 24) (see paragraphs 236-243 below). Only the second aspect is relevant under Article 5 (art. 5), taken alone or together with Articles 15 and 14 (art. 15+5, art. 14+5). In addition, the scope of the Court's review extends to the application of that legislation between 9 August 1971 and March 1975 only as a practice and not in a given individual case; this is clear from the documents before the Court read as a whole and, in particular, from the decision of 1 October 1972 on the admissibility of the original application of 16 December 1971.

191. It will, of course, be necessary to have regard to Article 15 (art. 15) in deciding whether any derogations from Article 5 (art. 5) were, in the circumstances of the case, compatible with the Convention, but the Court considers that it should ascertain in what respects the measures complained of derogated from Article 5 (art. 5) before assessing them under Article 15 (art. 15).

A. Paragraphs 1 to 4 of Article 5 (art. 5-1, art. 5-2, art. 5-3, art. 5-4), taken alone

192. Paragraphs 1 to 4 of Article 5 (art. 5-1, art. 5-2, art. 5-3, art. 5-4) read as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article (art. 5-1-c) 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.

4. 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."

193. In the Commission's opinion, the powers at issue – as exercised by the competent authorities – did not comply with paragraphs 1 to 4 of Article 5 (art. 5-1, art. 5-2, art. 5-3, art. 5-4) on a number of points.

The applicant Government agree with this conclusion; the respondent Government do not contest it but indicate that they do not necessarily accept all of the reasons.

1. Paragraph 1 (art. 5-1)

194. Paragraph 1 of Article 5 (art. 5-1) contains a list of the cases in which it is permissible under the Convention to deprive someone of his liberty. Subject to Article 15 (art. 15) – and without prejudice to Article 1 of Protocol No. 4 (P4-1) which the United Kingdom has not ratified -, that list is exhaustive: this appears from the words "save in the following cases" and is confirmed by Article 17 (art. 17).

195. The different forms of deprivation of liberty in this case clearly did not fall under sub-paragraphs (a), (d), (e) and (f) of paragraph 1 (art. 5-1-a, art. 5-1-d, art. 5-1-e, art. 5-1-f).

Neither were such deprivations covered by sub-paragraph (b) (art. 5-1-b), since they had no connection whatsoever with a "non-compliance with the ... order of a court" and were not designed to "secure the fulfilment of any obligation prescribed by law" (Lawless judgment of 1 July 1961, Series A no. 3, p. 51, para. 12; Engel and others judgment of 8 June 1976, Series A no. 22, p. 28, para. 69, third sub-paragraph).

196. At first sight, the different forms of deprivation of liberty may appear to bear some resemblance to the cases contemplated by sub-paragraph (c) (art. 5-1-c).

However, a "suspicion" of an "offence" was not required before a person could be arrested under Regulation 10, nor did it have to be "considered necessary to prevent his committing an offence or fleeing after having done so"; arrest had merely to be "for the preservation of the peace and maintenance of order" and was sometimes used to interrogate the person concerned about the activities of others (see paragraph 81 above).

On the other hand, the other three Regulations complained of by the Irish Government did require a suspicion. While Regulations 11 (1) (arrest) and 11 (2) (detention) spoke both of an "offence" and of activity "prejudicial to the preservation of the peace or maintenance of order" (see paragraphs 82 and 83 above), and while this latter concept alone appeared in Regulation 12 (1) (internment, paragraph 84 above), section 2 (4) of the Special Powers Act made such activity an offence.
The Terrorists Order (interim custody and detention) and the Emergency Provisions Act (arrest, interim custody and detention), for their part, were applicable only to individuals suspected of having been concerned in the commission or attempted commission of any act of terrorism, that is the use of violence for political ends, or in the organisation of persons for the purpose of terrorism; these criteria were well in keeping with the idea of an offence (see paragraphs 85-88 above).

Irrespective of whether extrajudicial deprivation of liberty was or was not founded in the majority of cases on suspicions of a kind that would render detention on remand justifiable under the Convention, such detention is permissible under Article 5 para. 1 (c) (art. 5-1-c) only if it is "effected for the purpose of bringing [the detainee] before the competent legal authority". Yet this condition – if interpreted, as must be done, in the light of paragraph 3 of Article 5 (art. 5-3) (Lawless judgment of 1 July 1961, Series A no. 3,

pp. 51-53, para. 14) – was not fulfilled; the Court refers, in this connection, to paragraph 199 below.

2. Paragraphs 2 to 4

197. Paragraphs 2 to 4 of Article 5 (art. 5-2, art. 5-3, art. 5-4) place the Contracting States under an obligation to provide several guarantees in cases where someone is deprived of his liberty.

198. Under paragraph 2 (art. 5-2), "everyone who is arrested shall be informed promptly ... of the reasons for his arrest and of any charge against him". However, there was no such provision either in Regulations 10 and 11 (1) or in section 10 of the Emergency Provisions Act. In point of fact, the persons concerned were not normally informed why they were being arrested; in general, they were simply told that the arrest was made pursuant to the emergency legislation and they were given no further details (see paragraphs 81 and 82 above). This practice originated in instructions issued to the military police in May 1970 and it continued at least until it was declared unlawful by the courts (see the McElduff case, judgment of 12 October 1971, and the Kelly case, judgment of 11 January 1973, on Regulation 11 (1); the Moore case, judgment of 18 February 1972, on Regulation 10).

199. As for paragraph 3 (art. 5-3), taken together with paragraph 1 (c) (art. 5-1-c) (see paragraph 196 above), the Court finds that the impugned measures were not effected for the purpose of bringing the persons concerned "promptly" before "the competent legal authority", namely "a judge or other officer authorised by law to exercise judicial power".

Persons originally detained under, for example, Regulation 11 (2) were, in fact, sometimes brought before the ordinary courts (see paragraph 83 above), but paragraphs 1 (c) and 3 of Article 5 (art. 5-1-c, art. 5-3) of the Convention are not satisfied by an appearance "before the competent legal authority" in some cases since such appearance is obligatory in every single case governed by those paragraphs. For its part, the advisory committee before which were brought – on the occasions when they so consented – individuals interned under Regulation 12 (1) did not have power to order their release and accordingly did not constitute a "competent legal authority" (see paragraph 84 above).

On the other hand, such a power was vested by the Terrorists Order and, subsequently, by the Emergency Provisions Act in the commissioners who adjudicated on cases of persons subjected to interim custody orders made by the Secretary of State for Northern Ireland. However, even if such a commissioner is regarded as a judicial authority ("officer", "magistrat"), appearance before him did not take place "aussitôt", or even "promptly" (see paragraphs 86-88 above).

A person "arrested or detained" pursuant to one of the provisions complained of was even less entitled to "trial within a reasonable time" or to "release pending trial" conditioned, if need be, by "guarantees to appear for trial", within the meaning of Article 5 para. 3 (art. 5-3). Quite the contrary: the reason for the existence of those provisions and of the related practice was the fact that the circumstances prevailing at the time made it difficult, subject to exceptions, to institute criminal proceedings which would in principle have led to a judicial hearing ("audience") and to a "[decision] on the merits" (Lawless judgment of 1 July 1961, Series A no. 3, p. 52, first sub-paragraph).

200. There remains paragraph 4 (art. 5-4) which is applicable to "everyone who is deprived of his liberty", whether lawfully or not (De Wilde, Ooms and Versyp judgment of 18 June 1971, Series A no. 12, pp. 39-40, para. 73).

Under Regulations 10, 11 (1) and 11 (2) there was no entitlement to "take proceedings by which the lawfulness of [the] detention [would] be decided speedily by a court" and "release ordered if the detention" proved to be "not lawful" (see paragraphs 81-83 above). As regards Regulation 12 (1), the advisory committee to which internees had the possibility of making representations could at most recommend, as opposed to order, release, as the Court has already noted (see paragraphs 84 and 199 above). Moreover, the committee's procedure did not afford the fundamental guarantees inherent in the notion of "court" as used in Article 5 para. 4 (art. 5-4) (De Wilde, Ooms and Versyp judgment of 18 June 1971, Series A no. 12, pp. 40-

42, para. 76, second and third sub-paragraphs, and para. 78; paragraph 84 above).

The last remark also applies, mutatis mutandis, to the commissioners and to the appeal tribunal entrusted with supervisory functions by the Terrorists Order and, subsequently, by the Emergency Provisions Act (see paragraphs 87-88 above). Here again, the Court does not consider it indispensable to enquire further into the matter. In fact, only the Chief Constable and, in certain circumstances, the Secretary of State were empowered to refer to a commissioner the case of a person detained under an interim custody order (see paragraphs 86-88 above). The detainee himself was not entitled to "take proceedings" in respect of an interim custody order; he had no means of contesting the "lawfulness" of his detention, either during its initial twenty-eight day period or during its extension pending the commissioner's adjudication (see paragraphs 86 and 88 above). When that adjudication resulted in a detention order, the individual could challenge the order before the appeal tribunal; in general, however, that tribunal did not give its decision "speedily", at least if, as must be done, the length of the earlier proceedings before the commissioner is also taken into account (see paragraphs 86-88 above). Accordingly, the commissioners and the appeal tribunal did not meet each of the requirements of Article 5 para. 4 (art. 5-4).

The respondent Government maintain that habeas corpus proceedings, on the other hand, fully satisfied those requirements. The Court has, in fact, cognisance of a judgment delivered by a court before whom an individual had challenged under common law his deprivation of liberty pursuant to Regulations 11 (1) and 11 (2) (the McElduff case, judgment of 12 October 1971). However, the courts considered that their powers did not go beyond the limits indicated in paragraphs 81-84 above. The judicial review of the lawfulness of the measures in issue was thus not sufficiently wide in scope, taking into account the purpose and object of Article 5 para. 4 (art. 5-4) of the Convention.

201. On paragraphs 1 to 4 of Article 5 (art. 5-1, art. 5-2, art. 5-3, art. 5-4), taken alone, the Court therefore arrives at conclusions in line with those of the Commission.

B. On Article 5 taken together with Article 15 (art. 15+5)

202. The applicant Government maintain that the powers relating to extrajudicial deprivation of liberty which were applied in Northern Ireland from 9 August 1971 to March 1975 were not in complete conformity with Article 15 (art. 15) and, accordingly, violated Article 5 (art. 5).

The Commission is unanimous in not accepting this claim and it is disputed by the respondent Government.

203. Article 15 (art. 15) 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 (art. 2), except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 (art. 3, art. 4-1, art. 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."

204. Article 5 (art. 5) does not appear amongst the entrenched provisions listed in paragraph 2 of Article 15 (art. 15-2) and is therefore one of the Articles subject to the "right of derogation" reserved by the Contracting States, the exercise of which is regulated by paragraphs 1 and 3 (art. 15-1, art. 15-3).

1. On the "public emergency threatening the life of the nation"

205. Article 15 (art. 15) comes into play only "in time of war or other public emergency threatening the life of the nation". The existence of such an emergency is perfectly clear from the facts summarised above (paragraphs 12 and 29-75) and was not questioned by anyone before either the Commission or the Court. The crisis experienced at the time by the six counties therefore comes within the ambit of Article 15 (art. 15).

2. On the "extent strictly required"

206. The Contracting States may make use of their right of derogation only "to the extent strictly required by the exigencies of the situation". The Irish Government consider the "extent strictly required" to have been exceeded, whereas the British Government and the Commission assert the contrary.

(a) The role of the Court

207. The limits on the Court's powers of review (see judgment of 23 July 1968 on the merits of the "Belgian Linguistic" case, Series A no. 6, p. 35, para. 10 in fine; Handyside judgment of 7 December 1976, Series A no. 24, p. 22, para. 48) are particularly apparent where Article 15 (art. 15) is concerned.

It falls in the first place to each Contracting State, with its responsibility for "the life of [its] nation", to determine whether that life is threatened by a "public emergency" and, if so, how far it is necessary to go in attempting to overcome the emergency. By reason of their direct and continuous contact with the pressing needs of the moment, the national authorities are in principle in a better position than the international judge to decide both on the presence of such an emergency and on the nature and scope of derogations necessary to avert it. In this matter Article 15 para. 1 (art. 15-1) leaves those authorities a wide margin of appreciation.

Nevertheless, the States do not enjoy an unlimited power in this respect. The Court, which, with the Commission, is responsible for ensuring the observance of the States' engagements (Article 19) (art. 19), is empowered to rule on whether the States have gone beyond the "extent strictly required by the exigencies" of the crisis (Lawless judgment of 1 July 1961, Series A no. 3, p. 55, para. 22, and pp. 57-59, paras. 36-38). The domestic margin of appreciation is thus accompanied by a European supervision.

(b) Questions of evidence

208. The Irish Government ask the Court to exclude from its examination the following material:

– by reason of their origin, the Diplock report (see paragraphs 58-59 above), statements made before the Commission by the representatives of the United Kingdom and the memorandum by the Northern Ireland Office, annexed to the British memorial to the Court;

– for the reasons given in paragraph 210 below, the oral evidence obtained by the Commission under Article 14 (art. 14), including that of the witnesses G 1, G 2 and G 3, who were heard in London on 20 February 1975 (see paragraph 146 above).

209. The Court is not bound, under the Convention or under the general principles applicable to international tribunals, by strict rules of evidence. In order to satisfy itself, the Court is entitled to rely on evidence of every kind, including, insofar as it deems them relevant, documents or statements emanating from governments, be they respondent or applicant, or from their institutions or officials. Here, there can scarcely be any question as to the relevance of the evidence which the Irish Government challenge. In particular, the fact that some of it was given in connection with Article 14 (art. 14) rather than Article 15 (art. 15) is of little moment.

210. The hearing of the evidence of G 1, G 2 and G 3 gives rise to rather complex questions. The applicant Government invite the Court not to take account of that evidence beause it was heard in the absence of the

Parties and without cross-examination, as a result of the wishes of the respondent Government who thereby allegedly failed in their obligation to cooperate in establishing the truth (Article 28, sub-paragraph (a) in fine, of the Convention) (art. 28-a).
The Court finds in the first place that it does not have jurisdiction to rule on the correctness of the procedure followed at that hearing. The Commission, with its independence from the Court when carrying out its fact-finding rôle (Lawless judgment of 14 November 1960, Series A no. 1, p. 11, second sub-paragraph), is master of its procedure and of the interpretation of its Rules of Procedure – in this case Rule 34 para. 2 – which it draws up under Article 36 (art. 36) of the Convention.

On the other hand, the Court, being master of its own procedure and of its own rules (Article 55 of the Convention) (art. 55), has complete freedom in assessing not only the admissibility and the relevance but also the probative value of each item of evidence before it. It cannot attach to the evidence of G 1, G 2 and G 3 as much weight as to the evidence of witnesses who have been cross-examined. The Court looks upon the evidence of G 1, G 2 and G 3 as no more than one source of information amongst others and one which, being evidence coming from senior British officials, falls into a similar category to the respective statements made by the representatives of the two Governments to the Commission and the Court. Although that evidence was given on oath, it was obtained under conditions which reduce its weight. Besides, its importance was not over-estimated by the Commission which bore the absence of cross-examination in mind; the delegates took care to emphasise this.

(c) Questions concerning the merits

211. The Court has to decide whether the United Kingdom went beyond the "extent strictly required". For this purpose the Court must, as in the Lawless case (judgment of 1 July 1961, Series A no. 3, pp. 57-59, paras. 36-37), enquire into the necessity for, on the one hand, deprivation of liberty contrary to paragraph 1 of Article 5 (art. 5-1) and, on the other hand, the failure of guarantees to attain the level fixed by paragraphs 2 to 4 (art. 5-2, art. 5-3, art. 5-4).

(i) On the necessity for derogation from paragraph 1 of Article 5 (art. 5-1) by extrajudicial deprivation of liberty

212. Unquestionably, the exercise of the special powers was mainly, and before 5 February 1973 even exclusively, directed against the IRA as an underground military force. The intention was to combat an organisation which had played a considerable subversive rôle throughout the recent history of Ireland and which was creating, in August 1971 and thereafter, a particularly far-reaching and acute danger for the territorial integrity of the United Kingdom, the institutions of the six counties and the lives of the province's inhabitants (see paragraphs 16, 17, 20, 28-32, 35-42, 44, 47-48, 54-55, 58, 61, 63 and 67 above). Being confronted with a massive wave of violence and intimidation, the Northern Ireland Government and then, after the introduction of direct rule (30 March 1972), the British Government were reasonably entitled to consider that normal legislation offered insufficient resources for the campaign against terrorism and that recourse to measures outside the scope of the ordinary law, in the shape of extrajudicial deprivation of liberty, was called for. When the Irish Republic was faced with a serious crisis in 1957, it adopted the same approach and the Court did not conclude that the "extent strictly required" had been exceeded (Lawless judgment of 1 July 1961, Series A no. 3, pp. 35-36, para. 14, and pp. 57-58, para. 36).

