COUNCIL OF EUROPE

EUROPEAN COMMISSION OF HUMAN RIGHTS

DECISION OF THE COMMISSION

AS TO THE ADMISSIBILITY

Applications Nos. 5310/71 and 5451/72
by the Government of Ireland
against the Government of the United Kingdom

The European Commission of Human Rights sitting in private on 1 October 1972, the following members being present:

MM. W.F. de GAAY FORTMAN, Vice-President, Acting President (Rules 7 and 9 of the Rules of Procedure)
J.E.S. FAWCETT
A. SUSTERHENN
M. SØRENSEN
F. ERMACORA
G. SPERDUTI
M.A. TRIANTAFYLLIDES
E. BUSUTTIL
L. KELLBERG
B. DAVER
K. MANGAN
J. CUSTERS

Mr. A.B. McNULTY, Secretary to the Commission
assisted by MM. C. KRUGER, T. OUCHTERLONY and C. BROADIE

Having regard to:

the application introduced on 16 December 1971, under Art. 24 of the Convention for the Protection of Human Rights and Fundamental Freedoms, by the Government of Ireland against the Government of the United Kingdom and registered on 17 December 1971 under file No. 5310/71;

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- the Commission's decision of 18 December 1971:

  1. to give precedence to the application in accordance with Rule 38, 1 of the Rules of Procedure;

  2. to request the Secretary General of the Council of Europe to give notice of the application to the United Kingdom Government in accordance with Rule 44 of the Rules of Procedure;

  3. to invite the respondent Government to submit, before 29 February 1972, its observations in writing on the admissibility of the application;

- the applicant Government's supplementary memorial of 22 February 1972;

- the decision of the President of the Commission of 25 February 1972 to communicate the supplementary memorial to the respondent Government and to extend provisionally until 21 March 1972 the time-limit for the submission of the respondent Government's observations on admissibility;

- the applicant Government's further supplementary memorial of 3 March 1972;

- the Commission's decision of 20 March 1972 to:

  1. treat the applicant Government's supplementary memorial of 22 February 1972 as part of application No. 5310/71;

  2. extend, until 15 April 1972, the time-limit for the applicant Government's observations on the admissibility of that application;

  3. regard the applicant Government's supplementary memorial of 3 March 1972 as a new application, to be registered under file No. 5451/72 and considered to have been introduced on 6 March 1972;

  4. invite the respondent Government to submit, before 1 May 1972, its observations in writing on the admissibility of the second application;

  5. communicate to the respondent Government for observations a letter of 16 March 1972 from the applicant Government requesting that certain interim measures should be taken;

- the respondent Government's observations of 23 March 1972 on the above letter;

- the Commission's decision of 24 March 1972 that it did not have the power, consistent with its functions under the Convention, to meet the request made in the applicant Government's letter of 16 March 1972;

- the decision of the President of 17 April 1972 to extend, until 3 May 1972, the time-limit for the respondent Government's observations on the admissibility of application No. 5310/71;

- the respondent Government's observations of 2 May 1972 on the admissibility of application No. 5310/71;

- the President's decision of 3 May 1972 to:

  1. invite the applicant Government to submit, before 29 June 1972, their observations in reply on the admissibility of application No. 5310/71;

  2. extend, until 22 May 1972, the time-limit for the submission of the respondent Government's observations on the admissibility of application No. 5451/72;

- the respondent Government's observations of 22 May 1972 on the admissibility of that application;

- the President's decision of 25 May 1972 to invite the applicant Government to submit, before 20 July 1972, their observations in reply on the admissibility of application No. 5451/72;

- the applicant Government's observations of 29 May 1972 in reply to the respondent Government's observations on the admissibility of application No. 5310/71;

- the Commission's decision of 30 May 1972 to invite the Parties to appear before it at a hearing, opening on 17 July 1972, to make oral explanations on the admissibility of application No. 5310/71 and, if possible, also on application No. 5451/72;

- the respondent Government's letter of 2 June 1972 requesting an adjournment of the hearing and the Commission's decision of the same date to communicate this letter to the applicant Government for observations;

- the applicant Government's observations of 8 June 1972;

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- the order of the Acting President of 12 June 1972 adjourning the hearing and fixing 25 September 1972 as a new opening date;

- the applicant Government's observations of 17 July 1972 in reply to the respondent Government's observations on the admissibility of application No. 5451/72;

- the respondent Government's letter of 29 August 1972 and the material enclosed therewith;

- the Commission's decision on 25 September 1972 to join applications No. 5310/71 and No. 5451/72 in accordance with Rule 39 of its Rules of Procedure;

- the oral and written submissions made by the Parties at the hearing before the Commission on 25, 26, 27, 28 and 29 September 1972;

Having deliberated,

Decides as follows:

THE PROCEEDINGS

On 16 December 1971 the Permanent Representative of Ireland to the Council of Europe filed with the Secretary General of the Council of Europe in Paris the original application which was dated 15 December 1971 and in which the applicant Government made various allegations under Arts. 1, 2, 3, 5, 6 and 14 of the Convention in respect of matters concerning Northern Ireland. Copies of the application were received by the Commission's Secretary in Strasbourg on 17 December and it was registered on the same day under file No. 5310/71.

The Commission considered the application on 18 December 1971 and decided:

1. to give precedence to the application in accordance with Rule 38, 1 of the Rules of Procedure;

2. to request the Secretary General of the Council of Europe to give notice of the application to the respondent Government in accordance with Rule 44 of the Rules of Procedure;

3. to invite the respondent Government to submit, before 29 February 1972, its observations in writing on the admissibility of the application.

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On 25 February 1972 the applicant Government filed a supplementary memorial, dated 22 February, together with a covering letter requesting that the new memorial which contained allegations as to further and continuing breaches of Arts. 1, 2, 3, 5, 6 and 14 of the Convention should be brought before the Commission as part of the original application.

The President decided that the supplementary material should be communicated at once to the respondent Government as part of the existing case-file and he extended provisionally until 21 March the time-limit for the submission of the respondent Government's written observations on admissibility. The Parties were informed accordingly and told that the Commission would consider during its next session the future procedure to be followed in regard to the new material.

Under cover of a letter dated 29 February 1972 the applicant Government submitted two affidavits which had inadvertently been omitted from the submissions of 23 February. These affidavits were also included in the case-file and copies sent to the respondent Government.

Under cover of a letter, dated 3 March 1972, the applicant Government submitted a further memorial, with enclosures for inclusion in the case-file, in which the applicant Government alleged violations of Arts. 1 and 7 of the Convention in relation to the Northern Ireland Act 1972. The Parties were informed that the Commission would decide the future procedure to be followed also in this regard during its next session.

The Commission considered the case on 20 March 1972 and decided that the Government's submissions of 3 March 1972 should be registered as a separate application (No. 5451/72). The respondent Government was invited to submit observations on the admissibility of this application before 1 May 1972.

With regard to the applicant Government's supplementary memorial of 22 February 1972 the Commission decided that it should be dealt with as part of the original application (No. 5310/71). The time-limit for the submission of the respondent Government's observations on the admissibility of this application was extended until 15 April 1972.

On 20 March 1972 the Commission also took note of a letter, received on the same day and dated 16 March, from the Agent of the applicant Government. It was submitted that the applicant Government had up to that date been receiving evidence from persons in custody under the Special Powers Act indicating that they continued to be ill-treated in the manner complained of by the applicant Government as involving breach of Art. 3 of the Convention. Reference was also made to a report, published

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on 13 March, of an inquiry by Amnesty International. The Commission was asked to request the respondent Government to take interim measures to ensure that such ill-treatment was discontinued pending a decision on the application in order to prevent irreparable damage. While recognising that the Commission was not expressly empowered to order or direct a government to adopt such measures, the applicant Government submitted that the Commission did possess the power to undertake interim measures as this was the necessary attribute of its judicial function and therefore covered by the doctrine of implied powers. Reference was also made to previous cases in which the Commission had requested Governments to take interim measures.

The applicant Government requested the Commission in particular to seek from the respondent Government: first, an undertaking that all such treatment of persons in custody as had been complained of in the application as constituting a breach of Art. 3 should be discontinued; secondly, permission for attendance by observers nominated by the Commission at centres of custody to ascertain whether these persons were subjected to such treatment; and, thirdly, an undertaking that all such persons in custody should be taken to the centres where these observers would be located and that the observers should at all times be given access to such persons.

The applicant Government stated their view that the object of interim measures is generally the preservation of the rights of the parties, pending adjudication, insofar as the damage threatened to these rights would be irreparable. It was submitted that the measures suggested would not in any way prejudice the rights of the respondent Government, but that they would on the other hand protect from irreparable damage the right to physical integrity of those persons in custody who had been and were still being subjected to ill-treatment. Reference was made to the findings of the Compton Report and of the Parker Report as evidence of the ill-treatment of these persons.

The Commission decided to communicate this letter to the respondent Government for observations.

In a letter from the Agent of the respondent Government dated 23 March 1972, received by the Commission on 24 March, the respondent Government submitted their observations on the applicant Government's letter.

The Commission took note of these observations on 24 March 1972. The respondent Government observed first that the applicant Government were requesting the Commission to seek certain undertakings and were proposing in effect that the Commission should appoint observers to investigate certain allegations of violations of the Convention regardless of any considerations

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of admissibility. The respondent Government noted further that the proposal was made not in respect of material which the Government had already supplied to the Commission, but in respect of new and unspecified allegations. It was submitted that there was no provision in the Convention conferring on the Commission competence to order interim measures of the kind that were being sought and reference was made to the Commission's decision in application No. 297/57, Yearbook 2, p. 204, at p. 212, that "the Convention does not contain any provision giving the Commission competence to order provisional measures".

It was submitted also that it would not be compatible with the Commission's functions under the Convention for it to seek from the respondent Government the undertakings or permission requested, or to appoint observers to supervise the activities of a State Party to the Convention. The respondent Government considered that the first undertaking which the applicant Government were requesting the Commission to seek went to the substance of certain allegations of violations of Art. 3 of the Convention, and these violations were denied by the respondent Government. It was the view of the respondent Government that to seek an undertaking of the sort requested would not only amount to prejudging the question of admissibility, but in addition would prejudice any consideration of the substance of any allegations which might arise. The respondent Government made a clear distinction between this situation and those cases where in the course of proceedings before the Commission a Government have deferred a particular action. It was submitted that to request a Government to defer action which it admittedly intends to take is quite different from asking a Government to desist from acts which it denies.

Objections were also made to the request that the Commission should nominate observers, the respondent Government considering that such action by the Commission would be incompatible with the Convention. While not accepting that the function of such observers would be the same as the function of determining the facts for which provision is made in Art. 28 (a) of the Convention, the respondent Government observed that in any event the latter function falls to be exercised by the Commission only if a particular complaint is declared admissible.

It was the view of the respondent Government that the requests of the applicant Government constituted an attempt to circumvent the normal procedures laid down in the Convention for considering complaints and would, if acceded to, prejudge the question of admissibility of complaints which the respondent Government had not yet had the opportunity of rebutting. The respondent Government submitted that the applicant Government's requests and proposals should be rejected, emphasising that this submission was based solely on what the respondent

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Government regarded as the proper function of the Commission at this stage of the proceedings.

After considering the applicant Government's letter of 16 March 1972 and the observations of the respondent Government of 23 March, the Commission decided on 24 March 1972 that it did not have the power, consistent with its functions under the Convention, to meet the request made in the applicant Government's letter.

On 13 April 1972 the respondent Government requested an extension of the time-limit of 15 April for the submission of their observations on the admissibility of application No. 5310/71. In their request the Government referred to the supplementary material submitted on 25 February by the applicant Government. The respondent Government observed that a substantial part of this material related to the deaths which occurred in Londonderry on 30 January and stated that a Tribunal of Enquiry into the circumstances of these deaths had been instituted. The Tribunal had prepared its Report, which was currently under consideration by the Government. The respondent Government submitted that the Report of the Tribunal was a significant factor and that they should have time to consider its contents before commenting on the allegations of the applicant Government. They maintained that they should not, by reason of the submission of supplementary material which had been joined to the application, be asked to submit their observations otherwise than on the allegations made by the applicant Government as a whole.

On 17 April 1972 the President decided, after taking into consideration the statements made by the respondent Government in their letter of request of 13 April, to extend the time-limit until 3 May.

In a letter dated 27 April 1972 the respondent Government requested that the time-limit for the submission of their observations on the admissibility of application No. 5451/72 should be extended until 22 May.

The President granted this extension on 3 May 1972.

Under cover of a letter dated 2 May 1972, received by the Commission on 3 May, the respondent Government submitted their observations on the admissibility of application No. 5310/71. On 4 May copies of the observations were sent to the applicant Government, who were invited to submit their observations in reply before 29 June 1972.

The respondent Government's observations on the admissibility of application No. 5451/72, dated 22 May 1972, were received by the Commission on 25 May. On the same day copies of the observations were sent to the applicant Government, who were invited to submit their observations in reply before 20 July 1972.

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On 30 May 1972 the Commission received the applicant Government's observations, dated 29 May, in reply to the observations of the respondent Government on the admissibility of application No. 5310/71.

The Commission decided on 30 May 1972 to invite the Parties to appear before the Commission at a hearing, opening on 17 July 1972, to make oral submissions on the admissibility of application No. 5310/71 and, if possible, also of application No. 5451/72.

By letter dated 2 June 1972 the respondent Government requested an adjournment of the hearing. On the same day the Commission decided to communicate this letter to the applicant Government for observations. In a letter of 8 June the applicant Government submitted their observations on the respondent Government's request for an adjournment. In this letter the applicant Government, while noting the difficulties which the proposed date for the opening of the hearing posed for the respondent Government, pointed out that they themselves faced similar difficulties, but were prepared to meet them. Mention was also made of the gravity of the case. The applicant Government recognised, however, that the fixing of the date of the hearing was a matter for the Commission and stated that they would understand if the Commission should decide to postpone the hearing.

On 12 June 1972 the Acting President decided to adjourn the hearing and to fix 25 September 1972 as the new opening date.

On 19 July 1972 the Commission received the observations of the applicant Government, dated 17 July 1972, in reply to the respondent Government's observations on the admissibility of application No. 5451/72.

Under cover of a letter dated 29 August 1972 the respondent Government submitted copies of exhibits which they proposed to refer to in the course of the hearing on admissibility.

On 25 September 1972 the Commission decided to join applications No. 5310/71 and 5451/72 in accordance with Rule 39 of its Rules of Procedure.

The hearing on the admissibility of the two applications was held in Strasbourg on 25, 26, 27, 28 and 29 September 1972. During the course of the hearing oral and written submissions were made to the Commission by the Parties.