However, under one of the provisions complained of, namely Regulation 10, a person who was in no way suspected of a crime or offence or of activities prejudicial to peace and order could be arrested for the sole purpose of obtaining from him information about others – and this sometimes occurred (see paragraphs 38 and 81 above). This sort of arrest can be justifiable only in a very exceptional situation, but the circumstances prevailing in Northern Ireland did fall into such a category. Many witnesses could not give evidence freely without running the greatest risks (see paragraphs 36, 53, 58-59 and 74 above); the competent authorities were entitled to take the view, without exceeding their margin of appreciation, that it was indispensable to arrest such witnesses so that they could be questioned in conditions of relative security and not be exposed to reprisals. Moreover and above all, Regulation 10 authorised deprivation of liberty only for a maximum of forty-eight hours.

213. From 9 August 1971 to 5 February 1973, the measures involving deprivation of liberty taken by the respondent State were used only against Republican terrorism even though as early as this period outrages, at first sporadic but later constantly more numerous, were attributable to Loyalist terrorism; even after 5 February 1973, the measures were applied against Republican terrorism to a much greater extent than against Loyalist terrorism despite the latter's organisation and extensive development shortly after 30 March 1972.

The Court will examine below (paragraphs 228-232) whether the difference of treatment between the two types of terrorism was such as to violate Article 14 (art. 14) of the Convention.

This issue apart, it appears to the Court that the extrajudicial measures brought into operation could, in the situation described above, reasonably have been considered strictly required for the protection of public security and that, in the context of Article 15 (art. 15), their intrinsic necessity, once recognised, could not be affected by the restriction of their field of application.

214. The Irish Government submit that experience shows extrajudicial deprivation of liberty to have been ineffectual. They contend that the policy introduced on 9 August 1971 not only failed to put a brake on terrorism but also had the result of increasing it (see paragraphs 42, 44 and 47-48 above). Consequently, the British Government, after attenuating the policy in varying degrees following the introduction of direct rule (see paragraphs 50, 57 and 64 above), abandoned it on 5 December 1975: since then, it appears that no one has been detained in the six counties under the emergency legislation, despite the persistence of an intense campaign of violence and even though the Emergency Provisions Amendment Act has remained in force (see paragraphs 76 and 91 above). This, claim the applicant Government, confirms that extrajudicial deprivation of liberty was not an absolute necessity.

The Court cannot accept this argument.

It is certainly not the Court's function to substitute for the British Government's assessment any other assessment of what might be the most prudent or most expedient policy to combat terrorism. The Court must do no more than review the lawfulness, under the Convention, of the measures adopted by that Government from 9 August 1971 onwards. For this purpose the Court must arrive at its decision in the light, not of a purely retrospective examination of the efficacy of those measures, but of the conditions and circumstances reigning when they were originally taken and subsequently applied.

Adopting, as it must, this approach, the Court accepts that the limits of the margin of appreciation left to the Contracting States by Article 15 para. 1 (art. 15-1) were not overstepped by the United Kingdom when it formed the opinion that extrajudicial deprivation of liberty was necessary from August 1971 to March 1975.

(ii) On the necessity for derogation from the guarantees under paragraphs 2 to 4 of Article 5 (art. 5-2, art. 5-3, art. 5-4)

215. The Court must now examine under Article 15 para. 1 (art. 15-1) the necessity for the far-reaching derogations found by it to have been made from paragraphs 2 to 4 of Article 5 (art. 5-2, art. 5-3, art. 5-4) (see paragraphs 198-200 above).

216. Neither Regulations 10 and 11 (1) nor section 10 of the Emergency Provisions Act afforded any remedy, judicial or administrative, against arrests effected thereunder. Although persons arrested under Regulation 11 (1) could, before 7 November 1972, apply to the Civil Authority for release on bail, the Terrorists Order deprived them of this right by revoking Regulation 11 (4) under which it arose. However, the duration of such arrests never exceeded forty-eight hours as regards Regulation 10, seventy-two hours as regards section 10 of the Emergency Provisions Act and, in practice, seventy-two hours as regards Regulation 11 (1) (see paragraphs 81-82 and 88 above).

217. Similarly, Regulation 11 (2), Article 4 of the Terrorists Order and paragraph 11 of Schedule 1 to the

Emergency Provisions Act did not provide for any remedy. Detention under Regulation 11 (2) sometimes continued for longer than twenty-eight days, but it was never to be for an indefinite period and the detainee could, if the administrative authority agreed, apply to the courts for release on bail (Regulation 11 (4) and the McElduff case, judgment of 12 October 1971). On the other hand, interim custody imposed under Article 4 of the Terrorists Order, or subsequently under paragraph 11 of Schedule 1 to the Emergency Provisions Act, continued until adjudication by the commissioner; the Chief Constable invariably referred the case to him within the initial twenty-eight day time-limit but the commissioner gave his decision after several weeks or even after six months (see paragraphs 83, 86 and 88 above).

218. Individuals deprived of their liberty under Regulation 12 (1), Article 5 of the Terrorists Order or paragraph 24 of Schedule 1 to the Emergency Provisions Act were in many cases interned or detained for some years. Nevertheless, the advisory committee set up by Regulation 12 (1) afforded, notwithstanding its non-judicial character, a certain measure of protection that cannot be discounted. By establishing commissioners and an appeal tribunal, the Terrorists Order brought further safeguards which were somewhat strengthened by the Emergency Provisions Act (see paragraphs 84, 87 and 88 above).

219. There was in addition the valuable, if limited, review effected by the courts, when the opportunity arose, by virtue of the common law (see, for example, the McElduff case, judgment of 12 October 1971 on Regulations 11 (1) and 11 (2), the Moore case, judgment of 18 February 1972 on Regulation 10 and the Kelly case, judgment of 11 January 1973 on Regulations 11 (1), 11 (2) and 12 (1); paragraphs 81-84 above).

220. An overall examination of the legislation and practice at issue reveals that they evolved in the direction of increasing respect for individual liberty. The incorporation right from the start of more satisfactory judicial, or at least administrative, guarantees would certainly have been desirable, especially as Regulations 10 to 12 (1) dated back to 1956-1957 and were made under an Act of 1922, but it would be unrealistic to isolate the first from the later phases. When a State is struggling against a public emergency threatening the life of the nation, it would be rendered defenceless if it were required to accomplish everything at once, to furnish from the outset each of its chosen means of action with each of the safeguards reconcilable with the priority requirements for the proper functioning of the authorities and for restoring peace within the community. The interpretation of Article 15 (art. 15) must leave a place for progressive adaptations.

The Northern Ireland Government sought in the first place – unsuccessfully – to meet the most pressing problem, to stem the wave of violence that was sweeping the region. After assuming direct responsibility for the future of the province, the British Government and Parliament lost little time in moderating in certain respects the severity of the laws applied in the early days. The Court asked itself whether those laws should not have been attenuated even more, especially as regards interim custody (see paragraph 217 above), but does not consider that it can give an affirmative answer. It must not be forgotten that the crisis experienced at the time by the six counties was serious and, hence, of a kind that justified far-reaching derogations from paragraphs 2 to 4 of Article 5 (art. 5-2, art. 5-3, art. 5-4). In view of the Contracting States' margin of appreciation, the Court does not find it established that the United Kingdom exceeded in this respect the "extent strictly required" referred to in Article 15 para. 1 (art. 15-1).

221. According to the applicant Government, the non-contested violations of Article 3 (art. 3) are relevant under Articles 5 and 15 (art. 15+5) taken together. They claim that deprivation of liberty was sometimes imposed on the strength of information extracted in conditions contrary to Article 3 (art. 3) and was thereby rendered unlawful under Article 15 (art. 15). The Irish argument is also said to be confirmed by the existence of those violations since they would probably have been prevented by the impugned legislation if it had afforded genuine guarantees to the persons concerned.

The Court emphasises, as do the respondent Government and the Commission, that Articles 3 and 5 (art. 3, art. 5) embody quite separate obligations. Moreover, the violations of Article 3 (art. 3) found in the present judgment fail to show that it was not necessary to apply the extrajudicial powers in force.

3. On the "other obligations under international law"

222. Article 15 para. 1 (art. 15-1) in fine prohibits any derogation inconsistent "with other obligations under international law". There is nothing in the data before the Court to suggest that the United Kingdom disregarded such obligations in this case; in particular, the Irish Government never supplied to the Commission or the Court precise details on the claim formulated or outlined on this point in their application of 16 December 1971.

4. On the observance of paragraph 3 of Article 15 (art. 15-3)

223. The Court finds proprio motu, in the light of its Lawless judgment of 1 July 1961 (Series A no. 3, pp. 61-62, para. 47), that the British notices of derogation dated 20 August 1971, 23 January 1973 and 16 August 1973 (see paragraphs 80, 85 and 88 above) fulfilled the requirements of Article 15 para. 3 (art. 15-3).

5. Conclusion

224. The Court has accordingly come to the conclusion that, since the requirements of Article 15 (art. 15) were met, the derogations from Article 5 (art. 5) were not, in the circumstances of the case, in breach of the Convention.

C. On Article 14 taken together with Article 5 (art. 14+5)

225. Article 14 (art. 14) provides:

"The enjoyment of the rights and freedoms set forth in [the] 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."

Before 5 February 1973, the extrajudicial powers were employed only against persons suspected of engaging in, or of possessing information about, IRA terrorism; later on, they were also utilised, but to a far lesser extent, against supposed Loyalist terrorists. According to the applicant Government, the circumstances of the case show that the United Kingdom thereby followed a policy or practice of discrimination.

226. The principal submission of the Irish Government is that it would not be correct to apply here the criteria used by the Court, in the field of Article 14 (art. 14) since its judgment of 23 July 1968 on the merits of the "Belgian Linguistic" case (Series A no. 6, pp. 34-35, para. 10). The Government's argument runs as follows: those criteria are applicable only where a respondent State admits having introduced a difference of treatment and where that difference is expressly permitted by legislation; however, the British Government pleaded before the Commission not the existence of an "objective and reasonable justification" but rather the complete absence of such a difference, and the inequalities found in the report of 25 January 1976 arose from the mere application of laws which themselves created no inequalities; therefore the Commission was in error in applying those criteria; the Court should depart therefrom and rely on a number of inferences which, in the applicant Government's view, indicate that those inequalities were discriminatory.

The Court's case-law does not, in fact, make the distinctions which the Irish Government seek to draw therefrom. That case-law was confirmed by the Court when, for example, it examined under Article 14 (art. 14) claims relating, like those in the present case, to the mere application of a law (Swedish Engine Drivers' Union judgment of 6 February 1976, Series A no. 20, p. 17, paras. 45 in fine and 46; Schmidt and Dahlström judgment of 6 February 1976, Series A no. 21, p. 17, paras. 39 in fine and 40; Engel and others judgment of 8 June 1976, Series A no. 22, p. 42, paras. 102 in fine, and 103 in fine; Handyside judgment of 7 December 1976, Series A no. 24, pp. 30-31, para. 66). The Court sees no reason for departing from that case-law on this occasion.

227. The applicant Government submit, in the alternative, that the difference of treatment in question lacked an "objective and reasonable justification".

228. Before ruling on this submission, the Court must examine why, as early as 1971, Loyalist terrorism was not fought with the same weapons as Republican terrorism (see paragraphs 37-38 above).

The Court finds that there were profound differences between Loyalist and Republican terrorism.

At the time in question, the vast majority of murders, explosions and other outrages were attributable to Republicans. Although Loyalists had begun towards 1963 to perpetrate acts of violence, reaching a high level in 1969 when the IRA was scarcely in evidence (see paragraphs 20-28 above), since 1970 the scale of their activities had been minute in comparison with those of the IRA (see paragraphs 29-32, 37, 45 and 47 above).

In the second place, the IRA, with its far more structured organisation, constituted a far more serious menace than the Loyalist terrorists. In 1970 and 1971 the Protestant community included political pressure groups with extremist tendencies, but apparently concealed within its ranks no underground military force akin to the IRA. At that time Loyalist terrorism was seen by the authorities as the sporadic work of individuals or isolated factions (see paragraph 37 above).

Lastly, it was as a general rule easier to institute criminal proceedings against Loyalist terrorists than against their Republican counterparts and the former were frequently brought before the courts. Accordingly, although Loyalist terrorists were not extrajudicially deprived of their liberty, they do not seem to have been able to act with impunity.

229. The later period (30 March 1972 – 4 February 1973) gives rise to delicate questions.

When assuming direct rule of the province (30 March 1972), the United Kingdom Government and Parliament wished, amongst other things, to combat the discrimination long prevalent there in the area of electoral rights, employment, housing, etc., in the hope of reaching an equitable solution to the Northern Ireland problem (see paragraphs 50, 60 and 77 above).

However, this approach did not have a consequence which might have been expected, namely a complete equality of treatment between the two categories of terrorists in the exercise of the special powers. Shortly after 30 March 1972, there was a spectacular increase in Loyalist terrorism. Furthermore, the UVF proved to have increased its membership, expanded its holding of arms and improved its organisation. Towards the middle of the year, the police as a general rule had reasonably good intelligence as to the identity of violent elements on the Protestant side but there were cases in which it was impossible to procure sufficient evidence to bring them before the courts. Nevertheless, about ten months elapsed before the first two Loyalists were extrajudicially deprived of their liberty (see paragraphs 52-53, 57, 61-62 and 66 above).

Several explanations for what is at first sight a surprising time-lag are advanced by the respondent Government and the Commission, for example the three combined facts that it had been decided to attempt the phasing-out of internment, that the IRA were still responsible for the great majority of serious acts of terrorism and that, broadly speaking, the ordinary criminal processes remained far more suited to the campaign against the Loyalist terrorists than to that against their Republican opponents (see paragraphs 50, 54-58, 61 and 63 above).

The cause or causes behind the conduct of the Government and the security forces at the time cannot be determined with certainty from the evidence, but it seems beyond doubt that the reasons that had been influential before 30 March 1972 became less and less valid as time went on.

However, the Court considers it unrealistic to carve into clear-cut phases a situation that was inherently changing and constantly evolving. The Court can understand the authorities' hesitating about the course to take, feeling their way and needing a certain time to try to adapt themselves to the successive demands of an ugly crisis. On the basis of the data before it, and bearing in mind the limits on its powers of review, the Court cannot affirm that, during the period under consideration, the United Kingdom violated Article 14,

taken together with Article 5 (art. 14+5), by employing the emergency powers against the IRA alone.

230. To sump up, the aim pursued until 5 February 1973 – the elimination of the most formidable organisation first of all – could be regarded as legitimate and the means employed do not appear disproportionate.

231. 5 February 1973 marked a turning-point. Thereafter, extrajudicial deprivation of liberty was used to combat terrorism as such, as defined a few months previously by the 1972 Order, and no longer just a given organisation. In point of fact, the measures were not applied against Loyalist terrorists to anything like the same extent as against the IRA (see paragraph 69 above), but the IRA were still committing the majority of the acts of terrorism (see paragraph 67 above). Furthermore, Loyalist terrorists could still be brought before the courts more easily than their Republican counterparts. Criminal proceedings were opened against many of the former and often led to convictions, above all in one particular field – sectarian assassinations (see paragraphs 67, 70 and 76 above). The Court cannot reproach the United Kingdom for having attempted to avail itself as far as possible of this procedure under the ordinary law. Taking into account, as it must, the full range of the processes of the law applied in the campaign against the two categories of terrorists, the Court finds that the initial difference of treatment did not continue during the last period considered.

232. Accordingly, no discrimination contrary to Articles 14 and 5 (art. 14+5) taken together is established.

III. On Article 6 (art. 6)

233. The substance of further claims made by the applicant Government is that

– the various powers concerning extrajudicial deprivation of liberty which were used in Northern Ireland from 9 August 1971 to March 1975 did not satisfy the conditions prescribed by Article 6 (art. 6);

– those powers violated Article 6 (art. 6) since they were not in full conformity with the requirements of Article 15 (art. 15);

– those powers were furthermore implemented with discrimination and consequently also violated Article 14 taken together with Article 6 (art. 14+6).

234. Article 6 (art. 6) provides as follows:

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed
innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum
rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient

means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

235. The applicability of Article 6 (art. 6) to the present case is a subject of controversy before the Court and is disputed by the respondent Government and the Commission. Argument has centred on whether there is room for the cumulative application of Articles 5 and 6 (art. 5, art. 6), whether the right to liberty is a "civil right" and whether the function of the commissioners and the appeal tribunal, under the Terrorists Order and the Emergency Provisions Act, was the "determination" of a "criminal charge".

The Court does not consider it necessary to give a decision on this point. The applicant Government are complaining here of the same measures as under Article 5 (art. 5). However, assuming Article 6 (art. 6) to be material, the derogations from the guarantees of a judicial nature afforded by Article 5 (art. 5) perforce involved derogating from those afforded by Article 6 (art. 6). The Court has already held that the derogations from Article 5 (art. 5) met the requirements of Article 15 (art. 15) (see paragraph 224 above); in the circumstances of the case, it arrives at the same conclusion as regards the derogations from Article 6 (art. 6). In addition, the Court has held that no discrimination contrary to Articles 14 and 5 (art. 14+5) taken together is established (see paragraph 232 above); it likewise finds no discrimination with respect to Article 6 (art. 6).