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The applicant Government were represented at the hearing by:

MM.	F.M. Hayes,	Legal Adviser, Department of Foreign Affairs, Agent of the Irish Government
	Colm Condon,	S.C., Attorney-General
Miss	Mary Tinney,	Permanent Representative of Ireland to the Council of Europe
MM.	T.A. Finlay,	S.C.
	A.J. Hederman,	S.C.
	Aidan Browne,	Barrister-at-Law
	John Murray,	Barrister-at-Law
	Liam Lysaght,	Chief State Solicitor
	P.D. Quigley,	Senior Legal Assistant, Attorney-General's Office
	E. Gallagher,	Counsellor at the Department of Foreign Affairs
	S. Donlon,	Counsellor at the Department of Foreign Affairs
	Charles E. Lysaght,	Assistant Legal Adviser at the Department of Foreign Affairs
	Dermot Walshe,	Chief State Solicitor's Office

The representatives of the respondent Government were:

Mr.	Paul Fifoot,	Barrister-at-Law, Legal Counsellor, Foreign and Commonwealth Office, Agent of the United Kingdom Government
The	Rt. Hon. Sir Peter Rawlinson,	Q.C., M.P., Attorney-General
MM.	D.J.B. Robey, C.M.G.,	Permanent Representative of the United Kingdom to the Council of Europe
	J.G. Le Quesne,	Q.C.
	J.B.E. Hutton,	Q.C.
	Gordon Slynn,	Barrister-at-Law, Junior Counsel to the Treasury
	Nicholas Bratza,	Barrister-at-Law
	M.G. de Winton,	C.B.E., M.C., Solicitor of the Supreme Court, Assistant Legal Secretary to the Attorney-General

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MM.	A.H. Hammond,	Solicitor of the Supreme Court, Senior Legal Assistant, Home Office
	A.C. Thorpe,	First Secretary, Foreign and Commonwealth Office
	R.C. Cox,	First Secretary, Northern Ireland Office
	D. Fisher,	Assistant Principal, Ministry of Defence
	Anthony Parry,	Assistant Legal Adviser, Foreign and Commonwealth Office

THE FACTS

APPLICATION NO. 5310/71

The facts of this case, as they have been presented by the Parties, may be summarised as follows:

I. The applicant Government's application

1. The original submissions of 15 December 1971

On 15 December 1971 the applicant Government submitted to the Commission the application in the following terms: (1)

"A. The Objects of the Claim

The objects of the claim are:

1. To ensure that the respondent Government will secure to everyone in Northern Ireland the rights and freedoms defined in Section 1 of the Convention and in particular the rights and freedoms defined in Arts. 2, 3, 5, 6 and 14 of the Convention;

2. To bring to the attention of the Commission breaches of Arts. 1, 2, 3, 5, 6 and 14 of the Convention by the respondent Government in Northern Ireland;

3. To determine the compatibility with the Convention of certain legislative measures and administrative practices of the respondent Government in Northern Ireland;

4. To ensure the observance of the legal engagements and obligations undertaken by the respondent Government in the Convention.

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(1) The footnotes appearing on pages 12 to 14 do not form part of the text of the original application, but have been added for editorial purposes.

Statements of the Facts and Arguments

B. Breach of Art. 1 of the Convention

1. The applicant Government refers the Commission to the provisions of the Civil Authorities (Special Powers) Act (Northern Ireland) 1922 and the Statutory Rules, Regulations and Orders made thereunder. The said Act, Rules, Regulations and Orders and two commentaries upon them and three law reports (1) in which they are considered are contained in Appendix 1 of the attached documents.

2. The applicant Government submits that the provisions of the said Act, Rules, Regulations and Orders hereinbefore mentioned are of themselves a failure by the respondent Government to comply with the obligation imposed on it by Art. 1.

3. It further submits that the methods employed or permitted by the respondent Government in the implementation of the said Act, Rules, Regulations and Orders constitute an administrative practice by the respondent Government, as is evidenced by the facts submitted in support of the references concerning breaches of Arts. 2, 3, 5, 6 and 14 of the Convention, (which said facts are relied on in support of this submission as well as in support of the submissions in respect of the breaches of the individual Articles), and constitute a breach by the respondent Government of its said obligations under Art. 1.

4. The matter herein being referred to the Commission, being a breach by the respondent Government of the obligations imposed on it by Art. 1 of the Convention, there is no domestic remedy available to the applicant Government, or to any person in respect of the matter referred.

C. Breach of Art. 2 of the Convention

1. The applicant Government refers the Commission to the deaths of Eamon McDevitt, Francis McGuinness, Father Hugh Mullan, William Kavanagh, Robert Anderson, James McLaughlin and Sean Ruddy, which said deaths were caused by security forces of the respondent Government.

2. The facts relating to the said deaths are set out in Appendix 2 of the attached documents (2).

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(1) McEldowney v. Forde /1971/ AC 632 H.L. (N.I.); judgment of 12 October 1971 (so far unpublished) of McGonigal J. on a habeas corpus application by J. McElduff; and R. (O'Hanlon) v. Governor of Belfast Prison 56 Ir.L.T.R.170.

(2) The deaths of the four first mentioned persons occurred in August 1971 and the other three died in October 1971.

3. The applicant Government submits that the said deaths are a breach by the respondent Government of Art. 2 of the Convention.

4. It further submits that the said deaths did not occur within the circumstances laid down in Art. 2 (2) (a), 2 (2) (b), or 2 (2) (c) of the Convention.

5. It refers the Commission to three communications of the respondent Government dated 27 June 1957 (1), 25 September 1969 (2) and 25 August 1971 (3), informing the Secretary General of the Council of Europe of measures taken by the respondent Government purporting to derogate from its obligations under the Convention and contained in Appendix 3. The said measures do not and could not constitute a derogation by the respondent Government from its obligations under Art. 2 having regard to the provisions of Art. 15 (2) of the Convention.

6. It submits that the breaches of Art. 2 of the Convention referred to the Commission are not only the deprivation of life of a number of individuals, but are also, and predominantly an administrative practice, and a series of operations endangering the right to life. The provisions of Art. 26 of the Convention do not apply in such circumstances.

7. It submits this constitutes a failure by the respondent Government as a matter of administrative practice to protect by law the right to life of persons within their jurisdiction in Northern Ireland; as such, there is do domestic remedy available to the applicant Government or to any individual or group of individuals in respect of the matter referred.

8. It further submits that none of the persons killed in breach of Art. 2 of the Convention, has got in himself any right to a remedy in accordance with the domestic law of the respondent Government, and the applicant Government will submit that such rights, if any, as exist in members of the family or dependents of individuals so killed, are irrelevant to the provisions of Art. 26 of the Convention.

D. Breaches of Art. 3 of the Convention

1. On the 9th day of August 1971 some 342 persons were taken into custody by security forces of the respondent Government. This was done pursuant to the provisions of the said Civil Authorities (Special Powers) Act (Northern Ireland) 1922 and the said Rules, Regulations and Orders made thereunder. Since that date more than 1,000 persons have been similarly taken into custody.

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(1) Yearbook 1, p. 50

(2) Yearbook 12, pp. 72-74

(3) Annexed to this decision

2. Persons taken into custody in the early stages were detained in varying numbers of different centres, namely Palace Barracks, Girdwood Park and Ballykinlar and to a lesser extent in Magilligan and elsewhere. Of that 342 persons, about 105 persons were released within 48 hours without any charge having been preferred against them. Subsequently further persons were taken into custody and detained in Palace Barracks and elsewhere.

3. The applicant Government refers the Commission to the affidavits and statements of persons so detained in the said Palace Barracks, Girdwood Park and Ballykinlar which are contained in Appendices 4, 5 and 6 respectively of the attached documents and to the affidavits and statements of persons who were detained elsewhere which are contained in Appendix 7 of the attached documents.

4. It further refers the Commission to the statements of medical doctors and other medical specialists who subsequently saw or examined some of the persons who had been or were so detained, or who are in a position to comment on their treatment, which are contained in Appendix 8 of the attached documents.

5. It further refers the Commission to a report and supplemental report of a Committee of Inquiry appointed by the Secretary of State for the Home Department of the respondent Government (known as the Compton Report) which are contained in Appendix 9 of the attached documents (1).

6. The applicant Government submits that the persons referred to in the said Appendices were subjected to treatment which constitutes torture and inhuman and degrading treatment and punishment and which was carried out by the security forces of the respondent Government and is a breach of Art. 3 of the Convention.

7. The acts of torture and of inhuman and degrading treatment and punishment referred to in para. 6 and the failure to prosecute and punish those responsible constitute a denial of justice on the part of the respondent Government. The rule of international law according to which domestic remedies must be exhausted before the Commission can deal with an application does not apply where there is such a denial of justice as aforesaid.

8. The form of treatment to which the persons referred to were subjected and the power of re-arrest, detention and internment would constitute an impediment and deterrent to the pursuit of any remedy within the domestic law of the respondent Government.

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(1) Report of the Enquiry into Allegations against the Security Forces of physical Brutality in Northern Ireland (Cmnd. 4823).

9. It further submits that the matter here referred to the Commission is not only a number of breaches by the respondent Government of Art. 3 of the Convention in respect of the treatment of individuals, but also constitutes an administrative practice, and a continued series of executive acts, exposing a section or sections of the entire population within its jurisdiction in Northern Ireland to torture or inhuman or degrading treatment or punishment.

10. The applicant Government submits by reason of the foregoing that the matter being referred to the Commission is not one in respect of which the applicant Government or any person or group of individuals can obtain a remedy in accordance with the domestic law of the respondent Government.

11. It further submits that the only purported remedy available to a person subjected to the aforesaid treatment constituting a breach of Art. 3 of the Convention, within the domestic law of the respondent Government, is, in the case where the tort of assault has occurred, the right to claim monetary damages. Such a remedy is not an effective remedy, nor is it a sufficient or adequate remedy for the acts referred in this submission to the Commission, and constituting breaches of Art. 3 of the Convention. Further, in cases where no such tort of assault has occurred not even this purported remedy exists.

12. The applicant Government further submits that the said breaches of Art. 3 of the Convention in addition constitute a breach by the respondent Government of Art. 1 of the Convention, and submits that this is a matter in respect of which there is no domestic remedy within the law of the respondent Government.

E. Breaches of Arts. 5 and 6 of the Convention

1. Subsequent to the events related in paras. D.1. and D.2. of this application a considerable number of persons were interned without trial by the respondent Government. The exact number of persons at present interned without trial is not known to the applicant Government but it is estimated to be in the region of some 400 persons. The applicant Government submits that the internment of persons as has been and is being carried out in Northern Ireland is a breach of Arts. 5 and 6 of the Convention.

2. The applicant Government refers the Commission to the Civil Authorities (Special Powers) Act (Northern Ireland) 1922 and the Statutory Rules, Regulations and Orders made thereunder, contained in Appendix 1 of the attached documents.

3. The applicant Government submits that the powers contained in the said Act and Rules, Regulations and Orders and the operation by the respondent Government of the said powers in Northern Ireland are in breach of Arts. 5 and 6 of the Convention.

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4. The applicant Government refers to the communications of the respondent Government referred to in para. C.5. and contained in Appendix 3 of the attached documents.

5. The applicant Government submits that the scope and form of the measures taken by the respondent Government in purported derogation from its obligations under the Convention are far greater and more extensive than the measures which would be strictly required by the exigencies of the situation and are inconsistent with the obligations of the respondent Government under international law.

6. The acts herein referred as breaches of Arts. 5 and 6 of the Convention are lawful within the domestic law of the respondent Government, being in accordance with the Civil Authorities (Special Powers) Act (Northern Ireland) 1922 and the Statutory Rules, Regulations and Orders made thereunder, and as such are acts in respect of which neither the individuals affected by them, nor the applicant Government, has any remedy within the domestic law of the respondent Government.

7. The applicant Government further submits that the said breaches of Arts. 5 and 6 of the Convention in addition constitute a breach by the respondent Government of Art. 1 of the Convention and submit that this is a matter in respect of which there is no domestic remedy within the law of the respondent Government.

8. The only possible purported remedy available to a person so interned in breach of Arts. 5 and 6 of the Convention is a right to make representations to an advisory Committee to consider representations from internees (known as the Brown Committee). The applicant Government refers the Commission to a memorandum concerning the terms of reference of the said Committee which is attached in Appendix 10 of the attached documents.

9. A person either arrested or detained pursuant to the provisions of the Civil Authorities (Special Powers) Act (Northern Ireland) 1922 or under the said Rules, Regulations or Orders made thereunder has no legal remedy.

10. The said Committee is an advisory body only and has no power to release any person subjected to internment and its procedures are not in accordance with natural justice. No other body of a quasi-judicial or purported judicial nature has been provided by the domestic law of the respondent Government for the examination of or adjudication on the rights or persons so interned pursuant to the Act, Rules, Regulations and Orders hereinbefore mentioned.

11. Persons not interned, but who are either held in custody or detained, have neither the right to make representations to the said Brown Committee or to any other committee of a quasi-judicial or other purported judicial nature.

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F. Breaches of Art. 14 of the Convention

1. The applicant Government refers the Commission to its aforesaid submissions in relation to breaches of Arts. 5 and 6 of the Convention. It further refers the Commission to the matters set out in Appendix 11 of the attached documents.

2. The applicant Government submits that the exercise by the respondent Government and by the security forces under its control of its powers to detain and intern persons has been and is being carried out with discrimination on the grounds of political opinion.

3. It further submits that the acts of the respondent Government set out in para. 2 hereof is a failure to secure without discrimination to persons within its jurisdiction the rights and freedoms conferred by Arts. 5 and 6 and is therefore a breach of Art. 14 of the Convention.

4. The applicant Government again refers the Commission to its aforesaid submissions in relation to Arts. 5 and 6 of the Convention and to the matters set out in Appendix 11 of the attached documents.

5. The applicant Government submits that the exercise by the respondent Government and by the security forces under its control of its powers to search homes has been and is being carried out with discrimination on the grounds of political opinion.

6. It further submits that the acts of the respondent Government set out in para. 4 hereof is a failure to secure without discrimination to persons within its jurisdiction the rights and freedoms conferred by Art. 8 and is therefore a breach of Art. 14 of the Convention.

7. The applicant Government further submits that the said breaches of Art. 14 of the Convention in addition constitute a breach by the respondent Government of Art. 1 of the Convention and submits that this is a matter in respect of which there is no domestic remedy within the law of the respondent Government.

G. General

1. Where possible, the applicant Government has referred the Commission to sworn affidavits relating to the breaches of the Convention complained of. Photo-copies of these affidavits have been furnished to the Commission. The original affidavits are in the possession of the applicant Government and can be produced before the Commission if required.