IV. On Article 1 (art. 1)

236. The Irish Government's submission is as follows: the laws in force in the six counties did not in terms prohibit violations of the rights and freedoms protected by Articles 3, 5, 6 and 14 (art. 3, art. 5, art. 6, art. 14); several of those laws, as well as certain administrative practices, even authorised or permitted such violations; the United Kingdom was thereby in breach, in respect of each of those Articles (art. 3, art. 5, art. 6, art. 14), of an inter-State obligation separate from its obligations towards individuals and arising from Article 1 (art. 1) which provides:

"The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention."

Neither the British Government nor the Commission in its report concur with this argument. They consider, briefly, that Article 1 (art. 1) cannot be the subject of a separate breach since it grants no rights in addition to those mentioned in Section I.

237. In their memorial of 26 October 1976, the respondent Government also stressed that the Commission had accepted only one of the two issues raised by this claim, namely the issue concerning administrative practices.

The applicant Government replied that the issue of the legislative measures was also referred to in paragraph 7 of the reasons for the decision of 1 October 1972, that the operative provisions of that decision had not declared that issue inadmissible and that the Commission had examined it on the merits. The delegates expressed a similar opinion.

At the hearings in February 1977, the British Government withdrew this preliminary plea in the light, inter alia, of the Handyside judgment of 7 December 1976 (Series A no. 24, pp. 19-20, para. 41). The Court takes note of this withdrawal; it does not consider that it has to give a ruling on a question which does not concern public order (ordre public), which apparently was not raised before the Commission (De Wilde, Ooms and Versyp judgment of 18 June 1971, Series A no. 12, p. 30, para. 54) and which, anyway, appears to have been overtaken by events.

238. Article 1 (art. 1), together with Articles 14, 2 to 13 and 63 (art. 14, art. 2, art. 3, art. 4, art. 5, art. 6, art. 7, art. 8, art. 9, art. 10, art. 11, art. 12, art. 13, art. 63), demarcates the scope of the Convention ratione personae, materiae and loci; it is also one of the many Articles that attest the binding character of the Convention. Article 1 (art. 1) is drafted by reference to the provisions contained in Section I and thus comes into operation only when taken in conjunction with them; a violation of Article 1 (art. 1) follows automatically from, but adds nothing to, a breach of those provisions; hitherto, when the Court has found such a breach, it has never held that Article 1 (art. 1) has been violated (Neumeister judgment of 27 June 1968, Series A no. 8, p. 41, para. 15, and p. 44; judgment of 23 July 1968 on the merits of the "Belgian Linguistic" case, Series A no. 6, pp. 70 in fine and 87, para. 1; Stögmüller judgment of 10 November 1969, Series A no. 9, p. 45; De Wilde, Ooms and Versyp judgment of 18 June 1971, Series A no. 12, p. 43, para. 80, and p. 47, para. 4; Ringeisen judgment of 16 July 1971, Series A no. 13, p. 45, para. 109 in fine, and p. 46, paras. 5-6; Golder judgment of 21 February 1975, Series A no. 18, p. 20, para. 40 in fine, p. 22, para. 45 in fine, and p. 23, paras. 1-2; Engel and others judgment of 8 June 1976, Series A no. 22, p. 29, para. 69 in fine, p. 37, para. 89 in fine, and p. 45, paras. 4, 5 and 11).

239. However, the Irish Government's argument prompts the Court to clarify the nature of the engagements placed under its supervision. Unlike international treaties of the classic kind, the Convention comprises more than mere reciprocal engagements between contracting States. It creates, over and above a network of mutual, bilateral undertakings, objective obligations which, in the words of the Preamble, benefit from a "collective enforcement". By virtue of Article 24 (art. 24), the Convention allows Contracting States to require the observance of those obligations without having to justify an interest deriving, for example, from the fact that a measure they complain of has prejudiced one of their own nationals. By substituting the words "shall secure" for the words "undertake to secure" in the text of Article 1 (art. 1), the drafters of the Convention also intended to make it clear that the rights and freedoms set out in Section I would be directly secured to anyone within the jurisdiction of the Contracting States (document H (61) 4, pp. 664, 703, 733 and 927). That intention finds a particularly faithful reflection in those instances where the Convention has been incorporated into domestic law (De Wilde, Ooms and Versyp judgment of 18 June 1971, Series A no. 12, p. 43, para. 82; Swedish Engine Drivers' Union judgment of 6 February 1976, Series A no. 20, p. 18, para. 50).

The Convention does not merely oblige the higher authorities of the Contracting States to respect for their own part the rights and freedoms it embodies; as is shown by Article 14 (art. 14) and the English text of Article 1 (art. 1) ("shall secure"), the Convention also has the consequence that, in order to secure the enjoyment of those rights and freedoms, those authorities must prevent or remedy any breach at subordinate levels.

240. The problem in the present case is essentially whether a Contracting State is entitled to challenge under the Convention a law in abstracto.

The answer to this problem is to be found much less in Article 1 (art. 1) than in Article 24 (art. 24). Whereas, in order to be able to lodge a valid petition, a "person, non-governmental organisation or group of individuals" must, under Article 25 (art. 25), claim "to be the victim of a violation ... of the rights set forth", Article 24 (art. 24) enables each Contracting State to refer to the Commission "any alleged breach of [any of] the provisions of the Convention by another [State]".

Such a "breach" results from the mere existence of a law which introduces, directs or authorises measures incompatible with the rights and freedoms safeguarded; this is confirmed unequivocally by the travaux préparatoires (document H (61) 4, pp. 384, 502, 703 and 706).

Nevertheless, the institutions established by the Convention may find a breach of this kind only if the law challenged pursuant to Article 24 (art. 24) is couched in terms sufficiently clear and precise to make the breach immediately apparent; otherwise, the decision of the Convention institutions must be arrived at by reference to the manner in which the respondent State interprets and applies in concreto the impugned text or texts.

The absence of a law expressly prohibiting this or that violation does not suffice to establish a breach since such a prohibition does not represent the sole method of securing the enjoyment of the rights and freedoms guaranteed.

241. In the present case, the Court has found two practices in breach of Article 3 (art. 3) (see paragraphs 168 and 174 above). Those practices automatically infringed Article 1 (art. 1) as well, but this is a finding which adds nothing to the previous finding (see paragraph 238 above) and which there is no reason to include in the operative provisions of this judgment.

Examination in abstracto of the legislation in force at the relevant time in Northern Ireland reveals that it never introduced, directed or authorised recourse to torture or to inhuman or degrading treatment. On the contrary, it forbade any such ill-treatment in increasingly clear terms (see paragraphs 134-136 above). More generally, as from the end of August 1971 the higher authorities in the United Kingdom took a number of appropriate steps to prevent or remedy the individual violations of Article 3 (art. 3) (see paragraphs 99-101, 133 and 137-143 above).

242. With regard to Article 14 taken together with Articles 15, 5 and 6 (art. 14+15, art. 14+5, art. 14+6), the applicant Government do not challenge the legislation as such. Moreover, it did not introduce, direct or authorise any discrimination in the exercise of the extrajudicial powers. The claim concerns only the legislation's application, in respect of which the Court has not found any violation (see paragraphs 228-232 and 235 above).

243. As for Article 15 taken together with Articles 5 and 6 (art. 15+5, art. 15+6), on the other hand, the legislation itself is criticised by the Irish Government.

Certain aspects of the legislation do give rise to doubts. Neither Regulations 11 (1) and 11 (2), nor Article 4 of the Terrorists Order, nor paragraph 11 of Schedule 1 to Emergency Provisions Act set any limit on the duration of the deprivation of liberty they authorised. Furthermore, they did not afford to the persons concerned any judicial or administrative remedy beyond the restricted right to apply for bail, a right that was moreover abolished on 7 November 1972 with the revocation of Regulation 11 (4) (see paragraphs 82, 83 and 85 above). These provisions differed, on the first point, from Regulation 10 (forty-eight hours) and section 10 of the Emergency Provisions Act (seventy-two hours) and, on the second, from Regulation 12 (1) (advisory committee), Article 6 of the Terrorists Order (appeal tribunal) and paragraphs 26 to 34 of Schedule 1 to the Emergency Provisions Act (idem).

The first-mentioned shortcoming resulted, however, from the mere silence of the legislation and was mitigated in practice (maximum of seventy-two hours for Regulation 11 (1) and, in general, twenty-eight days for Regulation 11 (2)).

The second shortcoming appears more serious, especially as regards Regulation 11 (2), Article 4 of the Terrorists Order and paragraph 11 of Schedule 1 to the Emergency Provisions Act; preferably, it should have been avoided. However, the deficiency was in part made good by the ordinary courts of the province by virtue of the common law (the McElduff case, judgment of 12 October 1971, and the Kelly case, judgment of 11 January 1973, Regulations 11 (1) and (2)).

Above all, one is dealing with special legislation designed to combat a public emergency threatening the life of the nation; such provisions cannot be torn out of context without leading to arbitrary results. It was hardly possible for this legislation to forecast in a rigid and inflexible manner the frontiers of the demands of an inherently fluid and changing situation; the massive scale of the outrages and the large number of the persons arrested, detained and interned prevented the provision of guarantees similar to those required by the Convention. In 1972 and 1973, the British authorities attenuated the severity of the original legislation, thereby demonstrating their concern not to go beyond the "extent strictly required by the exigencies" of the circumstances. On this, a question of fact rather than of law, the said authorities enjoyed a margin of appreciation which they do not seem to have exceeded. Here again, the Court considers that it would be unrealistic to isolate the first from the later phases (see paragraphs 220, first sub-paragraph, and 229, sixth

sub-paragraph, above); as regards the legislation as such, the Court does not feel able to arrive at conclusions conflicting with its decision on the application of that legislation (see paragraphs 214 and 220 above).

Accordingly, on this issue no breach of Articles 5, 6 (art. 5, art. 6) – assuming the latter Article (art. 6) to be applicable in this case (see paragraph 235 above) – and 15, taken together with Articles 1 and 24 (art. 15+1, art. 15+24), is found to be established.

V. On Article 50 (art. 50)

244. Under Article 50 (art. 50) of the Convention, if the Court finds, as in the present case, "that a decision or a measure taken" by any authority of a Contracting State "is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said [State] allows only partial reparation to be made for the consequences of this decision or measure", the Court "shall, if necessary, afford just satisfaction to the injured party".

The Rules of Court specify that when the Court "finds that there is a breach of the Convention, it shall give in the same judgment a decision on the application of Article 50 (art. 50) of the Convention if that question, after being raised under Rule 47 bis, is ready for decision; if the question is not ready for decision, the [Court] shall reserve it in whole or in part and shall fix the further procedure" (Rule 50 para. 3, first sentence, read in conjunction with Rule 48 para. 3).

245. The President, acting on behalf of the Court, instructed the Registrar to ask the Agent of the Irish Government to indicate "as soon as possible whether it would be correct to assume, particularly in the light" of certain passages in the Commission's decision on the admissibility of the application and in the verbatim report of the public hearings held in February 1977, "that [his] Government [were not inviting] the Court, should it find a violation of the Convention, to afford just satisfaction within the meaning of Article 50 (art. 50)". This the Registrar did by letter of 8 August 1977.

On 14 October 1977, the Agent of the applicant Government replied as follows:

"... the applicant Government, while not wishing to interfere with the de bene esse jurisdiction of the Court, have not as an object the obtaining of compensation for any individual person and do not invite the Court to afford just satisfaction under Article 50 (art. 50), of the nature of monetary compensation, to any individual victim of a breach of the Convention.
..."

246. The Court accordingly considers that it is not necessary to apply Article 50 (art. 50) in the present case.

FOR THESE REASONS, THE COURT

I. On Article 3 (art. 3)

1. holds unanimously that, although certain violations of Article 3 (art. 3) were not contested, a ruling should nevertheless be given thereon;

2. holds unanimously that it has jurisdiction to take cognisance of the cases of alleged violation of Article 3 (art. 3) to the extent that the applicant Government put them forward as establishing the existence of a practice;

3. holds by sixteen votes to one that the use of the five techniques in August and October 1971 constituted a practice of inhuman and degrading treatment, which practice was in breach of Article 3 (art. 3);

4. holds by thirteen votes to four that the said use of the five techniques did not constitute a practice of torture within the meaning of Article 3 (art. 3);

5. holds by sixteen votes to one that no other practice of ill-treatment is established for the unidentified interrogation centres;

6. holds unanimously that there existed at Palace Barracks in the autumn of 1971 a practice of inhuman treatment, which practice was in breach of Article 3 (art. 3);

7. holds by fourteen votes to three that the last-mentioned practice was not one of torture within the meaning of Article 3 (art. 3);

8. holds unanimously that it is not established that the practice in question continued beyond the autumn of 1971;

9. holds by fifteen votes to two that no practice in breach of Article 3 (art. 3) is established as regards other places;

10. holds unanimously that it cannot direct the respondent State to institute criminal or disciplinary proceedings against those members of the security forces who have committed the breaches of Article 3 (art. 3) found by the Court and against those who condoned or tolerated such breaches;

II. On Article 5 (art. 5)

11. holds unanimously that at the relevant time there existed in Northern Ireland a public emergency threatening the life of the nation, within the meaning of Article 15 para. 1 (art. 15-1);

12. holds unanimously that the British notices of derogation dated 20 August 1971, 23 January 1973 and 16 August 1973 fulfilled the requirements of Article 15 para. 3 (art. 15-3);

13. holds by sixteen votes to one that, although the practice followed in Northern Ireland from 9 August 1971 to March 1975 in the application of the legislation providing for extrajudicial deprivation of liberty entailed derogations from paragraphs 1 to 4 of Article 5 (art. 5-1, art. 5-2, art. 5-3, art. 5-4), it is not established that the said derogations exceeded the extent strictly required by the exigencies of the situation, within the meaning of Article 15 para. 1 (art. 15-1);

14. holds unanimously that the United Kingdom has not disregarded in the present case other obligations under international law, within the meaning of Article 15 para. 1 (art. 15-1);

15. holds by fifteen votes to two that no discrimination contrary to Articles 14 and 5 (art. 14+5) taken together is established;

III. On Article 6 (art. 6)

16. holds unanimously that the derogations from Article 6 (art. 6), assuming it to be applicable in the present case, are compatible with Article 15 (art. 15);

17. holds by fifteen votes to two that no discrimination contrary to Articles 14 and 6 (art. 14+6) taken together, assuming the latter Article (art. 6) to be applicable in the present case, is established;

IV. On Article 50 (art. 50)

18. holds unanimously that it is not necessary to apply Article 50 (art. 50) in the present case.

Done in English and French, both texts being authentic, at the Human Rights Building, Strasbourg, this eighteenth day of January, one thousand nine hundred and seventy-eight.

Signed: Giorgio BALLADORE PALLIERI
President

Signed: Marc-André EISSEN
Registrar

The separate opinions of the following judges are annexed to the present judgment in accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 50 para. 2 of the Rules of Court :

Mr. ZEKIA;
Mr. O'DONOGHUE;
Sir Gerald FITZMAURICE;
Mr. EVRIGENIS;
Mr. MATSCHER.

Initialled: G. B. P.

Initialled: M.-A. E.

Separate opinion of judge Zekia

With respect, I subscribe to the main part of the judgment of the Court. I maintain, however, a different view as to the notion and concept of the word "torture" occurring in Article 3 (art. 3) of the Convention. Moreover, I entertain a lot of doubt whether the Court is justified in setting aside a unanimous conclusion of the Commission in respect of torture which has not been contested by the representatives of the two High Contracting States who took part in the proceedings before the Court.

I feel tempted also to deal briefly with the principle underlying the onus of proof and the discharge of such onus in a case where a Contracting State is alleged to have violated its obligation under an Article of the Convention.

A. Torture

Admittedly the word "torture" included in Article 3 (art. 3) of the Convention is not capable of an exact and comprehensive definition. It is undoubtedly an aggravated form of inhuman treatment causing intense physical and/or mental suffering. Although the degree of intensity and the length of such suffering constitute the basic elements of torture, a lot of other relevant factors had to be taken into account. Such as: the nature of ill-treatment inflicted, the means and methods employed, the repetition and duration of such treatment, the age, sex and health condition of the person exposed to it, the likelihood that such treatment might injure the physical, mental and psychological condition of the person exposed and whether the injuries inflicted caused serious consequences for short or long duration are all relevant matters to be considered together and arrive at a conclusion whether torture has been committed.

It seems to me permissible, in ascertaining whether torture or inhuman treatment has been committed or not, to apply not only the objective test but also the subjective test.

As an example I can refer to the case of an elderly sick man who is exposed to a harsh treatment – after being given several blows and beaten to the floor, he is dragged and kicked on the floor for several hours. I would say without hesitation that the poor man has been tortured. If such treatment is applied on a wrestler or even a young athlete, I would hesitate a lot to describe it as an inhuman treatment and I might regard it as a mere rough handling. Another example: if a mother, for interrogation, is separated from her suckling baby by keeping them apart in adjoining rooms and the baby, on account of hunger, starts yelling for hours within the hearing of the mother and she is not allowed to attend her baby, again I should say both the mother and the baby have been subjected to inhuman treatment, the mother by being agonized and the baby by being

deprived of the urgent attention of the mother. Neither the mother nor the child has been assaulted.

The salient facts

In August and October 1971, fourteen persons were arrested with a view to extracting confession or information from them. They were submitted to a form of "interrogation in depth" by members of the security forces or persons authorised to do it. The said form of interrogation involved the application of the five techniques which consisted of:

1. hooding the detainees except during interrogation;

2. making them stand continuously against a wall in a spreadeagled and painful posture for prolonged periods of some hours;

3. submitting them to continuous and monotonous noise;

4. depriving them of sleep; and

5. restricting them to a diet of one round of bread and one pint of water at six-hourly intervals.

The five techniques were applied in combination and with premeditation and for hours at a stretch. They caused, if not actual bodily injury, at least intense physical and mental suffering to the persons subjected thereto and also led to acute psychiatric disturbances during interrogation. This practice of interrogation continued interruptedly for some days. This is a short summary of facts and effects relating to the application of the five techniques.

B. Interpretation of Article 3 (art. 3)

Reference was made to the Greek case and also to Article 5 of the Universal Declaration of Human Rights and also to Article 7 of the International Covenant on Civil and Political Rights.

Finally, stress was laid on Resolution 3452 of the United Nations
General Assembly of 9 December 1975 which was unanimously adopted.

Paragraph 1 of Article 1 of the Resolution referred to reads:

"For the purpose of this Declaration, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official ... for ... obtaining ... information or confession ...."

Paragraph 2 of Article 1 reads:

"Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment."

Paragraph 1, which deals with the meaning to be attached to the word "torture", is more relevant for the purpose of interpretation of Article 3 (art. 3) of the Convention.

It is significant that stress has been laid on the severity of physical and/or mental pain or suffering and it was not felt necessary to qualify the word "severe" with an adjective denoting a high degree of severity in the pain or suffering inflicted.

I do not share the view that extreme intensity of physical or mental suffering is a requisite for a case of ill-treatment to amount to "torture" within the purport and object of Article 3 (art. 3) of the Convention. The

nature of torture admits gradation in its intensity, in its severity and in the methods adopted. It is, therefore, primarily the duty and responsibility of the authority conducting the enquiries from close quarters, after taking into account all the surrounding circumstances, evidence and material available, to say whether in a particular case inhuman ill-treatment reached the degree of torture. In other words, this is a finding of fact for the competent authority dealing with the case in the first instance and which, for reasons we give hereunder, we should not interfere with.

C. The uncontested finding

In the instant case, as I said earlier, the Commission was unanimously of the opinion that the effect of the combined application of the five techniques in the case of fourteen persons amounted to torture. This conclusion has not been contested by applicant or respondent Government; what is more, by the representatives of the respondent Government, we have been invited to adhere to the findings of the Commission unless there were compelling reasons or cogent reasons to do otherwise. It was further submitted that it is wrong to suggest that the Court should make its own findings of fact because under the Convention questions of fact, evidence, etc., are primarily for the Commission; the Court will review only where there are compelling grounds.

Adopting the test submitted by the Counsel of the respondent Government, not only can I not find compelling reason or circumstance to go against the finding of the Commission, but I am not even in possession of adequate reason to suspect the soundness of the Commission's finding.

Amounts awarded

The fourteen persons who have undergone the ordeal of the five techniques were awarded compensation by way of settlement ranging from £10,000 to £25,000 sterling each. Surely the amounts awarded constitute a strong indication of the degree of severity and the intensity and length of the suffering caused to the recipients.

No new material before the Court

There was no new material or evidence before the Court, which was not made available to the Commission, relating to the application of the five techniques and its effects.

For the reasons I have endeavoured to give, I am of the view that the Commission rightly found that a contravention of Article 3 (art. 3) for torture in respect of certain cases has taken place.

On whom lies the burden to discharge the onus of proof

When a Contracting State is alleged to have committed a violation of a specific Article or Articles of the Convention by disregarding its obligation under it and such allegation is denied, surely there is a burden of proof to be discharged in some way or other in order to substantiate such accusation before an authorised organ of the Convention. What is material here is not whether a burden of proof does exist or not – it is an elementary rule of justice that it does exist and the fact that the presumption of innocence is codified by Article 6 para. 2 (art. 6-2) of the Convention is a strong indication of it – but by whom and how such onus should be discharged.

The national courts are bound both in civil and criminal matters by their procedural rules. A defendant or an accused might not have to defend his case until and unless some evidence has been adduced to support the charge or claim against him.

The national courts are bound by their rules of evidence governing the admissibility and inadmissibility of

evidence to be adduced. Hearsay evidence as well as an unauthenticated documentary evidence, for instance, might be excluded and not heard or produced.

On the other hand, the European Commission of Human Rights, as one of the judicial organs of the Council of Europe, possess unfettered discretion within the purview of Article 28 (art. 28) of the Convention and Rules 39 to 52 of their Rules of Procedure, to conduct investigation and enquiries in the way they think proper and to receive any kind of evidence without restrictions. No doubt, in the evaluation of the probative value of the evidence adduced, the nature of the evidence and of the documents will receive the deserved weight.

The interested Contracting Parties, on the other hand, have to render assistance to the Commission and the sub-committees who undertake investigation in a case. Withholding of evidence and a non-cooperative attitude by a respondent State no doubt might cause the Commission to draw adverse inferences. Having made the above general remarks, I would say that, at the end of proceedings, the Commission or the Court has, on the totality of evidence and material before them, to decide whether the burden of proof required to substantiate an allegation of contravention of the Convention by the respondent State has been discharged or not.

Separate opinion of judge O'Donoghue

On the findings of the Court summarized at pp. 94 to 96 of the judgment I share the unanimous views of my colleagues as well as the majority conclusion at no. 3. It is, however, with profound regret that I must record disagreement with the majority opinion at nos. 4, 5, 7, 9, 13, 15 and 17, and state the reasons in this separate opinion.

The report of the Commission covers 502 pages and was produced after a lengthy inquiry. It is to be commended for its comprehensive review of the facts. This is all the more praiseworthy to the authors when consideration is given to the sad lack of cooperation shewn by the respondent Government to the Commission and its delegates. I do not go beyond the narrative of the facts stated in the report, but set down my reasons where I differ from the conclusions of the Commission.

In noting the development of the crisis up to 1969 the report mentions the resentment shewn by the majority against proposed concessions to the minority and which took a somewhat savage form.

The report at p. 135(*) finds three salient facts:

(i) that in 1968-69 the IRA was virtually non-existent;

(ii) that the Civil Rights movement begun in 1968 and developed in 1969, was solely concerned with the civil rights of the people in Northern Ireland;

(iii) the Civil Rights movement produced a violent and well organized reaction against the minority and the Government when the latter appeared to concede reforms to the minority.

At pp. 169-173 there is described the attack on a peaceable march set upon at Burntollet Bridge, the burning out of hundreds of the minority living in Bombay Street, and the complete destruction of 30 licensed premises and the partial demolition of 46 similar premises, – all owned by members of the minority. At this juncture there was no forceful provocation on the minority side. Again it will be found at pp. 170-171, a reference to the series of explosions at electricity stations and water reservoirs early in 1969, and to the fact that although these outrages were at first attributed by the authorities to the IRA, this conclusion was found to be erroneous and terrorists on the majority side were held to have been responsible. I find that the report fails to place in its true perspective the weight and extent of the violence in 1968-69, which came from the majority terrorists.

The publication of the Hunt report in 1969, involving the disbandment of the Special Constabulary, also led to a violent reaction on the part of the majority and is outlined at p. 175 of the report of the Commission. The formation early in 1972 of the Ulster Vanguard Movement as a para-military body estimated to have numbered 50,000 after its inception, with threats expressed to liquidate the minority, conveys some idea of the strength and menace to peace from this source (p. 191).

I consider that the foregoing events have not been appraised correctly in the report so as to give an accurate picture of the respective dangers to peace in 1968-1971 coming from the two communities in contention. The defenceless plight of the minority furnished ample excuses for the IRA to become reactivated, and the comment in the report that the several happenings noted therein had a disenchanting effect on the peaceable members of the minority strikes me as a somewhat bland euphemism. One must remember that the Cameron report noted at p. 165 of the Commission's report sheds a flood of informative light on the plight of the minority community for almost half a century, and the cloud of discrimination which enveloped it. Again the comment of the Commission (p. 213) that there was an element of inherent bias in the whole political system in Northern Ireland in favour of one community retains a euphemistic flavour.

When the decision to introduce detention and internment was taken, it was stated to be a temporary measure against persons suspected of terrorist activities against whom evidence was not available. Persons were arrested under the Operation Demetrius and even detained on the basis of inadequate or inaccurate information. Furthermore, no reasons were given for detention of those taken into custody and in the early period no effective machinery for review was available to the detainee. I am of opinion that the deplorable effect on the peaceable members of the minority of this sweeping-up operation has not been fully appreciated.

I find it devoid of any realistic approach to the true situation to see expressions again in the Commission's report as to their surprise at the effect on the minority community – comprising practically in all one-third of the whole population – of the varied steps to deal ostensibly with the IRA. It is difficult, and has not been conveyed in the report, to describe the shocked reaction, far beyond the area of Northern Ireland, at the shooting down of thirteen civilians in Londonderry in January 1972. Military forces were responsible and suffered no loss.

When the Government decided that the situation in 1971 called for extraordinary steps, I am far from satisfied that there was a full review of the position in the light of all the events in the years 1968-1971. I am cognizant of the difficulties confronting the Government but I am unable to see how the enforcement of detention and internment could be justified when for a year and a half it was carried out against the minority community only without exposing the Government to a charge of discrimination. There was a disregard of the massive build-up of organized para-military bodies from majority sources and the extent of the threat to peace from such sources in the terror inflicted on the minority in 1968-69. These forces were capable of paralysing community services and did so at least on two occasions. I will advert again to the Government apprehension at the strength of these forces and their reluctance to assert the law. I see in the selectivity in the enforcement of internment until 1973 the continuance of that element of inherent bias in favour of one community. This hinges on the evidence taken on the discrimination issue under Article 14 (art. 14). There are many issues of fact in this entire case and the issue of discrimination is one of them. To attempt to answer or contradict the plain trend of the evidence submitted by the applicant Government to the Commission by proffering the testimony of witnesses sheltered and protected from observation or cross-examination falls far short of meeting the requirements of a thorough and even-handed inquiry into the facts. For this the respondent Government was responsible.

I am, therefore, obliged to conclude upon all the evidence in the report that the respondent Government was guilty of discrimination in its application of extrajudicial steps to deal with the crisis in 1971-1973.

The report (pp. 108-135 and 225-244) records the protracted process to devise a procedure to hear evidence under Article 3 (art. 3). It is for anyone to read these pages in order to see the marked and persistent reluctance on the part of the respondent Government to comply fully or at all in some instances with the directions of the Commission and the delegates. A great deal of Respondent's evidence on the issues of fact

under Article 3 (art. 3) should have been heard in Strasbourg or Belfast or elsewhere in Northern Ireland. Evidence on behalf of Respondent was heard in Northern Ireland during all the years covered by the inquiry on many aspects of the crisis by the many Commissions established by the Government such as the Cameron, Hunt, Scarman, Compton, Gardiner and Widgery tribunals. Again, there was no apparent difficulty in tendering evidence by State forces for the defence in Moore v. Shillington. This evidence was disbelieved by the Judge in that case and no appeal was taken against his judgment. Yet these witnesses were not produced before the delegates.

The value of hearing evidence in a local venue cannot be overestimated. As a member of the Sub-Commission in the Greek case, I visited some of the places of detention and heard the witnesses on complaints of ill-treatment inflicted on them in detention. No written description, however colourful, could have been as informative as the visit to Boubolinos Street in Athens. Yet no visit was made to Palace Barracks, Girdwood Park, Ballykinler or any of the other places used for detention. It would also have been instructive and illuminating to have seen the extent of the destruction throughout Belfast.

The claim that the respondent Government was to be the sole judge on matters claimed to involve security shews the extent to which it sought to dictate the manner in which and the extent to which evidence was to be vouchsafed to the delegates. At the end of p. 235, respondent Government claimed to instruct witnesses as to how they should answer questions. Can anyone express surprise that the applicant Government's Attorney General described the proposals of the respondent Government as "outrageous" (p. 118)? I reject the claim of the respondent Government that arrangements could not have been made to have much of the evidence heard in the local venue, and I regard the claim as an effort to raise a smoke-screen to hamper the investigation.

Article 3 (art. 3)

The report devotes half of its content to the allegations as to breaches of Article 3 (art. 3) (pp. 221-473). Any one as a judge of fact can say whether and how far he or she can agree with the conclusions of the Commission. For my part I agree with the unanimous finding of the Commission that the use of the five techniques constituted "torture" in breach of the Convention. Careful consideration was given in the Greek case to the meaning to be given to the notion of "torture", "inhuman treatment" and "degrading treatment". Recognizing the difficulty, as the Court has discovered, to fashion a precise definition of these terms which would be of universal application, I take the view that the approach made by the Commission in the Greek case was a reasonable one in the light of a Convention which proclaims it is expressly designed to defend human rights (p. 377).

It must remain for any judicial body to say if the facts before it amount to torture, inhuman or degrading treatment, having regard to the entire circumstances of the case under investigation. One is not bound to regard torture as only present in a mediaeval dungeon where the appliances of rack and thumbscrew or similar devices were employed. Indeed in the present-day world there can be little doubt that torture may be inflicted in the mental sphere. Torture is, of course, a more severe type of inhuman treatment. No amount of careful consideration can alter my opinion that the approach of the Commission at p. 402 was the correct one. Accordingly, I conclude that the combined use of the five techniques constituted a practice of inhuman treatment and torture in breach of Article 3 (art. 3).

It must be emphasized that this finding by the Commission was a unanimous one arrived at after hearing many witnesses. The Court did not have the advantage of hearing any evidence from witnesses. Moreover, although the charges under Article 3 (art. 3) were vigorously contested by the respondent Government in the proceedings before the Commission, the finding against that Government by the Commission in its report has not been contested by the respondent Government before the Court. It must be stated again that, while the evidence of the applicant Government was quite properly subjected to rigorous cross-examination, the same attitude was not displayed to all the witnesses for the respondent Government. Here was a lamentable lack in the manner adopted in carrying out a searching and even-handed investigation.

While I accept the Commission's conclusions in sub-paragraphs (1) and (2) noted at p. 473 of the report, I

take a different view on the evidence in the report in respect of sub-paragraphs (3) and (4) on the same page. I regard it as absurd to hold that there was not constant and close communication at all relevant times between the numerous centres used for detention, including Palace Barracks, Girdwood Park, and Ballykinler. I adopt the meaning accorded in the Greek case to the terms "repetition of acts" and "official tolerance", and to the establishment of an "administrative practice", where such conditions were present. The repeated factual events in the above-named centres which went unchecked compel me to find on the merits a practice of inhuman treatment in breach of Article 3 (art. 3). This conclusion is not displaced but rather confirmed by the awards of compensation made in the majority of cases.

When I look at the evidence as to Girdwood Park and Ballykinler, where conditions prevailing in the detention centres were complained of, and see the coincidence of the happenings in these places with the remaining "illustrative" cases in some unknown interrogation centres in the autumn of 1971, it points clearly in my judgment to the existence at that time of a practice in breach of Article 3 (art. 3).

I am a firm upholder of the doctrine frequently approved by the Court that a margin of appreciation should be accorded to a State for its action taken in an emergency and impugned as a contravention of the Convention. In the present case, however, the invocation of this principle in favour of the respondent Government has been treated by the Court, in my opinion, as a blanket exculpation for many actions taken which cannot be reconciled with observance of the obligations imposed by the Convention.

To cite a few passages in this judgment to shew the tendency of the Court to depart from that cold objectivity I would mention paragraph 63. It is just not accurate to say the Loyalist terrorist groups were more amorphous than the IRA and were "criminals" or "hooligans". This might have been a convenient way for the security forces to so regard the massive para-military strength of the UDA, the UVF and the Vanguard movement. Indeed, in paragraph 66 this is borne out by the apprehension of the authorities and their reluctance to contemplate the detention of Loyalists, and is confirmed by the events noted in paragraph 73.

I have called attention to the ill-balanced approach by the Commission to the extensive attacks on the minority by the majority in 1969 and it is regrettable that this is adopted by the Court as a true appraisal of the situation. It is also quite wrong to attempt to isolate complaints such as those in Moore v. Shillington and not to face up to the concerted and united effort to hold and interrogate those arrested in 1971 and the constant communication between the detention centres which could only point to the existence of a practice. To attempt to isolate the case of Moore v. Shillington or any other individual case of the many brought before the Commission is to contradict the dictum laid down in paragraph 243 of the judgment and to tear provisions out of context and not to look at the entire spectrum of the situation as a whole. To deal with incidents as isolated events seems to me merely to seek an excuse to exonerate the respondent Government. For example, why say that the treatment in Moore v. Shillington was merely "discreditable and reprehensible" and not a breach of Article 3 (art. 3)?