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2. Where it has not been possible, for reasons outside the control of the applicant Government, to obtain sworn affidavits, statements relating to such breaches have been furnished to the Commission. The original statements are in the possession of the applicant Government and can be produced before the Commission if required.

3. The applicant Government further refers the Commission to newspaper articles, statements and other reports contained in Appendix 12 of the attached documents, which should assist the Commission both in giving it background information and corroborative evidence of the matters complained of in this application.

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1. The applicant Government reserves the right to bring before the Commission on this application any further evidence or statements relating to any breach or to any future breach of any of the Articles mentioned in this application by the respondent Government in Northern Ireland where any such further evidence or statements becomes available to it and to submit further or other arguments as may appear to be necessary."

2. The supplementary memorial of 22 February 1972

The applicant Government stated that the object of this supplementary memorial was to draw to the attention of the Commission further and continuing breaches of Arts. 1, 2, 3, 5, 6 and 14 of the Convention.

In particular, reference was made to the deaths of two further persons on 8 July 1971 (1) and to the deaths of thirteen persons (2) and the wounding of sixteen others in Londonderry on 30 January 1972. It was alleged that these deaths had been caused by the security forces of the respondent Government in breach of Art. 2 of the Convention.

As regards the alleged breaches of Art. 3, the applicant Government referred to a number of further affidavits and other statements made by, or relating to, persons who had been held in custody by the security forces and to statements made by doctors who subsequently examined such persons. Further material and evidence were also submitted with regard to the alleged violations of Arts. 5, 6 and 14 of the Convention.

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(1) G B and S C

(2) J D , P D , B McG , H G , K McI , W N , J Y , M McD , M K , J J W , G D , G McK and W McK .

3. The final submissions of 29 September 1972

At the hearing on admissibility the Commission asked the applicant Government to indicate the elements in the situation today which, in their submission, were incompatible with the Convention. The applicant Government replied as follows:

"The elements in the situation today within the territory of the Respondent Government which the applicant Government submits are incompatible with the Convention are the following legislative measures and administrative practices.

(1) The persons responsible for the killing of the 22 people referred to in the Application have not been punished nor disciplined. This situation remaining today is incompatible with the Respondent Government's obligations under Articles 1 and 2 to secure that the right to life is protected by law.

(2) Beating and assault by security forces of persons arrested, detained and interned continues and remains unpunished and this situation today is incompatible with the Respondent Government's obligations under Articles 1 and 3.

(3) The provisions of the Special Powers Act 1922 and the Rules, Regulations and Orders made under it and the method of implementing these measures remain today unchanged from the position outlined in the application and this situation today is incompatible with the Respondent Government's obligations under Articles 1, 5, 6 and 14."

II. Submissions of the Parties

In their written observations on admissibility and at the hearing of 25 to 29 September 1972 the Parties made further submissions as follows:

A. As to the background

1. Submissions of the respondent Government

(a) In their written and oral observations on admissibility the respondent Government outlined the constitutional position of Northern Ireland and made certain other submissions which were described in the written observations as background material of a legal and factual nature.

The respondent Government stated that Northern Ireland was an integral part of the United Kingdom. The Government of Ireland Act 1920 established a separate Parliament and

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Executive for Northern Ireland. The Northern Ireland Parliament was given extensive legislative powers in respect of all domestic matters concerning the government of Northern Ireland except in certain specific matters excluded under the Act. Under Sec. 75 of the Act, the United Kingdom Parliament remained, however, the supreme authority over Northern Ireland but it was rare for the United Kingdom Parliament to legislate for Northern Ireland in matters within the competence of the Northern Ireland Parliament.

On 30 March 1972 the United Kingdom Parliament passed the Northern Ireland (Temporary Provisions) Act 1972 which made temporary provision for the exercise of the executive and legislative powers of the Government and Parliament of Northern Ireland by authorities of the United Kingdom. This Act was passed because of the public emergency in Northern Ireland and the reasons for its enactment were explained in a statement made by the Prime Minister in the House of Commons at Westminster on 24 March 1972.

(b) The respondent Government also referred to the Civil Authorities (Special Powers) Act (Northern Ireland) 1922 which, dealing with matters affecting law and order and the security of Northern Ireland, was an Act passed by the Northern Ireland Parliament. Under Sec. 1 (1) of the Act the Civil Authority had power, in respect of persons, matters and things within the jurisdiction of the Government of Northern Ireland, to take all such steps and issue all such orders as may be necessary for preserving peace and maintaining order in accordance with the Act and the Regulations ("the Special Powers Regulations") contained in the Schedule thereto, or any other Regulations made in accordance with the Act. This sub-section also required that the ordinary course of law and avocations of life and the enjoyment of property should be interfered with as little as might be permitted by the exigencies of the steps required to be taken under the Act. Section 1 (2) provided that the Civil Authority was the Minister of Home Affairs for Northern Ireland. Under the Act of 1972 the functions of this Minister were exercisable temporarily by the Secretary of State for Northern Ireland.

Under Section 1 (3) of the Act the Minister of Home Affairs had power to make further Regulations for the preservation of peace and maintenance of order and to vary or revoke any provision of the Regulations. Such Regulations were required to be laid before the Northern Ireland Parliament and were subject to amendment on an address by either House of that Parliament. Under the 1972 Act the power to make Regulations was vested in the Secretary of State for Northern Ireland who could not make Regulations unless a draft was approved by the United Kingdom Parliament, except where by reason of urgency this procedure could not be followed, in which case the Regulations had to be laid before the United Kingdom Parliament after being made and would expire if within 40 days they were not approved by each House.

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Under Regulation 24 of the Special Powers Regulations certain associations were declared to be unlawful including the Irish Republican Army (hereinafter referred to as "the IRA").

(c) The respondent Government further stated that there was, and had been at all times material to the application, a public emergency threatening the life of the nation. This emergency had been caused by the IRA which was a clandestine organisation, with quasi-military dispositions, which accepted neither the structure of government in the Republic of Ireland nor the existence of Northern Ireland as part of the United Kingdom, and was dedicated to changing both by force. From time to time the IRA mounted campaigns of violence. Such, for example, were the campaigns of 1939-41 and 1956-62 which were referred to by the applicant Government in the Lawless Case (application No. 332/57). At present the IRA was divided into "Official" and "Provisional" wings. This division occurred in 1969 and led to a revival of organised violence and intimidation. During 1971 the incidence of violence, terrorism and intimidation intensified. The respondent Government made detailed written and oral submissions with regard to such acts of violence and stated, inter alia, in this connection that, between 1 August 1969 and 12 September 1972, indiscriminate bombings and other terrorist activity resulted in the death of at least 259 civilians and the injury of over 5,000 persons. 170 members of the British Army and the police were killed and 1,251 injured. In the same period there were more than 2,300 bomb explosions which caused extensive damage to property. During this period the security forces seized 1,715 firearms, including 75 machine guns and 690 rifles; 348,000 rounds of ammunition; 6 3/4 tons of explosives plus a further 7 tons of explosives retrieved from bombs dismantled by the security forces; 7,000 detonators; over 5 miles of fuse wire; 3,200 grenades and nail bombs and 250 gallons of acid for the making of bombs.

The respondent Government submitted that the IRA had deliberately killed people on account of their political views or to prevent them from giving evidence. One effect of IRA terrorism was to deter people from coming forward as witnesses and this had stultified the ordinary methods of enforcing the law.

(d) The respondent Government further stated that the applicant Government were well aware of the dangers to them from the IRA and had condemned its activities. During previous periods of violence the applicant Government had resorted to internment and the introduction of special criminal courts. However, despite the fact that the IRA has been declared an illegal organisation in the Republic of Ireland since 1936, both wings of the IRA operated from known addresses in Dublin, leading members of both wings were known to the public, and both wings openly claimed responsibility for specific acts of terrorism.

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Little attempt appeared to have been made by the applicant Government to take effective action against the IRA and the ability of those responsible for acts of violence in the North to seek sanctuary south of the border had undoubtedly had an adverse effect on the security situation in the North, and contributed to the existence of a state of emergency in Northern Ireland. The ineffectiveness of the applicant Government in controlling the activities within their own territory was shown by a number of cross-border shootings by terrorists and other incidents of violence in the border area where terrorists had been seen to cross the border before or after an attack or had reasonably been believed to have done so.

The respondent Government also referred to representations made by them to authorities of the applicant Government on various occasions in connection with cross-border incidents and to the respondent Government's unsuccessful attempts to obtain the extradition of persons wanted by the Northern Ireland police.

2. Submissions of the applicant Government

The applicant Government submitted in reply that the observations of the respondent Government, which have been summarised in paras. (a) and (b) above, called for no comment on the issue of the admissibility of the application. As regards the submissions summarised in paras. (c) and (d) above, these were relevant to the application (if at all) only to the extent to which they related to the question whether the notifications sent by the respondent Government pursuant to Art. 15 (3) of the Convention were warranted under Art. 15 (1). They were not relevant to the question of admissibility.

The applicant Government strongly objected to the respondent Government's allegations that they had in any way failed to take effective action against members of illegal organisations or to secure proper control of the border. The applicant Government maintained that such allegations of action or inaction on their part were wholly irrelevant to the present application. In the applicant Government's submission they had behaved with utmost responsibility in matters of security and in regard to the border. They had proposed that a United Nations observer group should operate in the border area on both sides to assist in preventing breaches of the peace but the respondent Government had not agreed to this proposal.

The applicant Government also emphasised that they had taken positive steps to deal with the security situation. The criminal law relating to firearms and explosives in Ireland was similar to the law in the United Kingdom. In 1971, legislation had been passed which made it clear that to possess arms with the intention of endangering life outside the jurisdiction of the applicant Government was a very serious

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offence. All firearms, except sporting shotguns, had been called in and there was rigorous control of explosive substances. In addition certain chemicals which could be used to make explosives had been banned. Moreover, the police force had been steadily increased and a high proportion of the force were stationed in the border area where they were assisted in policing the border by a substantial portion of the Irish Army. In view of the fact that certain persons, who appeared on the evidence to be guilty of offences against the legislation relating to illegal organisations, firearms, explosive substances or certain other matters, had been acquitted in the courts, a special court was set up in May 1972 to deal with cases of this type. Many cases had been dealt with by the court and there had been a high proportion of convictions. Every individual who could be proved to belong to a subversive organisation was brought to trial.

B. General submissions

Both Parties made certain general submissions, which relate to more than one Article of the Convention. These submissions were mainly made under Art. 15 (right of derogation in public emergency) and Art. 26 (question of exhaustion of domestic remedies).

1. Submissions of the respondent Government

(a) In their written and oral submissions the respondent Government denied that they were in breach of their obligations as alleged by the applicant Government; in particular they denied that they were in breach of their obligations under Arts. 1, 2, 3, 5, 6 or 14 (or Articles cited in conjunction with 14) of the Convention.

(b) Without prejudice to that submission the respondent Government reiterated that there was in Northern Ireland, and had been at all times relevant to this application, a public emergency threatening the life of the nation. This emergency existed because of the activities of the IRA in the pursuance of its aims to destroy the existence of Northern Ireland as a part of the United Kingdom and to subvert the structure of government in the Republic of Ireland. It had accordingly been necessary for the respondent Government to undertake certain measures to counter the activities of the IRA. The respondent Government referred to the right accorded to States by Art. 15 (1) of the Convention to derogate from their obligations in time of public emergency threatening the life of the nation. The measures taken were strictly required by the exigencies of the situation and were not inconsistent with the respondent Government's obligations under international law and, furthermore, they were taken within the margin of appreciation accorded to States

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both as to the existence of an emergency and as to the measures required by it." Accordingly, insofar as the measures had effect in the field of Arts. 5, 6 or 14 or any other Article of the Convention taken in conjunction with Art. 14, these did not constitute a contravention of the Convention. The respondent Government referred to their communication to the Secretary General of the Council of Europe, pursuant to Art. 15 (3), of certain measures taken in connection with the exercise of the right of derogation.

(c) The respondent Government stated that they were mindful of decisions of the Commission that certain issues were, as such or in certain conditions, not issues for determination at the admissibility stage of applications made under Art. 24. Reference was made to the Commission's second decision on the admissibility of the First Greek Case (Yearbook 11, pp. 730, 768) where it was held that allegations could not be rejected on the ground that no prima facie proof had been produced. The respondent Government argued that this decision did not apply to allegations which were not supported by any assertion of law or fact. Moreover, allegations in an appplication under Art. 24 must at least contain a sufficient statement of fact or argument as was required by Rule 41 of the Commission's Rules of Procedure, to support them. In the absence of such supporting material an allegation should be rejected, or the Commission should decline to examine it further.

(d) The respondent Government also referred to the Commission's further finding in the First Greek Case (ibidem p. 726) that the provisions of Art. 26 of the Convention concerning the exhaustion of domestic remedies did not apply to applications whose object was to determine the compatibility with the Convention of legislative measures and administrative practices. The respondent Government submitted in this connection that this decision did not, at the admissibility stage, exclude from consideration bare allegations of an administrative practice, i.e. an allegation of a practice unsupported by any assertion of law or fact from which such practice was to be deduced. Moreover, the onus of establishing the existence of an administrative practice was on the applicant Government. Such onus was not satisfied without supporting evidence of fact or submissions of law. In the absence of such supporting material the issue of exhaustion of domestic remedies was not to be excluded at this stage. In support of this submission reference was again made to the second decision on the admissibility of the First Greek Case (ibidem p. 770).

2. Submissions of the applicant Government

(a) The main arguments submitted by the applicant Government in their written and oral submissions with regard to the relevance of Art. 15 of the Convention at the stage of admissibility can be briefly summarised as follows:

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- the question whether an application under Art. 24 of the Convention was well-founded or not was solely a question relating to the merits and, therefore, the effects of derogations made by the respondent Government under Art. 15 could not be considered by the Commission at the stage of admissibility;

- accordingly, no questions relating to the extent of measures taken in pursuance of a derogation or as to the validity of such a derogation could arise at that stage;

- were the Commission nonetheless to consider the question of derogation at that stage, the applicant Government would not contest that there existed in Northern Ireland at all material times a public emergency within the meaning of Art. 15 (1) of the Convention but they maintained that the measures concerned exceeded what was strictly required by the exigencies of the situation.

The applicant Government developed these arguments in connection with their submissions under Arts. 5 and 6 of the Convention and their case is therefore set out in greater detail below in the context of the other submissions with regard to those Articles.