Of course, the Court is not bound by the strict rules of evidence but it should be careful not to abuse this privilege. It would presumably look for the best evidence obtainable. I find nothing even approaching disapproval by the Court at the non-cooperative attitude of the respondent Government. It would be lacking in candour if I did not state that there is much in the tone and general approach of the judgment that must discourage member States from invoking Article 24 (art. 24). The concept of this being a collective guarantee in that Article (art. 24) to secure observance of human rights has been severely damaged.

Article 15 (art. 15)

I agree that the events justified derogation by the respondent Government under Article 15 (art. 15) but would point out the limitation imposed by that Article (art. 15) in requiring such departure from the Conventional obligations to be to the extent strictly required by the exigencies of the situation. I hope it will not be considered presumptuous to call special attention to the use of the word "strictly" and to suggest that some meaning be found for its insertion in the Article (art. 15).

It is erroneous to seek to establish a parallel with the Lawless case where the threat was to a small unitary State, not long recovered from a civil war situation, whereas in this case the threat must relate to the existence of the United Kingdom and not to the Six Counties only. It is necessary to examine the extent to which Articles 5 and 6 (art. 5, art. 6) were breached and to ascertain if the exigencies of the situation required those steps.

In view of my conclusions as to the breaches of Article 3 (art. 3) and to the discriminating employment of arrest and detention it is sufficient for me to express the opinion that the situation did not require the extrajudicial power of arrest and detention to have been employed without two safeguards viz: informing the person arrested and detained of the grounds therefor, and providing some means of obtaining a review of the extrajudicial action and release if the reviewing body was not satisfied. I regard these safeguards as necessary and indeed the logical sequence of the principles laid down in the Lawless case. Any such safeguards were not present in the early stages under Regulations 10, 11 and 12, and to the extent of their absence there was a breach in my opinion of Article 5 para. 4 (art. 5-4).

It is hardly necessary to pursue the question whether Article 6 (art. 6) was also contravened and I regard any breach of that Article (art. 6) to have been technical once it is accepted that there was for a period a breach of Article 5 para. 4 (art. 5-4) for the reasons stated above. It is no answer to say that the maximum or unlimited periods of detention were not exceeded or made use of in practice. The complaint here under Article 24 (art. 24) is that the Regulations sanctioned such excesses and that these contravened the Convention. Once again, it seems to me that the Court has strained beyond breaking point their conception of the margin of appreciation in Respondent's favour.

Consequential Order

I have a doubt as to the jurisdiction of the Court to make any effective order of a consequential nature as sought by the applicant Government. After such a lapse of time there would be practical difficulties in securing compliance with any such order. In my view it should not be made. Lest it might be overlooked I would observe there were a number of cases mentioned in the report in which complaints duly made as to assaults and ill-treatment by State forces on persons in custody were ignored by the authorities.

Article 1 (art. 1)

The question of interpretation of Article 1 (art. 1) of the Convention has not been satisfactorily treated by the Commission. Consideration of this problem turns largely on the meaning of Article 24 (art. 24). I would incline, therefore, to the approach in the separate opinions of Messrs. Sperduti, Opsahl, Ermacora and Mangan.

I would point out that the applicant Government is in the same position as the Scandinavian States in the Greek case. In both instances the applicant States ask for a collective enforcement of the guarantee in the Convention to secure the enjoyment of rights and freedoms.

In my opinion, at p. 501 of the report Mr. Mangan has summarized the true interpretation of Article 1 (art. 1) in this context as follows: "It is true that it is always necessary to invoke another Article in conjunction with Article 1 (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 Article 24 (art. 24) and an individual is exactly that the State may take action against anticipated breaches." At the conclusion of the proceedings before the Court the principal delegate of the Commission filed a memorial (Cour (77) 24) and at p. 5 thereof there will be found the concluding submission with which I fully agree: "Accordingly, the conclusion to be reached on the general problem of the interpretation of the European Convention is that a State that does not fulfil its domestic-guarantee obligation thereby infringes the Convention so that it may be found guilty of a breach of the Convention as a result of an application submitted under Article 24 (art. 24), even before any individuals personally experience the ill-effects of such a situation and are able to make a complaint under Article 25 (art. 25)."

Separate opinion of judge Sir Gerald Fitzmaurice

1. On Articles 5 and 6 (art. 5, art. 6) (and in consequence with reference to Articles 14 and 15 (art. 14, art. 15)), and also on Article 50 (art. 50), I voted in favour of the Judgment of the Court (which I shall hereafter refer to as "the Judgment"). This covers heads 11-18 inclusive in the "Dispositif" or final, operative, part of the Judgment, which I shall hereafter speak of simply as "the Dispositif". In all of these heads 11-18, the view put forward on behalf of the United Kingdom is upheld. I have nevertheless certain special points to make in connexion with Articles 5 and 6 taken in combination with Articles 14 and 15 (art. 14+5, art. 14+6, art. 15+5, art. 15+6), to which I shall come later.

2. With regard to Article 3 (art. 3), as to which the Dispositif is made up of ten points (nos. 1-10 inclusive), I voted in favour of all of these except for the crucial Point 3 (alleged inhuman and degrading treatment involved by the use of the so-called five techniques ([1]) of interrogation). In the no less crucial Points 4 and 7, the Judgment exonerates the United Kingdom from the charge of using torture. On Point 6, and despite my contrary vote on Point 3, I voted in favour of the view that a practice of inhuman treatment existed at Palace Barracks in the autumn of 1971, because of the special acts of mistreatment that then occurred – (as to this, see below paragraph 30). Furthermore, although I voted in favour of Point 1, I did so with considerable reluctance, on grounds to be explained. I now propose to comment on the particular points relating to Article 3 (art. 3) that I have just mentioned, viz. nos. 1, 3, 4, 6 and 7, and also on Point 2 which involves a question of primary importance in the case, even though it is not central to the main substantive issue. On all other points connected with Article 3 (art. 3) I feel no call to add anything to the reasoning contained in the body of the Judgment, with which I agree.

Article 3 (art. 3)

The uncontested allegations

Point 1 of the Dispositif – (the Court holds that "although certain violations of Article 3 (art. 3) were not contested [by the United Kingdom], a ruling should nevertheless be given thereon").

3. The "certain violations" of Article 3 (art. 3) which, according to paragraph 152 of the Judgment, read in combination with sub-paragraphs (iv) – (vi) inclusive, of paragraph 147, the United Kingdom (astonishingly in my view) did not contest before the Court, were those of torture, and of inhuman and/or degrading treatment, held by the European Commission of Human Rights to have occurred, mainly, though not exclusively, through the use of the "five techniques". Even though "non-contesting" may not, formally, amount to "admitting", I find this rather wholesale United Kingdom non-contestation of the use of torture, etc., surprising, for reasons that will become apparent.

4. However, and be that as it may, the United Kingdom, on the basis of these admissions, and as described in paragraph 153 of the Judgment, gave "an unqualified undertaking" to the effect that the five techniques would not "in any circumstances be reintroduced as an aid to interrogation"; and also, as similarly described, took "various measures designed to prevent the recurrence of the events complained of and to afford reparation for their consequences", – measures particularised in some detail, either directly or by reference, in the same paragraph of the Judgment. Having done this, the United Kingdom, not unnaturally, argued that the case had become (as the expression goes) "moot" ([2]) that there was no point in the Court giving rulings on allegations that were not, or were no longer, controverted, so that the proceedings had ceased to have any worthwhile object, – and that even if the plaintiff Government was not willing to discontinue them, the Court should exercise a discretion in the sense of declining to pronounce on allegations that, because not disputed, were not now actually in issue between the Parties, – and in short, that to do so would be an entirely gratuitous dotting of the "i's" and crossing of the "t's".

5. Although I regard this attitude as very understandable, I nevertheless consider that the Court was right to conclude that it should pronounce on the matter. But my reasons for doing so are not the same as those

which the Court gives in paragraphs 154 and 155 of the Judgment:

(a) To begin with – a point seemingly overlooked by the United Kingdom – it did not at all automatically follow that the Court would necessarily agree with all the findings of the Commission as to the character of the treatment of the detainees concerned who were undergoing interrogation in Northern Ireland, – and in point of fact the Court did not endorse the chief of these findings, namely that torture contrary to Article 3 (art. 3) of the European Convention was involved: it only concurred in the Commission's view that the treatment in question amounted to inhuman and/or degrading treatment. Therefore, had the Court accepted the United Kingdom contention that it need not and should not pronounce upon the non-contested allegations, the Commission's findings as to torture would have constituted the last word on the subject and, in the light of them, the United Kingdom would have stood convicted, so to speak, of that grave charge.

(b) But if the Court, in the course of reviewing the Commission's findings, was entitled, and indeed bound, to indicate which of them it disagrees with, must not the same hold good for those findings on which the Court is disposed to concur? – especially when, despite the fact that the defendant Government no longer contests the allegations in question, the plaintiff Government still maintains them and (as is here the case) presses for a ruling from the Court on the ground inter alia that the latter is alone competent to make pronouncements having a judicial character, and with binding effect, – those of the Commission, though entitled to the greatest respect, not being invested with that status.

6. These seem to me to be better, or at least, more directly compelling grounds in support of the view expressed in Point 1 of the Dispositif, than the less concrete and more questionable ones stated in paragraph 154 of the Judgment, and summarized in the phrase according to which the function of the Court is "not only to decide those cases brought before [it] but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties", – in support of which dictum Article 19 (art. 19) of the Convention is cited. This, however, is not only to attribute to the Court a teleological rôle which, in my view, it was not originally intended to have ([3]), but also to place upon Article 19 (art. 19) of the Convention a weight greater than its language warrants. This provision (text in the footnote below ([4]) is basically an instrumental one, the primary objective of which was to create machinery for the implementation of the Convention by setting up a European Court and Commission of Human Rights to "ensure the observance of the engagements undertaken by the High Contracting Parties". This of course is a purely adjectival provision that says nothing one way or the other as to what the engagements of the Parties under the Convention are, in what way the Court and the Commission are to secure the observance of those engagements, or what construction they are to put upon their functions in this respect. These are all matters dealt with – (to the extent that the Contracting Parties intended to go) – by other Articles of the Convention, – and if a general power "to elucidate and safeguard the rules instituted by the Convention" can be assumed, there is certainly no provision which invests the Court with any power to "develop" them, – (I am not of course speaking of that natural development that always occurs as an inevitable corollary of the legitimate interpretative process properly belonging to the judicial function, but which is quite different from development as a conscious aim, this being, in my view, a quasi-legislative operation exceeding the normal judicial function).

7. I can only conclude therefore, that in paragraph 154 of the Judgment the Court is acting out the consequences of a doctrine which it has itself propounded and decided to abide by, but which is neither propounded nor imposed upon it by the Convention as such. The Court could, without any misapplication of the Convention, have formulated a different, much less broad, doctrine. Whether this would have been preferable or not, it is clear that paragraph 154 of the Judgment reflects a subjective attitude of the Court, not an objective requirement of the Convention; and in consequence the more concrete reasons of a procedural character formulated in my paragraph 5 above seem to me to be more persuasive and less open to question than those on which the Court has based the conclusion stated in Point 1 of the Dispositif, – a conclusion with which, purely as such, I am nevertheless in agreement.

Relevance of the existence of a practice

Point 2 of the Dispositif – (the Court holds "that it has jurisdiction to take cognisance of the cases of the alleged violation of Article 3 (art. 3) to the extent that the applicant Government put them forward as establishing the existence of a practice [i.e. of torture, inhuman treatment, etc.]".)

8. The emphasis is on the words "a practice", but the intention of the pronouncement would have been clearer if the word "only" had figured before either "has jurisdiction" or "to the extent that", – for this has to be its intention. The reasons for it are explained in some detail in paragraphs 157-159 of the Judgment; but as the issue involved is likely to be unfamiliar to the general reader, it may be useful if I state my own understanding of it. Under the scheme of the European Convention, cases can come to the Court only if they have previously been before the European Commission, – and under Article 26 (art. 26) and the third paragraph of Article 27 (art. 27-3) of the Convention, the Commission can only accept a case for substantive consideration if, or rather, after, "all domestic remedies have been exhausted" – that is to say if all the remedies afforded by the local law or administrative machinery of the defendant State have been tried, but have proved unavailing or ineffective ([5]). There is no difficulty – of principle at least – in applying this rule where the complaint involved is being made by or on behalf of the individual person or persons affected by the alleged infractions of the Convention. But the matter is more complex where what is complained of is the existence of a practice in the defendant State contrary to the Convention, and where the particular acts in question are cited simply as evidence of the existence of such a practice and not, so to speak, for their own sake, in the sense of the tribunal being requested to award damages or other compensation to the injured individual as such.

9. In the present case the Commission found, and the Court has endorsed that finding, that the normal domestic remedies rule does not apply to the "existence of a practice". This was crucial to the admissibility of the case because (or so it must be assumed) in many of the concrete instances or examples put forward, those concerned had not, or would turn out not to have, exhausted the legal or administrative remedies available to them in Northern Ireland or elsewhere in the United Kingdom; and therefore, had the claim rested on that basis, the Commission would, under paragraph 3 of Article 27 (art. 27-3) of the Convention, have been obliged to reject it as inadmissible, with the further consequence, that under the Convention as it now stands, it could not have come before the Court. Thus it was only on the basis of a complaint about a practice contrary to the Convention (the individual instances being relevant only as establishing the existence of that practice) that the Commission and Court could pronounce upon the substance of the allegations involved, despite the non-exhaustion of the domestic remedies that might have been available to the affected persons acting individually.

10. The rationale of any finding upholding the non-applicability of the domestic remedies rule where the complaint is about the existence of a practice, can only be based on the assumption that, normally, domestic forums, whether judicial or administrative, can only deal with concrete claims preferred by individuals on their own behalf, and cannot conduct roving enquiries into the existence of practices, for which special machinery would have to be set up such as (in the United Kingdom) a Royal or Parliamentary Commission, Departmental Committee of Enquiry, or other ad hoc body, examples of which in the present case are afforded by the setting up of the Diplock Commission and the Gardiner, Compton and Parker Committees (see Judgment paragraphs 58, 74, 99 and 100). But of course such bodies are not part of the ordinary domestic forms of recourse available to the individual and whose jurisdiction he can himself invoke: the initiatives and decisions necessary for their creation must be governmental or parliamentary.

11. Having regard to these considerations and to the fact that, as stated in the last sentence of paragraph 159 of the Judgment, the United Kingdom did not (before the Court, at least) contest the Commission's decision to admit the case on the basis above described, I voted in support of the Court's pronouncement embodied in Point 2 of the Dispositif – (in itself undoubtedly correct) – although it necessarily implies what it does not actually state, namely that where the existence of a practice contrary to the Convention is in issue, the normal domestic remedies rule does not apply. I am nevertheless left with the feeling that the whole topic needs more extensive investigation.

Essential features of Article 3 (art. 3)

12. Article 3 (art. 3) is, so far as its text goes, a very simple provision which, in the light of the present case, may well appear to be altogether too simple. It reads:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

This wording, perhaps deliberately because of the virtual impossibility of arriving at any completely satisfactory definition of the notions involved, attempts none respecting torture, inhuman treatment, or degrading treatment. It is thus left to be determined in the light of the circumstances of each particular case whether what occurred amounted to, or constituted the specified treatment. Such a determination must necessarily be an entirely subjective one, so that differently constituted courts or commissions, functioning at different periods, might, on the basis of similar or analogous facts, reach different conclusions in border-line, or even not so border-line, cases. It results that there is little practical utility in speaking of torture or inhuman treatment, etc. "according to", or "within the meaning (or "scope" or "intention") of", Article 3 (art. 3) – (although the Judgment, probably by an oversight, uses such language here and there), – for that Article ascribes no meaning to the terms concerned, and gives no guidance as to their intended scope.

13. Nor does it serve to say that none of this matters because everyone knows what torture is, what inhuman treatment is, and what is degrading, – since the present case seems to show conclusively that ideas on these questions can differ very greatly, not only with reference to particular acts, but as to the very factors on which an assessment should be based. Yet it can certainly be said that some kinds of treatment recognisably amount to torture or inhuman or degrading treatment; whereas others, though censorable, do not.

14. Another feature of Article 3 (art. 3) that adds to the difficulties of interpreting and applying it correctly, is to be found in its absolute character to which the Court draws attention in paragraph 163 of the Judgment. Unlike other provisions of the Convention, such as Articles 4-6, 8-11 and 15 (art. 4, art. 5, art. 6, art. 8, art. 9, art. 10, art. 11, art. 15), Article 3 (art. 3) provides for no exceptions, no special cases and no derogations on emergency grounds. It could scarcely have done so without impairment of the moral effect produced by its unqualified terms, and without opening the door to grave possibilities of abuse. Moreover, the motivation of the alleged treatment – e.g. that it has the, in itself, legitimate object of obtaining information – is rendered irrelevant by the unconditional wording of Article 3 (art. 3) – (torture is torture whatever its purpose, if inflicted compulsorily – see footnote ([19]) below. But of course these aspects of the matter make it all the more important that the unfettered faculty thus conferred on the interpreting entity should be utilized with a keen sense of proportion, and without magnifying into contraventions of Article 3 (art. 3) acts which, because they are reprehensible, are felt to be deserving of stigmatization, but which do not, on any balanced view, amount to acts that involve treatment of the kind actually specified by Article 3 (art. 3).

15. The real dilemma that faced the Commission and the Court in the present case, and which would face any tribunal trying to apply Article 3 (art. 3) with some sense of proportion and objectivity, is that the Convention contains no prohibition covering intermediate forms of maltreatment that clearly fall short of, or only doubtfully attain, that degree of severity, which could, without evident exaggeration, justify classifying them as inhuman, or as amounting to torture; but of which it can be said that they are of such a nature that, if they are not actually caught by the strict language of the Convention, they deserve to be, and so deserve because, while not contravening those particular human rights specifically embodied in the Convention, they are nevertheless irreconcilable with the high ideal of human rights considered in the abstract. Confronted with such a situation, a tribunal seems to be faced with a choice that amounts to a choice between evils: either it must appear to condone or absolve the acts concerned, however blameworthy, by pronouncing them not to amount to infractions of the Convention because not covered by the language of the only provision of it (Article 3) (art. 3) that could, theoretically, be applicable, – or else the tribunal must strain the language of that provision so as to include them, although on a dispassionate reading of it, and on the basis of ordinary standards of meaning, they would not normally be regarded as covered. In short, not to put too fine a point on it, it must "develop" the Convention in this respect – (see paragraph 6 above).

16. International tribunals are in these respects more vulnerable than national ones, and an international

tribunal placed as has been described above, finds itself in a situation in which it can only register and proclaim to the world its disapproval of what has occurred (while at the same time remaining within the four corners of its functions as a forum for the application of the Convention) if it can hold that the conduct concerned amounts to a specific breach of the Convention – in this case of Article 3 (art. 3) since no other provision is relevant in the context of the use of the five techniques. The impulse to yield to the temptation here involved is one that all must sympathize with and respect. The Convention is obviously defective in not providing for lesser forms of ill-treatment than such as fall indubitably within the categories of torture or of what is "inhuman", – categories which, both of them, imply treatment reaching a serious, even an extreme degree of cruelty, barbarity or severity, and not something which, though to be condemned, is in comparison mild, and would be so regarded by all those who have either experienced or come close to or known cases of, or who have the imagination to feel in their own flesh and sinews the reality of what torture and truly inhuman treatment consist of. I shall revert to this.

17. Speaking purely as a jurist – (and in what other capacity can I or any member of a court claim to have a right to speak in adjudicating on a case?) – it seems to me that the legitimate inference to be drawn from the fact that the Convention made no provision against lesser forms of ill-treatment than such as would amount to torture, or fall into the category of the inhuman, is that these lesser forms were not intended to be covered. It would be reasonable to suppose that, at the date when the Convention was framed, during the aftermath of war and atrocity, it would have been the severer forms of ill-treatment that the Parties would have had in mind, those that, as I have said, amount recognisably to torture or inhuman treatment, etc. These were, at the time, well known, within contemporary experience, easily discerned. To have gone further would have necessitated much more careful and detailed consideration – and also drafting. Provision was made for "degrading treatment", but this involves another order of concept entirely. If the Parties to the Convention should now wish to go beyond what they orginally provided for, it is for them to do so by amendment of the Convention, not for a tribunal whose task is to interpret it as it stands.

18. If the views expressed in the preceding six paragraphs above (12-17) have some validity, certain precepts, if I may so call them, emerge; – and by not endorsing the Commission's finding that the use of the five techniques, and certain other forms of treatment, constituted torture, the Court has certainly to that extent acted in accordance with those precepts – (see Points 4, 7 and 9 of the Dispositif and the reasons in support given in the body of the Judgment – in particular in parts of paragraph 167). This is not surprising, for no other view seems reasonably possible unless it is to be held that inflicting any degree of suffering that is not merely trivial amounts to "torture". I shall revert to this matter in connection with the Commission's findings on that part of the case, – this being relevant in the context of Point 4 of the Dispositif. Meanwhile, the Court, though rejecting the notion of torture, did find (Point 3) that the use of the five techniques, and certain other acts, involved inhuman and degrading treatment contrary to Article 3 (art. 3). Since I was alone amongst the members of an otherwise (on this question) unanimous Court, in disagreeing with this view, it becomes incumbent on me to indicate my reasons for so doing. First, however, something must be said about the facts concerning the five techniques.

Nature of the five techniques

19. The five techniques referred to in Point 3 (see below) are listed and described in paragraph 96 of the Judgment; but as the Court, at least in respect of certain of them, had difficulty in arriving at exactly what they entailed, and there are some conflicts of evidence, I feel it necessary to make a few factual comments. The list and descriptions in the Judgment are taken from the report of the Commission representing the latter's conclusions (pp. 396-397) of the stencilled version), but do not reproduce all its nuances and qualifications. The following points arise: -

Wall-standing

(i) As regards the phrase "for periods of some hours", see footnote 10 below. The Commission's version says that the "exact length of time ... could not be established", but mentions periods "totalling" 23 and 29 hours.

Clearly these periods could not have been continuous, and one of the Compton reports ([6]) (as quoted on p. 247 of the Commission's own report) (6a) speaks of "periodical lowering of the arms to restore circulation". There must have been other intervals also, – see (vii) below.

(ii) The term "spreadeagled against the wall" cannot convey the correct picture, for the body was away from the wall and not in contact with it except through the fingers or flat of the hand (see (iii) below). If, however, the fingers (or part of the hands) were placed "high" above the head yet touched the wall, the body would necessarily be fairly close to the wall, resulting in a much less strained position.

(iii) "The weight of the body mainly on the fingers", – "mainly", which implies that it was sometimes on the flat of the hand, again reducing the stress.

(iv) "Causing them to stand on their toes" – this is not a necessary consequence of standing with legs apart and feet back; the stance is equally compatible with standing on the flat of the foot, whether the fingers or flat of the hand were against the wall, though more easily so in the latter case.

(v) It is therefore difficult to credit that those concerned were not able to vary their position from time to time, if only momentarily, which would bring relief.

(vi) The Commission states (p. 397) that the Compton report described "the position [of the detainee] as being a different one", and (p. 247) quotes the latter's much less detailed version as "Making the detainees stand against a wall in a required posture (facing wall, legs apart, with hands raised up against wall) ...". It also describes how detainees were not allowed to depart from this posture and were if necessary compelled to resume it.

(vii) It appears, however, from p. 248 of the Commission's report that although "some" detainees were standing "continuously" at the wall for periods of from 6-16 hours, this was "subject to breaks for bread and water and for toilet visits".

Hooding – as to one query that might arise, see footnote 11 below. Moreover the words "all the time", used in paragraph 96 of the Judgment, obviously cannot be taken literally. The fact, not mentioned in this paragraph – but see the Commission's and the Compton report – that the hood was removed during interrogation and – (at least in the particular cases cited) – when the detainee was alone – (provided, according to the Commission, that he kept his face to the wall) – seems to show that the principal object of the hooding was less to cause distress to the detainee than to prevent him seeing or communicating with other detainees. I think it worthwhile mentioning this, although I am aware that the absolute and unconditional character of Article 3 (art. 3) of the Convention makes the object or purpose of the treatment irrelevant (see paragraph 14 above), so long as it really constitutes treatment of the kind specified, – but it may all the same have considerable relevance to the question of whether or not it does constitute such treatment – (see as to this footnote 19 below).

Subjection to noise – paragraph 96 of the Judgment and the Commission's report (p. 397) describe the noise as "a loud and hissing noise". The Compton report, as cited by the Commission (p. 247), says "a continuous and monotonous noise", and as to its loudness says "of a volume calculated to isolate them [the detainees] from communication".

Deprivation of sleep – the Judgment says "Pending their interrogations, depriving the detainees of sleep": the Commission's version adds "but it was not possible to establish for what periods each witness had been without sleep". The Compton version on the other hand says "Depriving the detainees of sleep during the early days of the operation [i.e. of the detention]", and says nothing about for how long.

Deprivation of food and drink – the Judgment describes this as "subjecting the detainees to a reduced diet during their stay at the [interrogation] centre and pending interrogations". The Commission had said the same but added that 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" – i.e. went on hunger-strike. This last

is a point of considerable significance given the fanatical atmosphere often prevalent. The Compton report on the other hand is more specific, and speaks of deprivation of nourishment "other than one round of bread and one pint of water at six-hourly intervals". In characterising this as "physical ill-treatment" the report adds "for men who were being exhausted by other means at the same time".

20. My object in citing these details has been partly to ensure that the readers of this Opinion do not underestimate the character of the five techniques, – for it is far from my intention to do anything so unbecoming as to play down these practices. The remainder of my object has been to show that, despite all the efforts of the Commission and the Court, there still remains an element of considerable uncertainty on a number of points of obvious importance when it comes to assessing the degree of overall severity entailed by their use – e.g. the length and frequency of the periods of hooding and deprivation of sleep, food and water, the quality of the subjection to noise (something which affects some people very badly, others hardly at all), the real length of the maximum continuous period of wall-standing involved, and to some extent the exact posture, in which quite slight variations could make a considerable difference to its bearability. It is also noticeable with reference to the wall-standing that the Compton report, while unqualifiedly calling all the other four techniques "physical ill-treatment" (though only for a certain reason in the case of deprivation of nourishment), does not speak of the wall-standing posture itself as being per se ill-treatment, but says only that "the action taken to enforce this posture constituted ill-treatment" – i.e. the action taken to get the detainee back into the posture if he departed from it. This may be an immaterial detail, but it enhances the area of uncertainty. Paragraph 99 of the Judgment brings it out also how the Compton Committee held that the five techniques "constituted physical ill-treatment but not physical brutality as it [the Committee] understood that term". The distinction is an important one.

21. On the basis of this analysis of the facts, so far as I am able to carry it, I shall now give the reasons why I cannot agree with the finding in Point 3 of the Dispositif that the use of the five techniques constituted "inhuman" treatment – (I shall come to "degrading" treatment later).

Alleged inhuman and/or degrading treatment

Point 3 of the Dispositif – (the Court holds [by sixteen votes to one] that "the use of the five techniques ... constituted a practice of inhuman and degrading treatment, which practice was in breach of Article 3 (art. 3)").

(a) "inhuman" treatment

22. According to my idea of the correct handling of languages and concepts, to call the treatment involved by the use of the five techniques "inhuman" is excessive and distorting, unless the term is being employed loosely and merely figuratively (see examples below ([7]), – and it is clearly not in any such lax or light-hearted sense that Article 3 (art. 3) intends it. Subjection to the five techniques was certainly harsh treatment, ill-treatment, maltreatment, and other descriptions could be found; but the "inhuman" involves a totally different order or category of concept to which, in my opinion, the five techniques, even used in combination ([8]), do not properly belong ([9]). To regard them as doing so is to debase the currency of normal speech, because there is then no way left in which to differentiate or distinguish, or to describe instances of truly inhuman treatment. If anything that causes an appreciable amount of aching, strain, discomfort, distress, etc., or of deprivation of sleep or sustenance, is to be regarded as "inhuman", what words shall be found to characterize the much graver treatment that could without serious question be considered inhuman? To give concrete examples, if standing someone against a wall in a strained position over a considerable period ([10]), or keeping him with a hood over his head for a certain time ([11]), amounts to "inhuman" treatment, what language should be used to describe kicking a man in the groin, or placing him in a blacked-out cell in the company of a bevy of starving rats? That would also be merely inhuman treatment presumably? – and I say "merely" because, although the latter instances would clearly constitute inhuman treatment, they would apparently be rated no differently from, and as no worse than, the former relatively minor ones, if these also are to be characterized as "inhuman". If the extreme term is to be used for any infliction of physical or mental harm or stress, no way of marking out or attaching the necessary weight to the genuine case remains,

– for to employ such locutions as "very inhuman" or "severely inhuman" would obviously be ridiculous ([12]). Thus, pretty well everything physically or mentally injurious becomes "inhuman" – which is to reduce the whole concept to an absurdity, – just as, supposing that one subscribed to that view of humanity that seems to underlie Burns' well-known couplet about "Man's inhumanity to man" ([13]), one would be forced to the pessimistic conclusion that there is nothing so inhuman as the human.

23. Article 3 (art. 3) of the European Convention was not, however, intended to trade in paradoxes or propound conundrums such that it takes months of consideration in order to come to a final conclusion as to whether certain treatment can properly be said to attain the proportions of the inhuman. To my mind, that epithet should be kept for something that is immediately recognisable for what it is, – something much more than what occurred in the present case, – something different in kind. "What's in a name?" ([14]) – it may be asked. The answer is "everything", if it involves placing a course of conduct in a wrong category, with consequences that are both inappropriate and unjust.

24. Furthermore, as I pointed out in paragraphs 15 and 16 above, and would like to stress again because it involves the real difficulty latent in border-line cases, the fact that certain conduct was wrong, even very wrong, does not suffice to bring it under, or make it contrary to Article 3 (art. 3), which specifies a particular type of wrong, – and if the wrong conduct in question is not of that type, then – however regrettably – it is compatible with Article 3 (art. 3), – not, of course, for that reason to be considered as licensed by the latter – but not contrary to it; and if that is a consequence to be deplored, then, as I have said, the remedy is to amend the Convention, but neither the European Commission nor the Court can do that.

25. If instead of dealing in subjectivities, some objective criteria of what constitutes the inhuman are sought, the dictionaries furnish a very positive reply ([15]). The definitions given are "barbarous", "savage", "brutal", "cruel" (16). The Judgment of the Court in the present case considers the matter only extremely briefly in one short paragraph (the first sub-paragraph of paragraph 167) which devotes only 5-6 lines to inhuman treatment. These consist mainly of affirmations and assumptions. The essential phrase, after referring to the five techniques as having been "applied in combination, with premeditation and for hours at a stretch", – (as to this see my paragraph 19 and footnotes ([8]) and ([10]) above) – reads as follows:

"they caused, if not actual bodily injury [which means that they did not do so], at least intense physical and mental suffering to the persons subjected thereto and also led to acute psychiatric disturbances during interrogation."

Most people feel "disturbed" during an interrogation that must necessarily be of a rigorous, searching and quasi-hostile character, and it is not surprising that there was medical evidence of it in certain particular cases. But what is the basis of the term "intense", qualifying "suffering", physical and mental? Such language is surely excessive and disproportionate and not justified by the evidence. To many people, several of the techniques would not cause "suffering" properly so called at all, and certainly not "intense" suffering. Even the wall-standing would give rise to something more in the nature of strain, aches and pains, fatigue, and the like. To speak of "intense physical ... suffering" comes very near to speaking of torture, and the Judgment rejects torture. The sort of epithets that would in my view be justified to describe the treatment involved (treatment that did not cause bodily injury) would be "unpleasant, harsh, tough, severe" and others of that order, but to call it "barbarous", "savage", "brutal" or "cruel", which is the least that is necessary if the notion of the inhuman is to be attained, constitutes an abuse of language and, as I have said earlier, amounts to a devaluing of what should be kept for much worse things. It is hardly a convincing exercise.

26. After the passage from paragraph 167 just quoted in paragraph 25 above, the Judgment continues:

"They [i.e. the five techniques] 'accordingly' [my inner-quote marks] fall into the category of inhuman treatment 'within the meaning of Article 3 (art. 3)' [same remark]."

This is pure assertion. As I pointed out earlier (paragraph 12), there does not exist any "within the meaning of Article 3 (art. 3)" because that provision furnishes neither definition nor any aid to it. Consequently, what this phrase really signifies is "within the meaning that the Court has elected to ascribe to Article 3 (art. 3)".

The "accordingly" is presumably predicated mainly upon the previous "they caused ... intense ... suffering", – and I need not re-state what I have said about that. But again, it does not convince: it leaves a large area of indeterminacy filled with question-marks. For my part, I consider that the concept of "inhuman" treatment should be confined to the kind of treatment that (taking some account of the circumstances) no member of the human species ought to inflict on another, or could so inflict without doing grave violence to the human, as opposed to the animal, element in his or her make-up. This I believe is the sense in which the notion of "inhuman" treatment was intended to be understood in Article 3 (art. 3), – as something amounting to an atrocity, or at least a barbarity. Hence it should not be employed as a mere figure of speech to denote what is bad treatment, ill-treatment, maltreatment, rather than, properly speaking, inhuman treatment.