(b) In their written and oral submissions the applicant Government maintained generally that the provisions of Art. 26 concerning the exhaustion of domestic remedies did not apply to any part of their application whose object and purpose was to seek a determination of the compatibility of certain legislative measures and administrative practices with the respondent Government's obligations under the Convention. Moreover, the applicant Government emphasised that, while the application was by necessity supported in part by evidence of violations of the rights of individual persons, it was neither in form nor in reality concerned with compensation for, or reparation of, wrongs committed in respect of individual persons. There was no domestic remedy available in respect of such a claim by a High Contracting Party and no question of exhausting any domestic remedies could arise.

In support of this submission the applicant Government referred, in the first place, to the Commission's decisions on the admissibility in the First Greek Case with regard to the interpretation of Arts. 26 and 27. The applicant Government considered that no distinction could be made between their claim in the present case and the claim of the applicant Governments in the Greek case.

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In the applicant Government's further submission a consideration de novo of the relevant provisions of the Convention would for the following reasons inevitably lead to the same result:

- Art. 27 (2) by its express terms applied only to a petition under Art. 25;
- the only issue which could arise at the admissibility stage of an application under Art. 24 was the issue under Art. 26;
- the rule concerning domestic remedies in Art. 26 was expressly qualified by the reference to the generally recognised rules of international law;
- such rules provided that, where a claim was made bona fide on the ground of a breach of treaty only, no domestic remedy was available and the domestic remedies' rule did not apply;
- in the present application the claim was only concerned with ensuring the observance by the respondent Government of the obligations undertaken by them in the Convention and the applicant Government sought to obtain a determination of the compatibility with those obligations of certain legislative measures and administrative practices. The claim therefore constituted a breach of treaty claim.

In the applicant Government's view this submission constituted a complete answer to the respondent Government's objections to admissibility and would, if accepted by the Commission, lead to the whole application being declared admissible.

In the course of the hearing before the Commission the representatives of the applicant Government made detailed submissions in support of their argument that a claim of the present nature, being a breach of treaty claim, was not, according to the generally recognised rules of international law, subject to the rule requiring the exhaustion of domestic remedies. In particular, it was submitted that these generally recognised rules made a distinction between a breach of treaty claim and claims of diplomatic protection. The domestic remedies' rule only applied to the latter category of cases. In this connection reference was made to Meron, "The incidence of the rule of exhaustion of domestic remedies" (British Yearbook of International Law 35 (1959), pp. 83, 86). The same distinction should be

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made with regard to claims brought under Art. 24 of the Convention. As an example of the equivalent to a diplomatic protection claim under the Convention, the applicant Government referred to the Commission's decision on the admissibility of application No. 788/60 (Austria v. Italy).

The applicant Government also submitted that, having regard to the object of the present application, namely to determine the compatibility with the Convention of certain administrative practices, it would be inconsistent with the Convention and the principles underlying it to require substantial proof of the existence of such practices at the admissibility stage. In such an application the applicant Government would have to prove, first the existence of an administrative practice and, secondly, the inconsistency with the Convention of that practice. There could be no grounds for seeking substantial proof of the practice, which was an integral part of the case, at the admissibility stage, while leaving to the merits stage the whole question of the incompatibility of the practice. If the Commission rejected any part of the application on the ground that substantial evidence of a practice had not been given, this would in effect mean that the Commission was rejecting an application under Art. 24 for want of *prima facie* proof and this the Commission had consistently refused to do.

C. As to the allegations relating to particular Articles of the Convention

1. Under Art. 1

(a) Submissions of the respondent Government

The respondent Government submitted in their *written observations* that Art. 1 of the Convention did not constitute a head of liability otherwise than in respect of a right or freedom defined in Section I of the Convention. Accordingly, no question on the merits could arise in respect of a separate violation of Art. 1. Since the applicant Government's allegations under that Article did not give rise to any issue which fell to be considered separately at any stage of the proceedings before the Commission, this allegation did not come within the terms of Art. 24. The Commission should therefore reject or, in the alternative decline to give further consideration to, allegations of a contravention of Art. 1 which constituted in any sense substantive allegations separate from those of an allegation of a right or freedom defined in Section I of the Convention.

At the hearing the representatives of the respondent Government developed their arguments in this respect. They submitted that the interpretation of Art. 1 suggested by the applicant Government, namely that one act could constitute

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both a breach of one of the Articles in Section I and at the same time a separate and additional breach of Art. 1, was wrong and contrary to the Commission's case-law. Art. 1 provided that the "High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention". Art. 1 was not itself part of this Section which comprised Arts. 2-18. Section I was essentially a series of statements which are made binding on the Parties by Art. 1, whereas Art. 1, on the other hand, was meaningless if read in isolation. There could be no breach of Art. 1 unless there was a denial of the rights stated in Section I but a breach of one of those rights was a breach of the Convention solely by virtue of Art. 1. Strictly speaking, a breach of one of these Articles was a breach of that Article read with Art. 1. However, an act such as, for example, depriving a man of his liberty in a manner inconsistent with Art. 5 constituted only a single breach of the Convention, and that breach had a single and not a dual character.

It had been suggested in the past, and this was apparently repeated in the present proceedings, that such an act was both a breach of the provisions of the Convention and also of a treaty obligation accepted by the Parties to the Convention inter se. This interpretation had, however, previously been categorically rejected by the Commission (see decisions on the admissibility of application No. 788/60, Austria v. Italy, Yearbook 4, p. 116 at pp. 138 and 140 and of the First Greek Case, Yearbook 11, p. 730 at p. 762).

The object of the applicant Government's interpretation of Art. 1 was an attempt to evade the requirements of Art. 26. Moreover, the applicant Government was seeking to bring before the Commission matters which did not amount to a breach of any provisions of Section I, although the Commission had repeatedly decided that such matters could not be the subject of a complaint. Further, the applicant Government were asking the Commission to hold not that the respondent Government had committed wrongs against specific individuals but that they had been in breach of alleged "treaty obligations" in respect of certain individuals. However, the Commission had repeatedly decided that it was not the purpose of the Convention to create reciprocal rights between the High Contracting Parties themselves. The applicant Government were trying to extend the operation of the Convention to matters which lay quite outside its ambit.

It was true that this was not stated in the Convention to be a ground of inadmissibility. However, it would be objectionable for the Commission to spend time investigating complaints of matters to which the Convention did not apply. The Commission had previously recognised that a complaint might be declared inadmissible on this ground. In support of this proposition the respondent Government referred to the Commission's decision on the admissibility of application No. 214/56 (de Becker v. Belgium, Yearbook 2, p. 214, at p. 230) concerning inadmissibility ratione temporis.

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(b) Submissions of the applicant Government

In their written observations the applicant Government maintained that there was a breach of Art. 1 of the Convention by a High Contracting Party through that Party's failure to secure the rights and freedoms defined in Section I of the Convention where:

- the laws in force did not guarantee those rights and freedoms; or

- the laws in force permitted the infringement of those rights or freedoms; or

- the Government failed to take effective remedial action to prevent repeated violations of such rights and freedoms by those persons for whose acts they were responsible.

In the applicant Government's submission, the respondent Government were in breach of Art. 1 by the mere existence (even if non-implemented) of the Special Powers Act and the Rules, Regulations and Orders under it as part of the permanent legislation. The implementation and exercise of these powers were also in themselves:

- a further breach of Art. 1 as being a positive failure by the respondent Government to secure to persons within their jurisdiction the rights and freedoms defined in Section I; and

- a breach of Arts. 2, 3, 5, 6 and 14, each taken in conjunction with Art. 1, as being breaches of the rights and freedoms set forth in Section I.

Accordingly, where a positive breach of any Article contained in Section I occurred, there occurred in addition and by necessity a breach of Art. 1 of the Convention. Where no positive breach of any other Article had occurred, there might still be a breach of Art. 1 where legislation was enacted which could potentially deprive a person of his rights and freedoms under Section I.

The respondent Government had failed to take any effective remedial action to prevent violations. Ordinary claims for compensation by way of civil action were inadequate in this respect and the damage was not reparable by monetary compensation. By failing to punish or discipline those who assaulted detainees the respondent Government had failed in their duty under Art. 1. This breach was separate from the breach constituted by the assault itself. It was not a matter for which any domestic remedy existed so that the rule requiring the exhaustion of domestic remedies could have no application.

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The applicant Government further submitted that the repeated breaches of rights and freedoms under the Convention with official tolerance constituted a breach of treaty obligations additional to the rights and freedoms of the individual victims. It created a situation where the community generally was no longer secure in the enjoyment of the rights and freedoms. A deliberate course of conduct in breach of the Convention was properly categorised as a breach of a treaty obligation rather than a wrong against a specific individual so the domestic remedies' rule had no application.

At the hearing the representatives of the applicant Government made further submissions in this respect. They argued that the issue as to whether Art. 1 was a separate head of obligation was not an admissibility issue, and the respondent Government's contention that it should be decided at the stage of admissibility in this application was an attempt to apply to an application under Art. 24 the provisions of Art. 27 (2) which were expressly confined to applications made under Art. 25 of the Convention. In the applicant Government's opinion it was inconceivable that the Commission would at a preliminary stage decide such a fundamental question as the interpretation and application of Art. 1.

For the event that this issue was nevertheless to be considered at the admissibility stage the applicant Government summarised, at one point, their submissions in this respect as follows:

- The Convention was a treaty, being an international agreement between the High Contracting Parties in which reciprocal agreement had been reached. Reference was made to the Preamble and, in particular, its ending with the words "have agreed as follows";

- The purpose of the treaty was to maintain and realise the fundamental human rights and fundamental freedoms declared by the Universal Declaration of Human Rights proclaimed by the United Nations on 10 December 1948 as stated in the Preamble;

- The method of carrying out this purpose was that each High Contracting Party agreed with each other such Party to secure to everyone within their jurisdiction those rights and fundamental freedoms;

- This differed from the nature and effect of the Universal Declaration which consisted of a joint declaration by the Consenting Parties through the General Assembly (of which they were members) of the intention of each to promote respect for and recognition of these rights. In the Preamble of the Declaration the effective word was "proclaims" whereas in the Convention the effective words were "have agreed".

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- It should be noted that Arts. 2-18 of the Convention were similar in content and form to Arts. 1-30 of the Universal Declaration;

- The difference between the two documents was therefore primarily to be found in Art. 1 of the Convention which expressed a complete obligation to secure the rights and freedoms subsequently defined.

- This was a concrete obligation as was emphasised by the wording of Art. 19 of the Convention: "To ensure the observance of the engagements undertaken by the High Contracting Parties";

- The Convention being by its express terms an agreement between the High Contracting Parties, the engagements were obligations owed by every such Party to each of the others. If such an obligation existed, there should also be a possibility of it being broken. Therefore a breach of Art. 1 whose provisions created the specific obligation to secure the rights and freedoms subsequently defined must be possible and this was consistent with the jurisprudence of the Commission and the Court;

- It was a principle of international law as well as of domestic law that in the interpretation of any written agreement effect must be given to every clause and every provision. To construe the Convention in such a way that breaches could only occur of individual Articles which defined specific rights and freedoms, e.g. Arts. 2-14, would be to give no effect at all to Art. 1 for the Convention would have that meaning if the words "have agreed as follows" were immediately followed in the text by Art. 2 and the succeeding Articles.

- If Art. 1 did create an obligation capable of being breached then it necessarily followed that, at the reference of a High Contracting Party, such a breach was justiciable only by a court of international law and specifically by the organs set up under Art. 19 of the Convention and could not be the subject of proceedings in any municipal or domestic court.

In the course of the hearing the representatives of the applicant Government developped in greater detail and with references to the Commission's case-law their submission that Art. 1 constituted a separate head of obligation. The applicant Government again emphasised that this obligation was a positive duty to secure the rights and freedoms concerned.

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The applicant Government also made further arguments in support of the contention that a legislative measure in itself could be a breach of the Convention even without having been implemented. In this context the applicant Government submitted as an example, that a High Contracting Party which passed a statute providing for a degrading form of punishment, for instance the public whipping of adults, in clear violation of Art. 3, would be in breach of Art. 1 even before anybody had been punished. Before the law became operative in any particular case, there could, on the other hand, be no violation of Art. 3 itself. To construe Art. 1 and the Convention in such a way generally that another High Contracting Party could not come to the Commission until someone had been actually whipped could not conceivably be in accordance with the declared intentions of the Parties entering into the Convention.

2. Under Art. 2

(a) Submissions of the respondent Government

In their written observations the respondent Government denied that the incidents referred to by the applicant Government under this Article (even on the facts adduced, which were not admitted) constituted a breach of Art. 2 of the Convention. Such incidents either fell within the provisions of Art. 2 (2) or did not constitute an international deprivation of life within the meaning of Art. 2 (1). The main submissions on the admissibility of the allegation of a breach of this Article were as follows:

- nothing in the relevant parts of this application constituted a basis for the allegation that the loss of life of the individuals concerned, even if it had been caused by the security forces (and it was not admitted that this was the case in all the incidents quoted), constituted "predominantly an administrative practice ... endangering the right to life" or a "series of operations endangering the right to life";

- consequently the provisions of Art. 26 were required to be satisfied; and

- these provisions had not been satisfied.

As regards the alleged administrative practice the respondent Government submitted that administrative measures had always existed to safeguard life in circumstances in which troops had to open fire.

In this connection, the respondent Government referred to the rules of the common law and statutory provisions regarding the use of force in the event of a civil disturbance. Under the law military forces, when called upon to assist the civil authority in the maintenance of law and order, were under the same obligation as the ordinary citizen, namely to use only such force as was reasonably necessary to restore order. Instructions on opening fire in circumstances where military forces were so assisting the civil authorities were issued to every soldier engaged in such duties. The instructions (known as the "Yellow Card") were issued by the Director of Operations in Northern Ireland and were subject to revision from time to time.

The respondent Government referred the Commission to the two revisions of the Instructions in force at all times relevant to the application. The Yellow Card was intended to give guidance to the soldiers on the powers available to them under the law. In particular, the card gave guidance to soldiers on the circumstances in which they might open fire and in the manner in which they might fire if it was necessary to do so. According to these instructions a soldier should on no occasion use more force than the minimum necessary to enable him to carry out his duties and should not open fire if the situation could be otherwise handled; it was required that a warning should be given before opening fire except in certain exceptional circumstances.

The respondent Government submitted that these instructions demonstrated the clear intention of the authorities that soldiers should only open fire as a last resort and that, if they did so, there was to be no more shooting than the immediate circumstances demanded. The instructions also demonstrated clearly that the guidance laid down as to the circumstances when soldiers may open fire whilst quelling a civil disturbance were consistent with the provisions of Art. 2. Moreover, the instructions should be considered against the background of the common law and statutory provisions concerning the use of force. In this connection the respondent Government also referred to the findings in the Report of the Tribunal of Inquiry conducted by Lord Widgery, the Lord Chief Justice of England, into the events in Londonderry on 30 January 1972. Those findings were that "the standing orders contained in the Yellow Card are satisfactory. Any further restrictions on opening fire would inhibit the soldier from taking proper steps for his own safety and that of his colleagues and would unduly hamper the engagement of gunmen."

The respondent Government then set out the relevant provisions of United Kingdom law regarding the use of troops in a civil emergency and any deaths resulting therefrom. An act committed by a person resulting in the death of another

person might give rise both to liability under criminal law and to a civil action for damages. If the deaths, alleged to have been caused in violation of Art. 2, were caused in circumstances which under the relevant provisions of United Kingdom law were unlawful, it would have been the duty of the law enforcement authorities to consider whether criminal proceedings should be taken. Indeed, such action had been taken against service personnel (in certain cases other than the cases of death referred to in the application) in respect of incidents in which they used firearms.

If death was caused by a negligent act or by an intentional and unjustified act, it was a wrong against the deceased for which his personal representatives could, by virtue of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937, bring an action in tort (i.e. civil wrong) against the person whose act caused the death, or against the latter's employer if the act had been carried out in the course of that person's employment. If the deceased would have had an action against any person in respect of the acting causing his death (if death had not ensued), any dependants of the deceased had a right of action for any pecuniary loss which they had suffered by virtue of the Fatal Accidents Acts (Northern Ireland) 1846-1959.

Moreover, the Crown was vicariously liable in respect of tortious acts of its servants committed in the course of their duties by virtue of the Crown Proceedings Act 1947. If a person suffered injury as a result of a wrongful act of shooting by a Crown servant (including a soldier), he (or his personal representatives or, if the Fatal Accidents Acts were applicable, his dependants) had a right of action either against the soldier allegedly responsible, or against the Crown. A right of action would be against the Crown even if it was not possible to identify the soldier concerned.

Finally, another remedy available to the dependents was to bring an action in a County Court for the payment of compensation under the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968, where the deceased's death was directly attributable to a criminal offence (with certain exceptions) and where those dependents could show that they suffered pecuniary loss as a result. Excessive use of force would be an offence; and it was not necessary to identify the wrong-doer, providing it appeared on the balance of probabilities that the injury resulted from a criminal act; nor was it necessary for the person responsible for the injury to have been prosecuted for a criminal offence in respect of the death concerned.

It was apparent that domestic remedies within the meaning of Art. 26 had been and still were available, to the estate or dependents of the deceased persons in respect of the deaths which were the subject of the complaints under Art. 2. These remedies had not yet been exhausted although proceedings had been instituted in some cases (cf. below p. 37).

The respondent Government referred to the applicant Government's argument that the rights, if any, of dependants, or members of the family, of individuals who were killed contrary to Art. 2 were irrelevant to the question of domestic remedies under Art. 26. This argument was, in the respondent Government's submission, tantamount to saying that Art. 26 had no application at all in relation to allegations of a breach of Art. 2. There was nothing in the Convention to support such a suggestion. The remedies described above constituted remedies according to the generally recognised rules of international law. Contrary to what was stated in the original application, monetary damages were recognised in international law as an effective remedy in cases of death. As an illustration of the recognition of damages as a remedy the respondent Government referred to the Lusitania Case ((1923) 7 RIAA 32). Accordingly, the allegations of the applicant Government under Art. 2 should be rejected as inadmissible under Art. 27 (3) since domestic remedies had not been exhausted as required by Art. 26.

At the hearing the representatives of the respondent Government developed their submissions in this respect: The allegation that the 22 deaths referred to in the application showed an administrative practice of endangering life had to be seen in the right perspective. At present there were about 20,000 troops stationed in Northern Ireland. These troops had been involved in almost daily incidents. The respondent Government stated that the 22 deaths concerned arose in different ways and in greatly varying circumstances. The incidents showed no distinctive pattern of conduct by the troops and had no common factor save that in each case troops had opened fire which resulted, or may have resulted, in deaths. In this connection the respondent Government summarised briefly their view of the essential facts relating to the nine deaths which occurred in 1971 and made the following observations in this respect:

- G___ B___ was killed by one bullet in the course of a riot in Londonderry on 8 July 1971 where troops had been heavily stoned by rioters. During four days the soldiers had been attacked by petrol and nail bombs and fired at. In reply to those attacks, the troops fired three rounds, of which two were fired at B___.

- Father H___ M___ was shot in Belfast on 9 August 1971 during a heavy exchange of cross fire between British soldiers and gunmen and there was no evidence that he had been killed by a shot fired by the Army;

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- F McG - Whilst clearing a barricade in Belfast on 9 August 1971, the soldiers came under attack from a crowd of youths hurling stones, bricks and bottles. Rubber bullets were fired to disperse the crowd but with little effect. McG was shot after five petrol bombs had been thrown at the troops;

- E McD was killed by a single shot, which was the only shot fired during a series of riots in the town of Strabane;

- S C was shot during the course of a riot in Londonderry on 7 July 1971 when a crowd of over 100 men and boys had attacked the troops with stones and other missiles. C was not taken to hospital in Londonderry but brought across the border to the Republic of Ireland with a wound in his thigh and died there shortly after his arrival. The Coroner subsequently found that C would probably have survived if he had received medical attention sooner.

- W McK - On 11 August 1971, following prolonged riots in Belfast, troops came across four youths acting suspiciously. They were challenged to halt but failed to stop whereupon one of them, McK , was shot;

- R A , J McL and S R were shot in Newry after having attacked two men engaged in depositing money in a night safe of a bank. Soldiers on guard believed that the deceased were attacking the bank by a bomb and twice called on them to halt but they did not obey and were then fired upon.

As regards the 13 deaths in Londonderry, the respondent Government referred to the Report of Lord Widgery. In view of the security situation in Londonderry, the security forces decided to block a protest march organised in the city by the Northern Ireland Civil Rights Association on 30 January 1972 despite the prohibition by law of parades and processions in Northern Ireland. A crowd of rioters attacked the Army which was stationed behind three barricades and, during the Army's attempts to arrest the rioters, the firing took place. At the time it was suggested that the soldiers had blatantly disregarded the instructions in the Yellow Card by firing indiscriminately when the only threat to their safety came from a small group of stone throwers. After his extensive inquiry Lord Widgery concluded that the soldiers did, while trying to contain the disturbance, come under fire from unknown snipers who, endangering the lives of the soldiers, inflamed a situation

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which might otherwise have passed without bloodshed. Lord Widgery found (at para. 54 of the Report) that the first firing was directed against the soldiers. He also found that there was no general breakdown of discipline among the soldiers. In the respondent Government's opinion the Report gave a picture of soldiers conscientiously doing their best under very difficult circumstances and in many cases under fire. The one or two cases where soldiers were found to have fired without justification were exceptional and it would, in the circumstances, have been remarkable if there had not been one or two such incidents. However, no administrative practice contrary to Art. 2 of the Convention could possibly be inferred from the two examples where soldiers may conceivably have over-reacted.

In the respondent Government's submission the applicant Government would, if they were to succeed in establishing an administrative practice under Art. 2, have to provide substantial evidence of a pattern of killing or of acts endangering life. On the evidence before the Commission, they had not even begun to discharge their burden. Neither had the applicant Government established official tolerance of acts contrary to Art. 2. Whenever a death or serious injury occurred, investigation was always carried out by the Army in addition to the normal civil inquest. If evidence was disclosed of a criminal offence the papers were passed to the civil authorities for criminal proceedings. However, such proceedings would only be introduced where there was sufficient evidence to merit the commencement of proceedings. The question of criminal or disciplinary proceedings against the soldiers involved in the Widgery Inquiry had been carefully considered by the relevant authorities but these authorities were not satisfied that such proceedings were justified. Moreover, there had been no indifference shown on the part of the authorities by any refusal of adequate investigation. In addition to the normal inquests held in case of sudden death and inquiries where the security forces are involved, the Home Secretary had set up the Widgery Inquiry. The urgency with which the Inquiry was set up and the merits of this careful and exhaustive inquiry showed that there was no attitude of indifference on the part of the United Kingdom authorities. Neither was there any official tolerance by denying a fair hearing in judicial proceedings.

The respondent Government stated at the hearing that, so far, claims under the Criminal Injuries to Persons (Compensation) Act 1968 had been commenced in respect of five of the first group of nine deaths. In addition, an action had been commenced in the High Court in respect of the death of E McD for the loss of expectation of life on behalf of the estate and for financial loss on behalf of the dependants. As regards the 13 deaths in Londonderry, claims under the 1968 Act had been commenced in respect of all cases and actions had been brought in the High Court in respect of seven deaths. These remedies had not yet been exhausted.

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(b) Submissions of the applicant Government

In their written observations the applicant Government submitted that the facts relating to the incidents concerned showed repeated and successive breaches of the United Kingdom law, disobedience of the instructions in the Yellow Card and breaches of Art. 2 of the Convention. The applicant Government pointed out that the respondent Government had not, at that stage, submitted any facts to substantiate their contention that there had been no such breaches. As regards the Widgery Report, reference was made, by way of example, to the findings in the Report that the firing of some soldiers had "bordered on the reckless" and that "shots were fired without justification" (para. 85 and summary 8 of the Report). Moreover, Lord Widgery had found that the firing of 12 rounds by one soldier was "unjustifiably dangerous for people round about" (para. 101). Reference was also made to a newspaper article in which the Report was criticised on a number of points.

The applicant Government claimed that, in any event, no consideration of the Widgery Report should be made at the stage of admissibility. At that stage it had to be assumed that every allegation of fact and contention of law by the applicant Government was meritorious. The respondent Government's argument that the incidents referred to did not constitute deprivation of life within the meaning of Art. 2 (1) or, alternatively, fell within the provisions of Art. 2 (2) should also only be considered on the merits.

It was further submitted that, although the facts set out in the application showed a series of repeated operations of practices by the security forces in breach of domestic criminal law and the Yellow Card, no member of the security forces had been prosecuted or disciplined in respect of any act arising out of the incidents concerned. By failing to enforce the criminal law, or otherwise to punish or discipline such members of the security forces, the respondent Government had shown official tolerance and acceptance of military operations and practices in which citizens had been killed contrary to Art. 2, and such toleration constituted an administrative practice. There was no domestic remedy for this continuing practice.

Moreover, the respondent Government's contention that an award of damages to dependents of a deceased person was a sufficient remedy was in total disregard of the rights of such persons who had been killed as a result of a criminal act on the part of the security forces. In particular, it was a disregard for the rights of the community as a whole to have the right to life protected by the enforcement of the law designed to protect their rights under Art. 2. Once the respondent Government had failed to enforce such laws, no remedy was available to the community or to persons in Northern Ireland to have them enforced.

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Monetary damages were not a sufficient remedy for the purposes of Art. 26 of the Convention since, as far as such a remedy was available in Northern Ireland, such damages could only be obtained in respect of actual financial loss sustained by the dependants by reason of the loss of life, and such a remedy did not secure or protect the deceased's right to life. Insofar as monetary damages for loss of life constituted a remedy according to the generally recognised rules of international law, it was only recognised as such on the basis of the civil liability of a wrongdoer vis-à-vis the dependants of the deceased concerned. Monetary damages were not an adequate remedy in the context of a Convention designed to protect human rights, including the right to life, even if they were such in the case of claims of a different nature under international law. In the applicant Government's submission the Lusitania Case ((1923) 7 RIAA 32), to which the respondent Government referred did not consider or decide whether damages were or were not a sufficient remedy in cases where death had been caused by wrongful acts of a Government or its agents, having regard to the particular treaty obligations concerned in that case which provided for the determin ation of claims by a Mixed Claims Commission.

The applicant Government further maintained that no domestic remedy in Northern Ireland gave a right to the relatives or dependants of deceased persons to claim damages for mental distress and suffering or "préjudice moral" arising from an unlawful killing. Insofar as damages were a remedy (which was not admitted), the damages available under the Acts referred to by the respondent Government were neither effective nor adequate. In support of this submission reference was made, inter alia, to the decision in the Lusitania Case as illustrative of the recognition of the right to damages for metnal distress as an essential ingredient in awards of damages in death cases. The applicant Government also argued that any monetary damages payable in the circumstances alleged must allow for damages of an exemplary or punitive character in order to be adequate or effective. The domestic law of the respondent Government did not permit relatives or dependants of a deceased person to recover such damages in any circumstances.

At the hearing, the representatives of the applicant Government submitted that a consideration of each of the nine killings in the first group showed that unprotected persons were killed by members of security forces in contravention of the domestic criminal law, the Yellow Card instructions, and Art. 2 of the Convention. As regards the thirteen deaths in Londonderry on 30 January 1972, the conclusions of the Widgery Report were not accepted and were sometimes in total conflict with the material presented by the applicant Government. This material suggested that fire was first opened by soldiers before they were fired on, and that this firing,

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which caused the killing of a number of identifiable victims, was clearly in breach of Art. 2. However, even within the Widgery Report there were instances of firing which were "reckless" or "bordering on the reckless or dangerous". In the view of the applicant Government it should not be necessary, particularly with regard to Art. 2, to show a great number of cases in order to establish an administrative practice. Moreover, it should be hoted that the respondent Government again confirmed at the hearing that no criminal or disciplinary action would be taken against the soldiers concerned.

The applicant Government claimed that the summary of facts given by the respondent Government, concerning the first group of deaths, was too short to be of value and referred the Commission to the evidence filed with the application. As regards the death of E___ McD____, it appeared that he was a deaf mute and mentally below normal. He had at one time been holding a rubber bullet in his hand but he was shot after he had thrown it away. He was wearing a red shirt and it seemed that he had been picked out by the soldiers as a person to be shot. It was plain that he had been a wholly innocent person and, in the circumstances, it seemed impossible that no disciplinary action had been taken in relation to this killing. The evidence presented by the applicant Government indicated that Father M____ was shot by British troops while administering the last rites to a wounded person and while he was carrying a make-shift truce flag. As regards F___ McG____, the evidence emphasised that, at the time he was shot by the troops, he was not armed or carrying anything that might be mistaken for a weapon. R___ A____, J___ McL____ and S___ R____ were equally unarmed. G___ B____ and S___ C____ were also shot in situations involving only stone throwing.

As regards the question of domestic remedies, the applicant Government emphasised that the complaint under Art. 2 was not made on behalf of any person although, in some respects, it was supported by individual cases. The applicant Government was not seeking reparation for the dependants of a deceased person but a determination of the compatibility with the Convention of certain practices. The situation was therefore different from an application made by an individaul being a dependant of a deceased person in relation to a breach of Art. 2. In that situation there would be a domestic remedy and the Commission would have to consider its adequacy.