(b) "degrading" treatment

27. Much of what I have said about exaggeration and distortion in relation to inhuman treatment applies equally, mutatis mutandis, to the notion of degrading treatment, though less strongly. As a matter of interest some dictionary meanings of the notions of "degrading" and "degraded" are given in the footnote below (17), – but in everyday speech these terms are used very loosely and figuratively (see footnote ([7]) above). On such a basis almost anything that is personally unpleasant or disagreeable can be regarded as degrading by those affected. In the present context it can be assumed that it is, or should be, intended to denote something seriously humiliating, lowering as to human dignity, or disparaging, like having one's head shaved, being tarred and feathered, smeared with filth, pelted with muck, paraded naked in front of strangers, forced to eat excreta, deface the portrait of one's sovereign or head of State, or dress up in a way calculated to provoke ridicule or contempt, – although here one may pause to wonder whether Christ was really degraded by being made to don a purple robe and crown of thorns and to carry His own cross. Be that as it may, the examples I have given justify asking where exactly the degradation lies in being deprived of sleep and nourishment for limited periods, in being placed for a time in a room where a continuous noise is going on, or even in being "hooded" – (after all, it has never been suggested that a man is degraded by being blindfolded before being executed although, admittedly, this is supposed to be for his benefit). The wall-standing may be different and I shall revert to that.

28. What emerges is that the whole matter is far too subtle and complex to be dealt with statisfactorily on the basis of the Judgment's over-simplified approach. This is contained in only 3-4 lines following on those from its paragraph 167 quoted in my paragraphs 25 and 26 above. They read:

"The techniques were also degrading since they were such as to arouse in their victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical and moral resistance."

That is all the Judgment says by way of defining or describing degrading treatment, and it calls for the following comments:

(a) Feelings of "fear, anguish and inferiority" are the common lot of mankind constantly experienced by everyone in the course of ordinary everyday life: thas is "la condition humaine". Yet no one would consider himself, or regard others, as humiliated and debased because of experiencing such feelings, even though some experience them very easily and others only for greater cause. Thus it is not the subjective feelings aroused in the individual that humiliate or debase but the objective character of the act or treatment that gives rise to those feelings – if it does – and even if it does not, – for it is possible for fanatics at one end of the scale, and saints, martyrs and heroes at the other to undergo the most degrading treatment and feel neither humiliated nor debased, but even uplifted. Yet the treatment itself remains none the less degrading. The Judgment therefore applies here quite the wrong test, and does not ask any of the right questions, such as, for instance, what there is – if anything at all – that humiliates or debases in being kept on a reduced diet for a time, and whether this can really be called "degrading" treatment without great exaggeration or distortion.

(b) Nor does "possibly breaking their physical or moral resistance" furnish any more satisfactory test. Again it is the character of the treatment that counts, not its results. It is easy to think of ways in which physical

and moral resistance can be broken without any resort to ill-treatment, the use of force, or acts of degradation. Alcohol will do it, and often does. More generally, simple persuasion, or consideration and indulgence, will do it. As has been well said, "There is no defence against kindness" ([18]). The degradation lies not in what the treatment produces, but in how it does it: it might produce no result at all, but still be degrading because of its intrinsic character. That various kinds of treatment – and they cover a wide range – are capable of diminishing or breaking down physical or moral resistance is obvious, but the degradation, if any, consists not in that but in the particular methods employed.

29. In consequence, I find the reasoning of the Judgment quite unconvincing on this issue, – and I feel a further difficulty, which is that it is very possible for treatment to be in fact degrading without necessarily involving an infraction of Article 3 (art. 3) as such. For instance, there can be small doubt that the very process of being detained, held in custody, and subjected to interrogation, even in the most legitimate way, is in itself humiliating, and generally considered as debasing. But it could not, merely on that account, be held contrary to Article 3 (art. 3) of the Convention. It might be contrary to others of its provisions, such as Articles 5 and 6 (art. 5, art. 6), but that equally would not make it contrary to Article 3 (art. 3) also. Again, the element of compulsion is inseparable from holding in custody and its accompaniments, and it is always humiliating to be compelled. Clearly therefore, a breach of Article 3 (art. 3) under this head requires not only degrading treatment but a certain kind or degree of such treatment. As to this, and subject to the possible exception of the wall-standing element, it does not seem to me that the use of the five techniques was of that order or attained that degree of gravity. Three of them involved no degradation at all in the proper sense of the term, a fourth (hooding) might be a border-line case (see under "Hooding" in paragraph 19 above, and also the latter part of paragraph 27). Thus only the wall-standing could be said without much exaggeration or distortion to fall on the far side of the line. However, since the Court's findings on inhuman and degrading treatment related essentially to the combined use of the five techniques, and in my view none of these amounted, properly speaking, to the inhuman, and only one with reasonable certainty to the degrading, I had no alternative but to vote against Point 3 of the Dispositif as a whole.

Point 6 of the Dispositif – (the Court holds unanimously that "there existed at Palace Barracks in the autumn of 1971 a practice of inhuman treatment, which practice was in breach of Article 3 (art. 3)").

30. I voted in the affirmative on this Point, on the basis of the situation as described in paragraphs 110, 111 and 174 of the Judgment. As is made clear in paragraphs 110 and 111 of the Judgment, these detainees underwent much severe ill-treatment which, looked at as a whole, seemed to me to amount to inhuman treatment.

Torture

Point 4 of the Dispositif – (the Court holds that "the ... use of the five techniques did not constitute a practice of torture within the meaning of Article 3 (art. 3)").

Point 7 – (referring to Point 6 (supra) and the practice at Palace Barracks: the Court holds that "the [said] practice was not one of torture within the meaning of Article 3 (art. 3)").

31. For reasons already stated (see my paragraph 12 above) the phrase in the above formulations "within the meaning of Article 3 (art. 3)" is inapt, and should have been omitted or modified to read "contrary to Article 3 (art. 3)".

32. Since I agree with the findings in Points 4 and 7 above, and voted with the majority, I would not need to comment on them but for three factors, – first, the Commission regarded the use of the five techniques as amounting to torture; secondly, this finding on the part of the Commission received wide publicity and led to a general acceptance of the view, particularly in the Press, that the United Kingdom authorities concerned had in fact been guilty of using torture (and such impressions, once given currency, are difficult to eradicate); and thirdly, even before the Court, one-fifth to one-quarter of its Members thought the use of the five techniques constituted torture – (the voting was 13-4 on Point 4 and 14-3 on Point 7). Finally, the

Court's own observations on the matter are sparse and I feel that some amplification is called for.

33. As with the topic of degrading treatment, much of what I said earlier about the exaggerated use of language in connexion with inhuman treatment, and the distorting effect this produces, applies mutatis mutandis to the question of what treatment amounts to torture; but for this reason I can be relatively brief. The test applied by the Court, though a correct one, was mixed up with a number of other factors which, in view of the absolute character of Article 3 (art. 3) of the Convention, are strictly irrelevant – see paragraph 14 above; but in order not to interrupt the main thread of my argument, I relegate discussion of this to a footnote ([19]).

34. The Court's reason for rejecting the charge of torture is really contained in one sentence in the final sub-paragraph of paragraph 167 of the Judgment, namely that although the five techniques "undoubtedly amounted to inhuman and degrading treatment ..."

"they did not occasion suffering of the particular intensity and cruelty implied by the word torture ..."

(This passage is completed by the addition after the word "torture" of "as so understood", the object and effect of which escape me – but see footnote ([19])). The same test of "intensity" is applied again in connexion with the happenings at Palace Barracks in the autumn of 1971. Despite this, and its finding of inhuman treatment, the Court, speaking of the acts complained of, said (third sub-paragraph of paragraph 174) that

"the severity of the suffering that they were capable of causing did not attain the particular level inherent in the notion of torture as understood by the Court ..."

And this was completed by a reference back to the former pronouncement in paragraph 167.

35. Although I agree with these pronouncements, and they are correct as far as they go, and propound the essential test that has to be applied, they nevertheless fail to bring out the real point latent in them, which is that not only must a certain intensity of suffering be caused before the process can be called torture, but also that torture involves a wholly different order of suffering from what falls short of it. It amounts not to a mere difference of degree but to a difference of kind. If the five techniques are to be regarded as involving torture, how does one characterize e.g. having one's finger-nails torn out, being slowly impaled on a stake through the rectum, or roasted over an electric grid? That is just torture too, is it? Or might it perhaps amount to "severe" torture?! Or what words do you find to mark the difference between treatment of that kind and the mere aches, pains, strains, stresses and discomforts of the five techniques, which pale into insignificance in comparison with the searing, unimaginable, agony of the other? These are not in the same category at all, and cannot be spoken of in the same breath. Nor is the point academic, as it might be if torture of the order I have mentioned were a thing of the past. But it is not; and in Europe itself there are countries in which such practices have been prevalent in quite recent periods. So what does the European Commission do when, as it easily might, it finds itself faced with a case of real torture? Just pronounce it to constitute treatment contrary to Article 3 (art. 3) of the Convention? Fortunately for the Court, it, at least, has avoided digging this pit for itself.

36. May I conclude this part of the case by registering my emphatic opinion that if a commendable zeal for the observance and implementation of the Convention is allowed to drive out common-sense, the whole system will end by becoming discredited. There can be no surer way of doing this than to water down and adulterate the terms of the Convention by enlarging them so as to include concepts and notions that lie outside their just and normal scope.

Articles 5 and 6, taken in conjunction with Article 15 (art. 15+5, art. 15+6)

37. Although, as I said in the opening paragraph of the present Opinion, I agree with the Court on all the Points in the Dispositif dealing with the above-mentioned provisions, there is one question of method, not affecting the substance of the matter, but having important implications, that I think it desirable to draw attention to as a matter of fairness to governments placed as the United Kingdom Government has been in

this case.

Articles 5 and 15 (art. 5, art. 15)

38. Article 5 (art. 5) is the provision of the European Convention that safeguards freedom of the person by, in effect, prohibiting arrest or detention except for certain indicated purposes or in a number of listed cases. When, in circumstances of public emergency, a government wants to carry out arrests or detentions which it believes will not – or may not – fall within the permitted exceptions, Article 15 (art. 15) allows it (within stated limits and under specified conditions) to do so by taking measures derogating from what would otherwise be its obligations in this respect.

39. It is obvious that once a government has invoked Article 15 (art. 15) – (it has to give what amounts to a notice of derogation to the Secretary-General of the Council of Europe) – the only relevant, or at least the principal issue will be whether the circumstances required by Article 15 (art. 15) in order to validate the derogations are present, and whether the derogations themselves fall within the limits laid down. Briefly, there must be "war or other public emergency threatening the life of the nation", and the derogations must not exceed what is "strictly required by the exigencies of the situation". Accordingly when, as in the present case, acts contrary to Article 5 (art. 5) are alleged by the plaintiff Government to have occurred, but the defendant Government has invoked Article 15 (art. 15), while the plaintiff Government denies that the conditions required by that provision are fulfilled, the enquiry ought to start with this Article (art. 15) since, if it was properly invoked, and if the acts or conduct complained of are validated under it, it will become unnecessary to consider whether, had this not been the case, they would have involved derogations from – i.e. infractions of – Article 5 (art. 5). Only if it appeared that Article 15 (art. 15) could not operate in favour of the defendant Government, either because there was not real public emergency or because the acts or conduct in issue went beyond what was required in order to deal with it, would it become essential to investigate the acts or courses of conduct themselves, so as to establish whether they did or did not amount to breaches of Article 5 (art. 5).

40. It may be asked what advantage this method of proceeding would have over that hitherto followed by the Court, namely of first enquiring whether there has, or but for Article 15 (art. 15) would have been, a breach of Article 5 (art. 5), and, if the answer is in the affirmative, only then going on to consider the applicability of Article 15 (art. 15). It seems to me not only that there are clear advantages in the method I suggest, but also that not adopting it is liable often to place the defendant Government in a false position.

41. If of course the defendant Government has not invoked Article 15 (art. 15) at all, and simply takes its stand on a denial that Article 5 (art. 5) has been infringed (e.g. because the arrest or detention involved came within one of the cases permitted by that provision), then clearly an enquiry into the Article 5 (art. 5) position is all that is necessary or possible. But where Article 15 (art. 15) was invoked, this either implies a tacit recognition that Article 5 (art. 5) has, or very possibly has been infringed, or renders that issue irrelevant except upon the assumption that, in all the circumstances of the case, Article 15 (art. 15) would not in any event validate the infraction. This last matter therefore becomes the primary issue and should be gone into first. Had the Court followed this method in the present case, some fourteen paragraphs and five pages of the Judgment could virtually have been omitted.

42. But the point has a substantive as well as a merely procedural aspect:

(a) Where it is the fact (as the Court has found in the present case) that although there would have been a breach of the Convention under Article 5 (art. 5), if that provision had stood alone, – but that, by reason of the operation of Article 15 (art. 15), the putative or potential breach resting on Article 5 (art. 5) is so to speak redeemed, discharged or re-habilitated, – then what really results, when the ultimate situation is reached, is simply that there is no breach of the Convention at all, as such. In these circumstances, it seems to me wrong, or at least inappropriate, to give the impression, as there will be a tendency to do, at least initially, that there is a breach of the Convention because the acts complained of, taken by themselves, would have derogated from Article 5 (art. 5). The whole point is that once the respondent Government has pleaded justification under Article 15 (art. 15), the situation as it might exist under Article 5 (art. 5) alone cannot

properly be taken by itself. The Court's present method of dealing with the matter is to hold that there has been a breach of the Convention because of derogations from it under a certain Article, – but then to hold that, by reason of the provisions of another Article, these derogations are excusable. But this is clearly incorrect. Article 15 (art. 15), where applicable to the facts of the case, does not merely excuse acts otherwise inconsistent with Article 5 (art. 5): it nullifies them qua breaches of the Convention as a whole, – or at least justifies them, so that no breach results.

(b) This being so, it seems to me that the present system puts the emphasis in the wrong place. It involves coming to the consequences of the respondent Party having pleaded Article 15 (art. 15), only after establishing that there has been a breach of Article 5 (art. 5), thus putting that Party in the posture of being, in principle, a Convention-breaker, although it has taken all the steps necessary to invoke and bring into play Article 15 (art. 15) which specifically provides that, in certain circumstances "any High Contracting Party may take measures derogating from ... this Convention". Moreover, there being in consequence no breach of the Convention as such, there cannot have been any breach of Article 5 (art. 5) either, – for Article 15 (art. 15) has acted retrospectively to prevent that. The respondent Party is therefore left in the invidious and false position of having prima facie violated the Convention, and having merely as it were subsequently atoned for that violation by bringing itself under Article 15 (art. 15), – whereas the true situation is that such a Party should be deemed never to have breached Article 5 (art. 5) at all as regards any acts for which Article 15 (art. 15) was invoked and found to be applicable.

Articles 6 and 15 (art. 6, art. 15)

43. Exactly the same considerations as those just discussed apply here also. But in my view Article 6 (art. 6) has no relevance at all to the question of the validity of the arrest and detention of those concerned in the present case, – while in so far as it might have, it would only apply to matters already so completely covered by Article 5 (art. 5) that it would be a work of supererogation to take them up again. I therefore agree with paragraph 235 of the Judgment that it is unnecessary to give a decision on the point, but that in any event, and a fortiori for the reasons stated in my paragraphs 39-42 above, any United Kingdom derogations under Article 6 (art. 6) would become justified and cease to be such, by virtue of Article 15 (art. 15).

Article 14 (art. 14)

44. This is the Article (art. 14) according to which States Parties to the Convention must not practise any discrimination in granting to persons within their jurisdiction enjoyment of the rights and freedoms which the Convention provides for. I agree with the Court in not accepting the contention of the Irish Government that there was discrimination because the Northern Ireland authorities, while subjecting various persons belonging to or suspected of connexion with IRA terrorist organizations to detention, did not do the same in respect of "loyalist" organizations of a terrorist character. The Court rejected this view, broadly because it did not regard the two sets of cases as comparable. I would go further, however, and question whether Article 14 (art. 14), the text of which is set out in the footnote below ([20]), has any application at all in the present case.

45. The point is that in the present case, the alleged discrimination relates not to the way in which a right provided for by the Convention is accorded – (i.e. it is accorded to some but not to others) – but to the way in which it is denied – (denied to some but not to others). At first sight this may seem to be only a case of the two sides of the same coin. But is this so? It seems a curious proposition that because one class of persons is deprived of liberty in a manner prima facie contrary to Article 5 (art. 5), therefore any or all other classes, if in a comparable position, must also be. This gets very near to saying that because one man is illegally arrested all must be – surely the reverse of the truth, – as it would equally be if it was said that because one man is lawfully arrested, therefore all those whom it is possible lawfully to arrest must in fact be arrested. In any event, arresting people is not granting them a right but depriving them of one – even if for just cause. Hence the issue is the negative one of inflicting an (at least potential) wrong, or at any rate disability, on some but not on others. Can it ever be discriminatory in the normal acceptation of the term to wrong or inflict a disability on some people, but not on others even if they deserve it? If not, then the question of discrimination within the meaning of Article 5 (art. 5) cannot arise at all on the basis on which it has been

put by the plaintiff Government, and there is no need to enter into the question whether it was correct not to arrest the "loyalist" terrorists when the IRA terrorists were arrested. This is really a false antithesis and a false issue. A more genuine one may underlie it, but it would need a different formulation and approach and I am not called upon to go into that here.