In the applicant Government's submission, the admitted absence in the law of Northern Ireland of damages for grief or "préjudice moral" rendered the remedies under the Fatal Injuries Acts and Criminal Injuries to Persons (Compensation) Act insufficient. For example, if a young person were killed in breach of Art. 2, and if, his death being immediate, there was no significant or real expense connected with his recovery

and if he left no financial dependant, nobody would be entitled to compensation in Northern Ireland for that death. In this situation it was impossible to say that an effective remedy within the meaning of Art. 26 of the Convention was available and should have been exhausted.

3. Under Art. 3

(a) Submissions of the respondent Government

In their written observations the respondent Government first stated that the treatment alleged in the appendices to the application to be contrary to Art. 3 of the Convention should be regarded as falling into three categories:

a) treatment which in paras. 59-67 of the Compton Report was associated with interrogation, namely hooding, noise, wall-standing, deprivation of sleep and limited diet;

b) other incidents referred to in the Report, namely the "obstacle course" at Girdwood Park and "special exercises" at Ballykinlar;

c) other individual allegations of ill-treatment or injury not referred to under a) and b) above.

The main submissions on the admissibility of the allegations of a breach of Art. 3 were summarised as follows:

- having regard to the discontinuance of the treatment described in category a), it was appropriate that the Commission should decline to proceed further in respect of that treatment; and, without prejudice to that submission;

- no treatment or incident of a kind described in the Compton Report and referred to in category a) or b) was capable of constituting inhuman or degrading treatment or punishment within the meaning of Art. 3; nor, in the circumstances, did it constitute such treatment or punishment contrary to Art. 3;

  and, without prejudice to that submission or in any way pronouncing on the merits of any allegation of treatment as described in any of the categories;

- any treatment of the nature alleged, if capable of constituting a breach of Art. 3, would, in the present context, be a wrong in domestic law for which remedies existed in the law in Northern Ireland.

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The respondent Government then developed these submissions. First, as regards category a) the respondent Government referred to the statement made by the Prime Minister of the United Kingdom in the House of Commons on 2 March 1972 concerning the Report of a committee of Privy Counsellors of which Lord Parker of Waddington was Chairman (the "Parker Report") (1). That Committee investigated all the five techniques used as an aid to interrogation described under a). The Prime Minister then stated that: "The Government, having reviewed the matter with great care and with particular reference to future operations, have decided that the techniques which the Committee examined will not be used in future as an aid to interrogation". The Prime Minister added that "... if any Government did come to the decision, after the most careful thought, that it was necessary to use some or all of these techniques, it would be necessary to come to the House first before doing so ...".

In this connection the respondent Government first recalled that the stated object of the application was not to obtain compensation for the alleged victims of the practices complained of but to achieve, through the procedures laid down in the Convention, the abandonment of these practices.

The respondent Government then submitted that, insofar as the application complained of the treatment under a), and irrespective of whether or not that treatment gave rise to an issue under Art. 3 (which was not admitted), the Prime Minister's announcement that such techniques would not be used in the future removed the ground of this complaint. In the respondent Government's submission it was not the function of the Commission to determine, as a "judicial tribunal called upon to decide a legal controversy between the Parties" the compatibility with the Convention of measures which had been abandoned. In the present circumstances the function of the Commission was achieved by the measures taken. In support of this argument reference was made to the provisions of Arts. 19, 28, 30 and 31 of the Convention and to the Report of the Commission in the First Cyprus Case (No. 176/56, Vol. I, pp. 106-114, not published). In that case the Commission decided not to express an opinion on the compatibility of certain legislative and administrative measures which were the subject of the application and which had been revoked in the course of the proceedings, even though no settlement had been reached on other aspects of the case. The Commission considered that, while the Convention gave no explicit guidance on this point in circumstances where the revocation took place during the proceedings, the question must be decided in the light of the general function attributed to the Commission by the Convention.

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(1) "Report of the Committee of Privy Counsellors appointed to consider authorised procedures for the interrogation of persons suspected of terrorism", (Cmnd. 4901).

In the respondent Government's view there was, in principle, no distinction between the situation where, as in the Cyprus case, the administrative and legislative practices in question were revoked in the course of the proceedings before the Commission and the present situation where the measures in question had been abandoned before the Commission had pronounced on the admissibility of the application. If it would not be appropriate for the Commission to pronounce on the compatibility of such measures with the Convention, where it had already begun an examination on the merits of the complaint, there were even more compelling reasons why it should decline to proceed to an examination of the merits of a complaint relating to such measures. It remained, of course, open to any person who was allegedly a victim of such measures to pursue any remedy open to him under United Kingdom law.

As regards the question of domestic remedies, the respondent Government submitted that a person who claimed that he had been ill-treated whilst in custody might, under the common law, bring an action in tort for damages which, as a general rule, would be an action for assault (this expression being used here to include battery).

In certain circumstances an action for negligence might be available in a case where an action for assault would not lie. The Crown was vicariously liable for torts of members of the armed forces even if it was not known which individual serviceman was responsible for the alleged wrong. If the alleged treatment was caused by a police officer (i.e. in Northern Ireland a member of the Royal Ulster Constabulary, hereinafter referred to as the RUC) the Chief Constable of the RUC could be sued under Sec. 14 of the Police Act (Northern Ireland) 1970, which provided that proceedings might be brought against him in respect of torts committed by members of the police force under his direction and control in the exercise or purported exercise of their function.

Assault might also constitute a criminal offence, for which an alleged wrongdoer might be prosecuted or, as mentioned under Art. 2 above a person who sustained an injury, which was directly attributable to a criminal offence, could apply for compensation under the Criminal Injury to Persons (Compensation) Act (Northern Ireland) 1968.

Furthermore, the Chief Constable of the RUC was required, by Sec. 13 of the Police Act, forthwith to record the complaint of a member of the public against a member of the police force and to cause it to be investigated. In certain cases such investigation was to be carried out by a barrister or solicitor. Some 19 persons referred to in the application had made formal complaints under this section.

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In the respondent Government's submission these remedies constituted remedies according to the generally recognised rules of international law. Monetary damages were a sufficient and adequate remedy in the domestic law of both the applicant and the respondent Governments; in cases of assault or personal injury monetary damages were recognised as effective damages in international law. Contrary to what was alleged in the application, domestic remedies were available to persons in Northern Ireland who alleged acts capable of constituting a breach of Art. 3. Moreover, by April 1972, at least 22 persons named in the application (at least 17 of them whilst detained or interned) had, in regard to treatment allegedly received, instituted proceedings against the Crown through various public authorities. The claims alleged, inter alia, assault, battery and negligence. A list of these persons and the substance of their claims was set out in an annex to the respondent Government's observations. In one case judgment had been recovered for £300. In another case 16 persons who had taken proceedings against various authorities received agreed damages of £250 or £150.

The respondent Government submitted that, insofar as any issue might have fallen to be considered by the Commission in respect of treatment alleged in the proceedings for which damages had been awarded, such issues had been resolved and no further question remained for determination in the present proceedings. Insofar as other allegations were made of a violation of Art. 3, it was submitted that, having regard to the availability of remedies, there had been a failure to exhaust domestic remedies by the persons specified in this part of the application and, accordingly, the circumstances in which the Commission might deal with this allegation as prescribed in Art. 26 of the Convention had not been satisfied. In this connection, reference was made to the Commission's decision on admissibility in the Second Cyprus Case (application No. 299/57, Yearbook 2, p. 187) where the Commission held inadmissible 20 complaints relating to certain identified persons on the grounds that a remedy was available which had not been exhausted. On the other hand, in respect of certain alleged wrongdoers who had not been identified, no remedy had been available against the Crown, except by petition which was not a remedy within the meaning of Art. 26. However, the situation in the present case was different as, under the law in Northern Ireland, an action always lay against the Crown. The respondent Government also referred to the findings of the Commission in the Second Cyprus Case as regards the bringing of actions by persons in custody (ibid. at p. 194).

The respondent Government then referred to the assertion made, in the context of the alleged breach of Art. 3, by the applicant Government in the original application (para. D7,

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p.14 above), that there had been a denial of justice on the part of the respondent Government and that the rule of exhaustion of domestic remedies therefore did not apply. The respondent Government submitted that it was not clear whether by this assertion it was simply claimed that there was no effective remedy, or whether it had some wider context. As regards the former alternative, the respondent Government repeated that remedies were available and that proceedings had been taken in some cases. If the assertion was made in a wider context, it was submitted that it was misconceived:, the concept of denial of justice in any other sense than that in which this expression was used in international law had no relevance and certainly not in relation to the admissibility of an application under the Convention; nor had the applicant Government alleged any matter which would confer jurisdiction on the Commission or give rise to any claim to a locus standi for the applicant Government in that regard.

In their observations the respondent Government then dealt with the contention that the alleged breaches of Art. 3 also constituted an administrative practice. The Government stated that, to the extent that there might be evidence of a practice in relation to the treatment described in category a) above, the treatment had been discontinued. So far as concerned the allegations of treatment described under b) and c), no allegation of fact had been cited in support of the existence of a practice in relation to that treatment. The respondent Government repeated their submission that a bare allegation of a practice does not fall within decisions of the Commission such as that in the First Greek Case, nor discharge the onus on the applicant Government to establish such a practice, so as to exclude from consideration at the admissibility stage the issue of whether or not domestic remedies have been exhausted.

The respondent Government submitted that the allegations of a practice relating to treatment described in categories a), b) and c) should therefore be rejected under Arts. 26 and 27 (3) of the Convention. This submission was without prejudice to the earlier submissions that the Commission should decline to proceed further with the examination of those aspects of the application relating to treatment described in category a) and that no treatment in categories a) and b) was capable of constituting a breach of Art. 3.

<u>At the hearing</u> the representatives of the respondent Government made further arguments in support of their above submissions.

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The respondent Government maintained that a distinction should be made between the authorised aids to interrogation considered in the Compton and Parker Reports (i.e. the above-mentioned category a)) and the other forms of ill-treatment alleged.

As regards the previously authorised techniques, it was denied that they had been used since 2 March 1972 when the Prime Minister announced that they would be discontinued. Moreover, it was open to persons, who complained of having been subjected to any of these techniques, to bring civil proceedings against the Crown or the Chief Constable of the RUC even if they could not identify an individual defendant. In fact, out of the 12 persons mentioned in the Compton Report and in Sir Edmund Compton's second report as having been subjected to these techniques, six had already instituted civil proceedings. It was therefore clear that, whether or not the techniques constituted a violation of Art. 3, they had now ceased and domestic remedies were available. In this situation it would be appropriate for the Commission to follow its decision in the First Cyprus Case and decline to proceed further on this aspect of the case. Moreover, whether or not the techniques had constituted a practice, no such practice existed any longer. Even if an administrative practice might obviate the need for an applicant to exhaust domestic remedies, that situation no longer applied.

The respondent Government then referred to the Commission's finding in the First Greek Case (Report II, 1, pp. 12-13) that there was a close link between the notion of an administrative practice and the principle of the exhaustion of domestic remedies and that, when there was a practice of non-observance of certain Convention provisions, the remedies would of necessity be side-stepped or rendered inadequate. In the respondent Government's opinion the facts of the present case disclosed no such position. As soon as allegations of fact were first made, the Compton Committee was established to investigate them. When the existence of certain facts, namely the five techniques, were reported by that Committee, the Government set up the Parker Committee to consider these techniques and, when this Committee submitted its report, the techniques were abandoned. At all times it had been open to persons to take proceedings arising from experiences of the interrogation techniques. Such proceedings were in some cases commenced before the Prime Minister's statement on 2 March.

As regards the allegations of other forms of ill-treatment the respondent Government emphasised that these allegations were not admitted. If such treatment took place, it was entirely unauthorised and domestic remedies were available. The fact that the majority of the persons complaining of ill-treatment were in custody under the Special Powers Act did

not affect their right under the common law to bring a civil action for physical assault or ill-treatment. The allegations of ill-treatment concerned fell into two groups, namely allegations of force used against some of the detainees, such as kicking and beating, and allegations of threats of force and violence. There was, however, a domestic remedy available for all such allegations. Thus, a detainee who was struck or threatened with violence could recover damages. If a physical assault had involved humiliation or degradation of the injured party, this element could be taken into account by the court in assessing the appropriate damages. In addition to the remedies for a civil wrong, the Criminal Injuries to Persons Compensation Act (Northern Ireland) 1968, provided a detainee who had suffered maltreatment with a further effective remedy. Civil proceedings and a claim for compensation under the 1968 Act could be pursued simultaneously, but compensation awarded in such civil proceedings would be taken into account when making the ward under the Act.

The respondent Government further submitted that there was no evidence to support the applicant Government's allegation that, for various reasons, these remedies were ineffective or illusory.

In particular the facts showed that former detainees and internees had not (as suggested by the applicant Government) been deterred from bringing proceedings after their release by fear of re-arrest or maltreatment. By 11 September 1972, 35 such former detainees or internees named in the allegations of ill-treatment brought before the Commission had commenced civil claims in the Northern Ireland courts; 16 of these were actions in the High Court, 14 were actions in the county court and there were 5 claims under the 1968 Act. Moreover, 11 of these former detainees and internees had been granted legal aid to enable them to bring their claims against the Crown. In this connection the applicant Government had referred to the case of M v. S in which the judge had commented on the silence of the RUC in face of allegations of maltreatment (1). However, the plaintiff was in no way prejudiced in pursuing his domestic remedies but was awarded the damages he asked for.

The applicant Government had been equally wrong in suggesting that persons in custody might face difficulties in bringing claims and that this would render their right to institute proceedings illusory. Detainees and internees might, and did, take legal advice if they wished to initiate proceedings against the Crown and special arrangements were made for solicitors to visit them and they might also correspond with their solicitors. No permission was needed to institute proceedings. In fact, while in custody, 48 persons had already instituted proceedings against the Crown for maltreatment or wrongful arrest.

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(1) Judgments given on 3 January and 18 February 1972 by Judge Conaghan in the Armagh County Court.

Furthermore, it was clear from the mass of statements and medical reports (in some cases with photographs) submitted to the Commission by the applicant Government that detainees and internees, who wished to bring proceedings for alleged maltreatment, had no difficulty in obtaining evidence.

In this context the respondent Government emphasised that there was in Northern Ireland a strong and independent judiciary and legal profession who were in no way subserviant to the executive. This was clearly shown, inter alia, by the cases to which the applicant Government had referred in particular, the case of M v. S and the McE case. In this connection, the respondent Government provided further information as to the number of claims brought for maltreatment in Northern Ireland and the damages received for such claims in cases which had been settled.

The respondent Government then turned to the allegation that (apart from the authorised techniques of interrogation) there had been in Northern Ireland an administrative practice of ill-treatment of persons in custody contrary to Art. 3 of the Convention. The respondent Government again denied that, even assuming that specified acts of ill-treatment occurred, they amounted to an administrative practice. In view of the Commission's findings in the First Greek Case the applicant Government were obliged to produce substantial evidence, already at the stage of admissibility, to show that there had been a steady and systematic process of ill-treatment and that there had been official tolerance of that process.

As regards the first element, the respondent Government emphasised that the applicant Government only relied on complaints made in 127 cases, although a total of about 3,500 persons had been arrested at some stage during the serious emergency in Northern Ireland. Moreover, some of the complaints made were trivial. In the respondent Government's submission this did not reveal a systematic process of ill-treatment.

With regard to the second element, the respondent Government submitted that there was nothing in the Special Powers Act or in any administrative instruction authorising unlawful conduct. On the contrary, the Parker Report set out a directive which specifically outlawed violence to life and persons, ill-treatment, torture and outrages on personal property, including humiliating and degrading treatment. All soldiers in Northern Ireland were under strict instructions to use no more force than was necessary to make arrests and supervise persons in custody. Those instructions made it abundantly clear that no form of physical ill-treatment was to be used against individuals.

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However, even if these rules and directives had been broken, the respondent Government had not condoned such breaches. The Compton Committee was established to investigate the truth of such allegations. In addition, the Army and the RUC had carried out detailed investigations into complaints concerning conduct of their members and a number of cases had been submitted to the prosecution authorities for decision whether criminal proceedings should be brought. However, as was illustrated in the Compton Report, the authorities had encountered difficulties in their investigation as a result of the failure of detainees and internees to give evidence.

<u>At the hearing</u> the Attorney-General stated, on behalf of the respondent Government, that since 30 March 1972 he had been ultimately responsible for prosecutions in Northern Ireland. He submitted that it had been his firm policy that criminal acts of physical ill-treatment by the security forces should not be tolerated. In order to strengthen the administration of criminal law, a Department of Public Prosecutions was established in April 1972. The Attorney-General referred to a number of cases in which, before he became responsible for prosecutions, soldiers were charged with offences involving ill-treatment of civilians. In some cases the soldiers concerned were fined or given prison sentences. He also referred to charges brought, after 30 March 1972, against members of the security forces including charges against two police officers and a soldier for inflicting grievous bodily harm on three persons referred to in the applicant Government's submissions. These prosecutions had brought it home to the security forces that no criminal acts would be tolerated by the prosecuting authorities.

Furthermore, the Attorney-General stated that his directions to the Director of Public Prosecutions in Northern Ireland were to exercise his powers irrespective of any consideration save whether or not there was evidence on which it was reasonably likely that a conviction would ensue. The Attorney-General explained that he had also warned and advised the competent authorities of the Army and the police that, whenever there was sufficient evidence of conduct amounting to the crime of assault or intimidation of a person in custody, the person responsible would be prosecuted. Moreover, the police and the Army had been informed that interrogation, whether under ordinary police powers or under the Special Powers Act, must only be conducted in accordance with the law; this meant that such interrogation should only be conducted if the person interrogated was held under proper and reasonable conditions, with reasonable and proper opportunities for movement and with intervals for normal refreshments and rest. The Attorney-General stated that he had no reason to believe that such directions or warnings had been ignored.

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In reply to a question from the Commission as to what interrogation in depth meant at the present time, the Attorney-General stated, inter alia, as follows:

"First, interrogation in depth means asking extensive and searching questions on subjects specially selected as likely to be able to provide useful information and its object is to obtain reliable information concerning the disposition of the enemy and of his intentions rather than to obtain evidence to achieve a conviction in the courts. The statement of the Prime Minister on 2 March ... meant that, while the use of the five techniques would be discontinued, the process of asking extensive and searching questions would continue as and when it was considered necessary. Obviously, when combatting terrorist campaigns of the kind the IRA is currently waging, it is necessary to obtain information which can be of use to the security forces in preventing and combatting such terrorist attacks and thereby in saving life. But while such interogation continues in specially selected cases, where the subject is considered to have information likely to be of use to the security forces, clear instructions have been issued to the Chief Constable of the Royal Ulster Constabulary (and all interrogation is the responsibility of the police, not of the Army) that the use of the five techniques set out in the Compton and Parker Reports is no longer authorised and that any form of physical ill-treatment is strictly forbidden."

(b) Submissions of the applicant Government

In their written observations the applicant Government rejected the segregation made by the respondent Government between the authorised aids of interrogation and other forms of alleged ill-treatment on the ground that such segregation was neither logically justifiable nor appropriate. The applicant Government asked the Commission to define the rights under Art. 3 of the Convention and to reach more acceptable standards as to what constituted torture or inhuman or degrading treatment than those apparently accepted by the respondent Government.

The applicant Government then made the following submissions:

- The Government would rely, inter alia, on the travaux préparatoires of the Convention, the jurisprudence of the Commission and on medical evidence in support of their contention that the forms of ill-treatment complained of, whether taken individually or collectively or in conjunction with other forms of ill-treatment, constituted a breach of Art. 3;

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- The general physical brutality and ill-treatment complained of had not been discontinued;

- In any event it was not accepted that discontinuance could, in any circumstances, constitute a barrier to admissibility. At the admissibility stage the sole function of the Commission was to decide whether the conditions in Art. 26 were fulfilled and no consideration could be given to any conciliatory function;

- The Commission's decision in the First Cyprus Case was not a binding precedent; in that application it was accepted that the measures whose examination was not pursued, namely corporal punishment and collective punishment, had been discontinued. Moreover, they were not part of a larger practice or scheme of conduct. In the present case neither of these conditions obtained.

The applicant Government referred to further affidavits, statements, medical reports and photographs in support of their contention that, despite the assurances of the Prime Minister of the United Kingdom, continuing breaches of Art. 3 were still occurring. In support of the contention that the treatment referred to in the material submitted to the Commission in this respect, or in the Compton Report was capable of constituting a breach of Art. 3, the applicant Government referred in particular to two reports by psychiatrists. In the opinion of the applicant Government, the observations made by the respondent Government in this regard were irrelevant to the admissibility of the application as was evident from the fact that such observations had not been considered at the admissibility stage of previous applications by States relating to Art. 3. The only issue in such an application made under Art. 24 was the question whether domestic remedies had been exhausted. In considering this question it had to be assumed that every allegation of fact and contention of law was meritorious.

The applicant Government further replied to the respondent Government's objection that no allegation of fact was cited to support the assertion that the treatment complained of constituted an administrative practice. The applicant Government here referred to the evidence contained in the appendices to their application and observations. The applicant Government also noted that, although the treatment complained of was clearly illegal, it was not suggested by the respondent Government that those responsible for the acts concerned had been punished; neither had the respondent Government taken any adequate or effective action to prevent their repetition.

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If, contrary to the applicant Government's above argument, it was permissible to segregate certain forms of ill-treatment, it was incumbent on the respondent Government to show what remedies were available for each form of ill-treatment alleged in the application, if they sought to contest the admissibility of the complaint in respect of such ill-treatment. It was submitted that the respondent Government had failed to discharge this burden. It was not sufficient for this purpose to state in general terms, as had been done in the respondent Government's observations, that any treatment of the nature alleged, if capable of constituting a breach of Art. 3, would, in the present context, be a wrong in domestic law for which remedies existed. Further specification in relation to each form of ill-treatment was necessary because of the abridgement of the general principles of tort in common law wrought by the Special Powers Act. The applicant Government also observed that the respondent Government had made no reference to the initiation or conclusion of any prosecutions or even investigations under the Police Act 1970, despite the lapse of up to nine months since the actions referred to in the appendices to the original application.

The applicant Government claimed that for the following reasons a civil action for damages was by itself an inadequate remedy in the present circumstances:

- First, an award of damages did nothing to prevent the recurrence of such acts either by or against the same persons, or otherwise;

- Secondly, persons who had suffered from such ill-treatment from the security forces were at a very serious disadvantage in seeking a domestic remedy because:

  a) they would find it difficult if not impossible to procure the evidence of independent witnesses who could substantiate claims;

  b) the security forces carrying out breaches as a planned system would inevitably make concealment of these breaches a part of that planned system;

  c) the disadvantages were greatly increased when the person suffering from the breaches was incarcerated immediately thereafter, thereby being deprived of the freedom necessary for the normal collection of evidence, e.g. prompt medical examination and instruction of a legal adviser.

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The applicant Government pointed out that it was a settled principle in international law that the exhaustion of a domestic remedy was not required if, in the circumstances, such remedy would prove ineffectual or inadequate. This rule was not a technical or rigid rule but one which international tribunals had applied with a considerable degree of elasticity. In the present case where there had been widespread, repeated and flagrant breaches of Art. 3, one of the most fundamental of the Convention, involving irreparable damage to the victims, a remedy must, if it was to be deemed adequate, be more immediate and effective than the eventual prospect of monetary damages. Nothing less than the vigorous enforcement of the law by the Executive, through criminal prosecution and disciplinary action, could afford an adequate remedy. In this context reference was made to the Commission's Report in the First Greek Case (Vol. II, 1, p. 12, para. 25).

In the applicant Government's submission the Executive had, in the present case, not only failed to secure by positive action the rights guaranteed in Art. 3 of the Convention but had also attempted to obstruct the course of civil claims by maintaining a threat of internment against the claimant. In support of this contention the Commission was referred to two judgments given in the case of M___ v. S_______ delivered on 3 January and 18 February 1972.

Moreover, the applicant Government claimed that the evidence submitted by them disclosed a repetition of acts sufficient to constitute an administrative practice especially when considered in conjunction with the official tolerance envinced by the respondent Government's failure to punish such acts or to prevent their repetition. In this context reference was again made to the Commission's Report in the First Greek Case (ibid. pp. 1-15 and pp. 412-420 and in particular to p. 13, para. 27).

The applicant Government stated in conclusion that the remedies sought by them could not be granted by a domestic court in the United Kingdom. Such a court had no jurisdiction to consider whether there had been a breach of the Convention. Moreover, it was submitted that, where the wrong sought to be remedied was a breach of a treaty and the remedy sought was a declaration that this had occurred, the domestic remedies rule had no application.

<u>At the hearing</u> the representatives of the applicant Government maintained that evidence of the existence of an alleged administrative practice in breach of Art. 3 of the Convention was not relevant to the issue of admissibility in an inter-State application such as the present, whose object was to determine the compatibility of an administrative practice with the obligations of the respondent Government and not to seek redress on behalf of individuals. The

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applicant Government also claimed that, even if such evidence was nevertheless considered to be relevant at the admissibility stage, this evidence had clearly been provided in the application and the documents supporting it.

According to the applicant Government, the factual information supplied with the application related to a total of 103 persons and the complaints of ill-treatment ran from 9 August 1971 to the end of January 1972. The treatment complained of occurred in three identifiable places. Eight persons complained of this type of ill-treatment in Palace Barracks, which was one of the identified places and nineteen persons had given statements with regard to such treatment in the same place between 20 September 1971 and 7 January 1972. With regard to the Girdwood Detention Centre there were thirty-one statements relating to the period 9 August - 2 November 1971 and four statements concerning the period 2 November 1971 - 25 January 1972. In Ballykinlar eighteen persons made depositions concerning such treatment alleged to have taken place on the same day, namely 9 August 1971. In the areas which could not be identified, mostly due to the treatment of the people concerned, there were nineteen persons involved and these incidents had occurred from August to November 1971 in seven places and from November 1971 to January 1972 in five places.

In the applicant Government's view the treatment to which these 103 persons were subjected had an extraordinary air of repetition. The statements showed that precisely the same methods recurred repeatedly with variations only in the order of application. Not only the techniques referred to in the Parker Report, such as hooding, wall-standing and noise, occurred as total pattern but also the other forms of ill-treatment, some of them more savage, recurred with the some pattern. It would be illogical to separate the techniques referred to in the Parker Report from other forms of ill-treatment as the statements showed that the same person was subjected to both kinds of treatment in the same place and at the hands of the same security personnel. The entire treatment of these 103 persons was closely inter-related and showed a recurring pattern.

In the applicant Government's submission the failure to punish the security personnel responsible for the alleged acts of ill-treatment had three consequences. First, it constituted evidence of an official tolerance which was an accepted ingredient in an administrative practice. Secondly, it established in itself a failure to secure to persons the rights and freedoms in Art. 3. Thirdly, because the executive could not be forced to punish the responsible persons, its failure to do so rendered other apparent remedies for injuries to individuals ineffective and insufficient in a situation where such injury consisted of a failure by a Government to secure and protect the individual's rights and freedoms.

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When concluding their submissions under Art. 3 of the Convention, the applicant Government referred to the account given by the Attorney-General of the respondent Government as to the instructions and steps he had taken to prevent ill-treatment when he became responsible for prosecutions in Northern Ireland. The applicant Government fully accepted that such instructions had been given. However, there was substantial evidence of brutality apart from the interrogation in depth techniques. The applicant Government was regularly receiving information to the effect that physical brutality continued. Moreover, constant charges of this kind were still being made in the newspapers in Northern Ireland. In these circumstances, there still remained a situation which should be investigated by the Commission.

The applicant Government also asked the Commission to proceed with an investigation of the interrogation in depth and pointed out that, while certain techniques had been discontinued some form of such interrogation was still in operation. In this connection, the applicant Government described the forms and effects of the previously authorised techniques. As regards wall-standing, the persons who were being interrogated were kept in an uncomfortable posture with the tips of their fingers against the wall for long periods. Their heads were hooded and they were deprived of sleep and food. They were also subjected to what the psychiatrists described as a "white noise" which was a continuing noise with the object of producing a sense of isolation in the victim as well as hallucinations. The hooding also produced a sense of isolation and disorientation and, it was claimed, in some cases a sense of panic or suffocation. It was clear from the evidence submitted, in particular a report by Professor J. Bastiaans of Leyden University that the intention was to isolate a person, not only from communication with other persons, but also from himself. In the applicant Government's submission anything more patently and grossly in violation of Art. 3 than such techniques could not be conceived.

At the present time the respondent Government had ceased these particular practices but it appeared clearly that the possibility of some of these measures being re-introduced was contemplated and the respondent Government had expressly reserved to itself the right to re-introduce them. The Parker Report showed that these interrogation procedures had been used in Malaya, Palestine, Kenya and Cyprus where they had similarly been discontinued until they were required again. Thus, they had been used again in the British Cameroons (1960-61), Brunei (1963), British Guiana (1964), Aden (1964-67), Borneo/Malaysia (1965-66), the Persian Gulf (1970-71) and in Northern Ireland. It would be appropriate and timely for the Commission to set standards and limits as to what forms of interrogation in depth were permissible.