Separate opinion of judge Evrigenis

Having felt unable to agree with the majority of the Court on points 4, 7, and 9 of the operative provisions of the judgment, I think it my duty to set out the reasons why I am of a different opinion.

(a) The majority of the Court considered that the combined use of the five techniques constituted inhuman and degrading treatment but not a practice of torture within the meaning of Article 3 (art. 3) of the Convention. I think, on the contrary, that the acts complained of, whilst amounting to inhuman and degrading treatment, do also come within the notion of torture. On this point I share the unanimous opinion of the Commission, which was not contested before the Court by the respondent Government. My disagreement with the majority of the Court concerns both of the premises underlying its reasoning, namely (i) the definition of the notion of torture and what distinguishes it from inhuman treatment as well as (ii) the assessment of the combined use of the five techniques from the factual point of view.

(i) The definition of torture – and hence the feature distinguishing torture from inhuman treatment – on which the judgment is based does not appear to differ appreciably from the one adopted by the Commission in its report. According to the Commission, torture is an "aggravated form of inhuman treatment", the latter in turn being such treatment as "deliberately causes severe suffering, mental or physical" (report, pp. 377, 379). For its part, the judgment defines torture as "deliberate inhuman treatment causing very serious and cruel suffering" (paragraph 167). Since the two definitions concentrate on the effects of the acts in question on the victim, it is difficult to distinguish between what should be regarded as an "aggravated form" of "treatment causing severe suffering" on the one hand and the infliction of "very serious and cruel suffering" on the other. To find the distinction between the two definitions of the notion of torture becomes even more difficult by reason of the fact that the Court draws some parallel between its own definition and that given by the United Nations General Assembly (in Resolution 3452 (XXX) of 9 December 1975, Article 1), which is in substance identical to the Commission's definition.

The fact remains that this terminology, which is not very enlightening in itself, has to be seen as reflecting the tendency, apparent in the reasoning of the majority of the Court, to place the distinction between torture and inhuman treatment very high up on the scale of intensity of the suffering inflicted. Indeed, the judgment appears to reserve the category of "torture" exclusively for treatment which causes suffering of extreme intensity. I cannot agree with this interpretation.

The notion of torture which emerges from the judgment is in fact too limited. By adding to the notion of torture the notions of inhuman and degrading treatment, those who drew up the Convention wished, following Article 5 of the Universal Declaration of Human Rights, to extend the prohibition in Article 3 (art. 3) of the Convention – in principle directed against torture (cf. Collected Edition of the "Travaux Préparatoires", volume II, pp. 38 et seq., 238 et seq.) – to other categories of acts causing intolerable suffering to individuals or affecting their dignity rather than to exclude from the traditional notion of torture certain apparently less serious forms of torture and to place them in the category of inhuman treatment which carries less of a "stigma" – to use the word appearing in the judgment. The clear intention of widening the scope of the prohibition in Article 3 (art. 3) by adding, alongside torture, other kinds of acts cannot have the effect of restricting the notion of torture. I might advance the hypothesis that, if Article 3 (art. 3) of the Convention referred solely to the notion of torture, it would be difficult not to accept that the combined use of the five techniques in the present case fell within its scope. I do not see why the fact that the Convention, with the sole aim of increasing protection of the individual, condemns not only torture but also other categories of acts should lead to a different conclusion.

The Court's interpretation in this case seems also to be directed to a conception of torture based on methods

of inflicting suffering which have already been overtaken by the ingenuity of modern techniques of oppression. Torture no longer presupposes violence, a notion to which the judgment refers expressly and generically. Torture can be practised – and indeed is practised – by using subtle techniques developed in multidisciplinary laboratories which claim to be scientific. By means of new forms of suffering that have little in common with the physical pain caused by conventional torture it aims to bring about, even if only temporarily, the disintegration of an individual's personality, the shattering of his mental and pyschological equilibrium and the crushing of his will. I should very much regret it if the definition of torture which emerges from the judgment could not cover these various forms of technologically sophisticated torture. Such an interpretation would overlook the current situation and the historical prospects in which the European Convention on Human Rights should be implemented.

(ii) I take a stronger position than the majority of the Court as regards the assessment of the combined use of the five techniques from the factual point of view. I am sure that the use of these carefully chosen and measured techniques must have caused those who underwent them extremely intense physical, mental and psychological suffering, inevitably covered by even the strictest definition of torture. The evidence which, despite a wall of absolute silence put up by the respondent Government, the Commission was able to gather about the short– or long-term psychiatric effects which the practice in question caused to the victims (paragraph 167 of the judgment) confirms this conclusion.

(b) I voted in favour of the view that a practice of torture existed in the cases referred to in point 7 of the operative provisions. I cannot characterise in another way treatment which, on the basis of the facts relied on by the Court (paragraph III of the judgment), caused "substantial" and "massive" injuries to detainees.

(c) I voted in favour of the view that Article 3 (art. 3) had been violated in the cases referred to in point 9 of the operative provisions. The practices described in the Moore case (paragraph 124 of the judgment) constituted, in my opinion, degrading treatment within the meaning of this provision.

Separate opinion of judge Matscher

1. Concerning the notion of torture (Article 3 of the Convention) (art. 3)

According to the reasoning of the majority of the Court in the present case, the principal criterion for distinguishing between inhuman treatment and torture is the intensity of the suffering inflicted. To my great regret I cannot agree with this interpretation.

My position on this is close to that adopted in the Commission's unanimous opinion in the present case (pp. 389-402 of the report), which opinion is in turn based on the interpretation of the essential elements of Article 3 (art. 3) of the Convention developed in previous cases, mainly in the First Greek Case (pp. 377-379 of the report). In my view, the distinguishing feature of the notion of torture is the systematic, calculated (hence deliberate) and prolonged application of treatment causing physical or psychological suffering of a certain intensity, the aim of which may be to extort confessions, to obtain information or simply to break a person's will in order to compel him to do something he would not otherwise do, or again, to make a person suffer for other reasons (sadism, aggravation of a punishment, etc.).

There is no doubt that one can speak of torture within the meaning of Article 3 (art. 3) only when the treatment inflicted on a person is such as to cause him physical or psychological suffering of a certain severity. However, I consider the element of intensity as complementary to the systematic element: the more sophisticated and refined the method, the less acute will be the pain (in the first place physical pain) which it has to cause to achieve its purpose. The modern methods of torture which in their outward aspects differ markedly from the primitive, brutal methods employed in former times are well known. In this sense torture is in no way a higher degree of inhuman treatment. On the contrary, one can envisage forms of brutality which cause much more acute bodily suffering but are not necessarily on that account comprised within the notion of torture.

Moreover, this notion of torture, to which I subscribe, does not differ essentially from those recently worked out by various international bodies, including the United Nations (see, for example, Article 1 of Resolution 3452 (XXX), adopted by the General Assembly on 9 December 1975). The notion seeks only to stress some of the features which are also included in those other notions and which seem to me to be the most important.

As regards the unanimous findings of fact by the Commission and the Court (paragraphs 96-107 of the judgment), the five techniques, as used in unidentified interrogation centres, constituted a highly sophisticated and refined system aimed at obtaining information or confession: "The five techniques were applied in combination, with premeditation and for hours at a stretch; they caused, if not actual bodily injury, at least intense physical and mental suffering to the persons subjected thereto and also led to acute psychiatric disturbances during interrogation" (paragraph 167 of the judgment). They thus constitute a typical example of torture within the meaning of Article 3 (art. 3) of the Convention.

2. Concerning Article 14 (art. 14) of the Convention

In my opinion, there is discrimination within the meaning of Article 14 (art. 14) of the Convention where a measure which in itself meets the requirements of the system for protecting the fundamental rights guaranteed by the Convention is applied in a different way to individuals or groups of individuals within the jurisdiction of a State Party to the Convention and when this difference in treatment is not justified by objective and reasonable motives (judgment of 23 July 1968 on the merits of the "Belgian Linguistic" case, Series A no. 6, pp. 34-35, para. 10). A fortiori, there is discrimination where the different treatment is accounted for by motives based mainly on one of the criteria cited by way of example (see the words "such as ...") in Article 14 (art. 14) and expressly stated to be discriminatory.

My line of argument here follows the position of principle – a correct one, I think – which this Court adopted in the case of Engel and others (judgment of 8 June 1976, Series A no. 22, para. 72) and which seems to me also to underlie the reasoning of the majority of the Court in the present case, namely that discrimination can also exist as regards restrictions – in themselves legitimate – on the rights guaranteed by the Convention. To put it another way, the wording of Article 14 (art. 14) – "enjoyment of the rights and freedoms set forth in [the] Convention" – must be given a broader conceptual scope so as to include therein, over and above enjoyment in the strict sense, the way in which the rights and liberties in question may have been restricted.

In the present case we are dealing with the application of the extrajudicial powers of detention and internment which the Court has rightly – in view of the circumstances prevailing in Northern Ireland at the relevant time – considered to be compatible with the system for protecting fundamental rights set up by the Convention (Articles 5 and 6 taken together with Article 15 (art. 15+5, art. 15+6).

It may be regarded as established that in the period up to 5 February 1973 these measures were applied only against Republican terrorists and not against Loyalist terrorists and that likewise in the subsequent period the measures in question affected the latter only to a far lesser extent. The crucial point is whether this different treatment was justified by objective and reasonable motives. If so, the difference is legitimate; if not, it constitutes discrimination within the meaning of Article 14 (art. 14).

There is no doubt that the extrajudicial measures were introduced at a time when terrorism of Republican origin had reached a high level. It has also been proved, however, that terrorism from Loyalist sources existed at the same time and on an increasing scale. That, from the quantitative point of view, a larger number of serious outrages were attributable to the Republican terrorists does nothing to alter the fact that in this same period two brands of terrorism were simultaneously rife in Northern Ireland. Moreover, at least from 1972 onwards, the two varieties of terrorism represented a comparable menace to law and order in the country. Nonetheless, up to 5 February 1973 the British authorities continued to apply the emergency measures to the Republican terrorists alone.

The reasons put forward by the respondent Government to justify such a difference hardly convince me, and

it must also be remembered that, on this particular point, the respondent Government were very unforthcoming during the enquiry (pp. 107 et seq. and 153 et seq. of the Commission's report), so that an unfettered assessment of the evidence does not operate in their favour. Examination of the material before the Court would seem to me rather to permit the conclusion that, besides the bias on the part of the authorities which characterises the general situation in Northern Ireland not only in the course of history but also at the time in question, there was hesitation over talking equally energetic action against the Loyalist terrorists and over using emergency powers against them because of fear of the political repercussions of such a step. In my view, this is not a justification based on objective and reasonable motives. For want of such justification, the different treatment, which has been proved objectively, constitutes discrimination within the meaning of Article 14 (art. 14) of the Convention.

There is also another point of view to be taken into account. If the authorities deemed it necessary in order to combat terrorism to take emergency measures which weighed heavily on the population concerned, and if these measures were applied to only one section of the population whereas, in order to combat a comparable terrorist campaign originating from the other side – insofar as it was seriously combated -, they thought that they could confine themselves to the ordinary means of prevention and punishment, the question also arises whether the emergency measures were really indispensable within the meaning of Article 15 (art. 15) of the Convention.

(*) Note by the Registry: All page references to the Commission's report are to the stencilled version.
([1]) The techniques are listed and described in paragraph 96 of the Judgment; but see paragraph 19 below.
([2]) A convenient American locution for describing "an issue which during the course of a trial or pending an appeal has ceased to have practical importance" – (Radin's Law Dictionary, Oceana Publications, New York, 2nd Edn. 1970, p. 211); and see correspondingly the definition given in n. 1 on p. 86 of my separate opinion in the Northern Cameroons case before the International Court of Justice (I.C.J. Reports 1963, at p. 97).
([3]) See my separate (partly dissenting) opinion in the Golder case before the Court, paragraphs 38-45 and the conclusion drawn in paragraph 46 (Series A no. 18, 1975).
([4]) "To ensure the observance of the engagements undertaken by the High Contracting Parties in the present Convention [my italics], there shall be set up: – A European Commission of Human Rights, hereinafter referred to as 'the Commission'; – A European Court of Human Rights, hereinafter referred to as 'theCourt'."
([5]) This is an over-simplified statement of what can in fact be a complicated matter, and needs qualification in various respects. However, this is not the place for any exposition of the law on the subject.
([6]) This was the report of the Committee set up in August 1971 by the United Kingdom Home Secretary, under the chairmanship of Sir Edmund Compton, G.C.B., K.B.E., to consider allegations of ill-treatment of detainees – see Judgment, paragraph 99.
([6a]) For reasons of convenience the quotations which I give are those provided by the Commission. There is some obscurity as to the exact source from which the Commission is itself quoting – but there seems to be no doubt that as given on p. 247 they do reproduce the Compton formulation.
([7]) To give examples of figurative use within most people's experience: – One hears it said "I call that inhuman", the reference being to the fact that there is no dining-car on the train. "It's degrading for the poor man", one hears with reference to an employee who is being given all the unpleasant jobs. "It's absolute torture to me", – and what the speaker means is having to sit through a boring lecture or sermon. There is a lesson to be learnt here on the potential dangers of hyperbole. ([8]) It is fairly clear that all five techniques could not have been employed simultaneously on the same person, though two or three of them might have been combined in that sense. What the Judgment is actually referring to is the fact that each of the individuals concerned was subjected in one way or another and at one time or another, to all five techniques and not only to one or two.
([9]) Of course they might do so in practice, in particular cases – e.g. if used on the old or infirm – but the question has to be considered on the basis of the average case.
([10]) The evidence on this point is unsatisfactory. I deduce that – (though not always) – the periods were long in the aggregate, but cannot have been continuous – see ante paragraph 19 (i) and (vii).
([11]) There has been no suggestion that this impeded normal breathing. ([12]) Equally, to characterize the instances I have given, and other similar ones that could be thought of, as cases of "torture" is to misapply the latter term which is an expression having its own proper sphere. It would also be to abolish the distinction between torture and inhuman treatment which Article 3 (art. 3) of the Convention specifically makes. Of course all torture is "inhuman" but not all inhuman treatment involves or amounts to torture.
([13]) From Man was made to Mourn: the couplet runs "Man's inhumanity to man makes countless thousands mourn."
([14]) Romeo and Juliet, Act II, Scene 2, line 43.
([15]) The principal dictionaries I have consulted are the Shorter Oxford ("shorter" only than the full Oxford in several volumes, and itself running to 2,500 pages); the superlative American Random House Dictionary of the English Language – probably the best one-volume English Dictionary extant; Webster's Third International; and, in the popular category, Professor Garmonsway's excellent Penguin English Dictionary.
([16]) Speaking of persons, not actions, the dictionaries use such descriptions as "callous", "unfeeling", "destitute of natural kindness or pity", "lacking in the normal human qualities of sympathy, pity, warmth, compassion or the like". But the absence of such feelings, natural enough in the circumstances of the present case, does not suffice of itself to make the acts or treatments involved

"inhuman", – and it is the quality of these that must be looked to. Other lines of definition, such as "not of or like the human race" and "not of the ordinary human type", are question-begging and evocative of a smile – remembering Burns (see end of paragraph 22 supra).

([17]) Literally, "degraded" (de-graded) means reduced to a lower grade, rank, position or status; but the relevant meanings in the present context, as given in the dictionaries (see n. 15 supra) would be to "lower in estimation, character or quality" (Shorter Oxford); to "lower in dignity or estimation; bring into contempt" (Random House). Other descriptions used are "to debase" (ibid), "to humiliate" (Penguin). The relevant notions here are clearly those of humiliation, bringing into contempt, loss of esteem, and debasement, presumably from status as a human being.

([18]) From Outsider in Amsterdam, by Jan van de Wetering, Corgi Edn. 1977, p. 170.

([19]) Prefacing the passage from paragraph 167 of the Judgment quoted first in my paragraph 34, and which sets out the Court's notion of what is not torture, are some lines qualifying this by an "although" clause, and stating that although the object of the five techniques was "the extraction of confessions, the naming of others and/or information, and although they were used systematically", they did not cause the necessary intensity of suffering, etc.

This qualification, in slightly different terms, also precedes the second passage quoted in my same paragraph. It is not clear what the purpose of the reference to extracting confessions, the naming of others, etc. is. If it is intended to indicate that the existence of such objectives is a necessary ingredient before the treatment concerned can constitute torture, such an idea must be firmly rejected.

Torture is torture whatever its object may be, or even if it has none, other than to cause pain, provided it is inflicted by force – (of course the suffering experienced in the dentist's chair, however intense, is not technically torture because the patient submits to it of his own volition). However, the real question suggested by the references to the objectives of the torture is whether there can ever be an objective justifying its use. In strict terms of Article 3 (art. 3) of the Convention, the answer must be in the negative: the prohibition is unqualified and therefore absolute – see paragraph 14 above.

Yet there have been cases in which the extraction of information under torture or extreme ill-treatment has led to the saving of hundreds, even thousands of lives. On this matter the temperate and carefully balanced separate opinion of Mr. J.E.S. Fawcett, President of the European Commission, recorded on pp. 495-7 of the Commission's report in the present case, repays careful study.

([20]) "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."