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4. Under Art. 5

(a) Submissions of the respondent Government

In their written observations the respondent Government referred to the text of the original application in which it was alleged that the internment of persons in Northern Ireland was a breach of Arts. 5 and 6 of the Convention and that the powers contained in the Special Powers Act and Regulations, as well as their operation, were in breach of the said Articles. It was observed that, apart from a reference (Part E, para. 11, see p.16 above) to persons held in custody or detained, no indication was given of the context in which such a breach was alleged to exist, and no allegation of fact was made except with regard to internment. The respondent Government therefore assumed that the reference to the Special Powers Act and Regulations, and the operation of the powers therein contained, was a reference to those powers and their operation in regard to internment and to the holding of persons in custody or detention in relation to the making of an order of internment.

So far as concerned an alleged breach of Art. 5 by reason of the existence of the powers contained in the Special Powers Act and Regulations, the respondent Government repeated that the application failed to state how the existence, as distinct from the application, of enabling legislation was capable of contravening the Convention. So far as concerned the alleged breach of Art. 5 by reason of the operation of such powers, the respondent Government repeated their observation that there was, and had been at all times material to the application, a public emergency threatening the life of the nation and that this fact was not disputed by the applicant Government. The latter's submission on the present issue went not to the existence of the emergency, but to the extent of the measures taken by the respondent Government or the Government of Northern Ireland and their consistency with the respondent Government's other obligations under international law. With regard to the latter allegation, no indication had been given of any specific obligation under international law with which the measures taken were alleged to be inconsistent. The respondent Government submitted therefore that this allegation should be rejected, or that the Commission should decline to give further consideration to it, on the ground that, in this respect, the applicant Government had failed to comply with the Rules of Procedure.

The respondent Government then observed that, between January and the end of July 1971, 2 police officers, 10 soldiers and 8 civilians, not themselves the instigators of violence, were killed as a result of terrorist activity. In January there were 16 explosions, in May 37 explosions, and in July 68 explosions. On 9 August 1971, the Northern Ireland

Government faced with this increasing violence and the difficulty of bringing those responsible to justice (due to intimidation and the ease with which terrorists were able to cross the border with the Republic of Ireland after carrying out their attacks), decided, with the agreement of the respondent Government, that it was necessary to use their powers of detention and internment in order to protect the population as a whole from terrorism. Whenever possible the normal processes of criminal law continued to be followed: between 9 August 1971 and 31 March 1972 over 888 people had been charged in the ordinary way with offences arising out of civil disturbances. Internment had been ordered only in cases where, after careful examination of a recommendation of a senior police officer, the Minister of Home Affairs for Northern Ireland was satisfied that the person concerned was at the time an active member of the IRA or had been actively implicated in the IRA campaign. Between 9 August 1971 and 31 March 1972 796 persons had, from time to time, been interned for varying periods without trial in exercise of the powers conferred by the Special Powers Regulations.

Orders for internment made under the Special Powers Regulations expressly provided that due consideration should be given by an Advisory Committee to any representations which the person subject to the Order might make. The current Advisory Committee comprised a Deputy Judge of Oxfordshire Crown Court (who was a Roman Catholic) and 2 lay members. Regulation 12 (3) required that the chairman held or had held certain judicial appointments, or was a practising barrister of at least ten years standing. Any internee might put such representations as he wished to make against the internment order to the Committee, either orally or in writing. He might be represented by an agent in the preparation of his case and certain legal aid was available. The function of the Committee was to consider whether or not the internee could safely be released, whereupon they put their recommendation to the Minister of Home Affairs whose functions were now exercised by the Secretary of State for Northern Ireland. In addition the Committee had conducted a systematic review of the position of persons interned under the Regulations. By 30 March 1972, 588 cases had been heard by the Committee (notwithstanding the refusal of 451 to appear or otherwise make representations to the Committee), of whom 69 were recommended for release. All of these were released except for 6 persons who refused to give an undertaking not to engage in violence on their release and this was in accordance with the policy stated by Mr. Faulkner, the then Minister of Home Affairs, to the effect that the Committee's recommendations would be followed whenever possible.

Following the enactment of the Northern Ireland (Temporary Provisions) Act 1972 the functions of the Minister of Home Affairs of Northern Ireland became exerciseable by the Secretary of State for Northern Ireland. In his statement, explaining

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the reasons for the introduction of that Act, the Prime Minister of the United Kingdom referred to the question of internment and said that, within the next few weeks, those internees whose release was no longer thought likely to involve an unacceptable risk would be set free. The Secretary of State for Northern Ireland would establish a procedure to review each case personally. In a subsequent statement in the House of Commons, the Secretary of State explained the policy which he would adopt. In particular, he said that cases which could be brought to trial would be. He also stressed that the sooner violence ended the sooner could internment be ended.

On 7 April 1972, the Secretary of State announced the immediate relase of a total of 47 internees and also of 26 detainees. Subsequent releases of internees had brought the total of internees released from 7 April to 28 April to 118.

The respondent Government maintained that, faced with the prevailing situation, they and the Government of Northern Ireland had, at all times relevant to this application, been clearly entitled, within the margin of appreciation accorded to Governments in such cases, to take the view that internment measures in general had been and were required by the exigencies of the situation within the meaning of Art. 15 (1). They also maintained that the application of these measures in practice had been within that margin of appreciation and had gone no further than was strictly required by the exigencies of the situation and, if that question remained in issue, were not inconsistent with their obligations under international law. They therefore repeated their submission that the matters of complaint in Part E of the application did not constitute a contravention of their obligations under the Convention.

The respondent Government stated that they were mindful of decisions of the Commission reserving to its examination of the merits issues in relation to Art. 15. They submitted, however, that the question whether measures taken by a State were measures in respect of which, or taken in circumstances in which, a State was entitled to exercise its right of derogation were matters which might properly be taken as a preliminary issue. A determination that the measures fell within that description rendered unnecessary any further examination of issues under Articles other than those specified in Art. 15 (2); before there was a determination of the issue under Art. 15 (1), the examination of any such other issue would be premature. Accordingly (and since the question was, as a matter of fact, capable of separate consideration from issues as to which Art. 15 did not permit derogation) they submitted that it was appropriate that the issue whether the measures taken were measures which were permitted under Art. 15 (1) should be considered as a preliminary question. They requested the Commission to consider it as such and to hold that the matters referred to in this part of the application did not constitute a contravention of the Convention.

In their oral observations <u>at the hearing</u> the representatives of the respondent Government maintained these submissions. In this connection reference was again made first to the reasons for introducing internment and detention on 9 August 1972. Further reference was made to the letter addressed on 25 August 1971 to the Secretary General of the Council of Europe for the purpose of Art. 15 (3) of the Convention (see the annex below).

The respondent Government also recalled the statements made before the European Court by the applicant Government in the Lawless Case as to the activities of the IRA and the measures introduced by the applicant Government, including detention without trial, to deal effectively with the threats from the IRA. The respondent Government submitted that it was clear that the previous campaigns referred to in the Lawless Case did not approach in violence and extent the threat to security of the present campaign in Northern Ireland.

The respondent Government emphasised that the power of internment under the Special Powers Act was accompanied by important safeguards. In particular, according to Regulation 12 (1), an internment order could be made only if an officer of the RUC not below the rank of county inspector, or an advisory committee, recommended that "for securing the preservation of the peace and the maintenance of order in Northern Ireland it is expedient that a person who is suspected of acting or having acted or being about to act in a manner prejudicial to the preservation of the peace and the maintenance of order in Northern Ireland" shall be interned. Regulation 12 (1) also required any internment order to contain express provision for consideration by an advisory committee of any representations made against the order by the person concerned. Moreover, it was recalled that Regulation 12 (3) laid down that this committee should be presided over by a person holding, or having held high judicial office, by a county court judge or a practising barrister of at least ten years' standing.

The respondent Government gave further information to show that internment was being phased out as quickly as possible and stated that, between 30 March and 12 September 1972 a total of 557 internees and 166 detainees had been released. At the latter date there were still 171 internees and 67 detainees. However, on 21 September 1972, the Secretary of State for Northern Ireland had announced new important changes in the procedure. First, the Government would set up a commission of experienced lawyers and laymen to advise them on the measures required to deal with terrorist activity and to bring to book individuals involved in terrorist activity without resorting to internment. Pending this report and the subsequent legislation on it, the Government proposed to change the existing law to facilitate the prosecution of persons for membership of unlawful organisations. In addition, provisions

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would be introduced under the Special Powers Act to set up a tribunal to deal with persons suspected of participation in terrorist activities. The relevant procedure would provide maximum safeguards for the protection of the individual and, while eliminating objectionable features of internment, notably judgment by executive decisions alone, would be matched by the special conditions in Northern Ireland. This tribunal would be asked to consider cases referred to it (including cases of those presently interned or detained) and to determine the nature of their involvement in terrorist activities with a view to their release or committal to a period of detention.

The respondent Government further developed their submission that the Commission should, in the present case, determine at the admissibility stage the question whether the derogation from Art. 5 was justified under Art. 15. In this connection the respondent Government referred to the Commission's decision in the Lawless Case to join to the merits of the case the respondent Government's preliminary objection under Art. 15 (Yearbook 2, pp. 308, 334). In the respondent Government's opinion that decision did not exclude the possibility that, in an appropriate case, the Commission would decide at the admissibility stage, on the question of a derogation under Art. 15. In the present application the two grounds indicated in the Lawless Case for joining this issue to the merits did not apply. First, in the present case, it was not disputed that there was, and had been when the emergency measures were first taken, a public emergency in Northern Ireland threatening the life of the province. Secondly, the Commission had in the present case a full and detailed account of the threat posed by the IRA to peace and security; of the powers contained in the Special Powers Act and Regulations and the existing safeguards against abuse of such powers; of the manner in which these powers had been exercised in practice; of the functions of the Advisory Committee and of the steps which had been taken since 30 March 1972 to bring internment to an end. There could be no substantial dispute about these facts nor about the situation confronting the respondent Government at the time of the derogation and the steps taken to meet this situation. What might be in dispute was whether these measures went beyond the margin of appreciation allowed to a State in judging the extent that is strictly required by the exigencies of the situation. In the respondent Government's submission this question should be decided at the present stage, the material needed for such decision being available in the form of undisputed facts. The claims under Art. 5 should therefore be declared inadmissible.

The respondent Government then turned to the particular submissions made by the applicant Government in support of their contention that the measures taken exceeded what was strictly required by the exigencies of the situation. The first criticism was that the decision to intern was taken

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previously by the Minister of Home Affairs but, after 30 March 1972, it was taken by the Secretary of State for Northern Ireland alone. Neither of these was bound by the views of the Advisory Committee. This position would be changed by the setting up shortly of the new tribunal announced on 21 September 1972. Moreover, internment could only be ordered on the recommendation of a senior police officer. As regards the Advisory Committee, their advice had not been binding on the Minister but there were only six cases in which the Minister had not released an interned person when this had been advised by the Committee. These six persons were released by the Secretary of State on 7 April 1972.

The applicant Government's second ground of criticism was that the right of representation before the Advisory Committee did not include a right to know the evidence on which that person was interned or the right to enquire into, cross-examine, or refute that evidence. However, the reasons for this restriction was self-evident. The IRA was prepared to murder without scruple anyone who endangered or interfered with its members or activities. To inform an interned person suspected of being a member of the IRA of the names of the witnesses on whose evidence he was interned would, in some cases, constitute a death warrant of these witnesses or would ensure some lesser form of retribution on the part of the IRA.

The third criticism was that there was no right given to an interned person to appear or to be represented or give evidence before the person who made the decision as to his internment. However, an interned person had the right to appear or be represented before the Advisory Committee whose advice had almost invariably been accepted.

The fourth criticism, finally, was that a person, who was detained under the Special Powers Act and Regulations, had no remedy and not even a remedy before the Advisory Committee to procure release as long as the detention was a valid detention in accordance with the requirements of the Act. In considering this criticism, the purposes and the background of the Act and the Regulations had to be kept in mind. They were made and passed in a situation of emergency and danger to the community as a whole which would have to be dealt with, if it arose, swiftly and quickly. Moreover, Sec. 1 of the Act provided that there should be as little interference as possible with the ordinary course of law, avocations of life and the enjoyment of property. In the respondent Government's submission the existence of the Special Powers Act and the Regulations had been, and was, necessary in the particular situation prevailing in Northern Ireland and there was nothing to suggest that the powers concerned had been abused or used contrary to the provisions of Sec. 1.

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Moreover, the courts had been astute to ensure that the powers conferred were exercised in accordance with the strict requirements of law. In this connection reference was made to the McE Case which had been referred to by the applicant Government. In that case the judge had to interpret Regulations 10 and 11 under which McE had been arrested and he held that there was no valid arrest and ordered that McE should be released. Furthermore, the civil authority retained power to grant bail to all persons detained by virtue of Regulation 11 (4). The respondent Government did not regard these powers to detain and to intern as attractive powers, but they were powers to be used when required for the security and safety of the inhabitants of Northern Ireland. In this context the respondent Government again referred to the McE Case where the power of arrest was described "as part of legislation to meet unusual conditions where more normal and conservative powers may be ineffective for preserving peace and maintaining order in a troubled community". In the applicant Government's submission the mere creation of the powers of detention concerned, which were pursuant to an Act passed by a democratically elected Parliament, could not and should not be accepted as grounds of a viable application under the Convention. The need for such powers were plain and it was necessary that detention should be immediate. The fact that there was no express provision in the Act or Regulations for a remedy by application to a court or some other tribunal did not violate the Convention. It was also true that there was no express provision limiting the period during which a person might be detained but, if the existence of the powers was justified, this was not surprising. The judge in the McE Case considered that there was no such limitation enabling the courts to act as a court of appeal on the issue of the time which the arrested man could be held under Regulation 11. However, without suggesting that there was any limitation as to the period a man could be detained, the respondent Government stated that they were not aware of any court decision specifically deciding whether or not there was any implied restriction to the effect that a man could only be detained for a reasonable period. If the courts found that it was right that there was no such limitation on the basis that these powers were created to deal with situations of emergency, it would be wrong to hold that there was, on this basis an admissible application under the Convention. Nor did the fact that people were detained under those powers *ipso facto* give substance to such an application.

In this connection, the respondent Government referred to the applicant Government's argument that the fact that the Special Powers Act and the Regulations under it remained in force and did not have to be brought into operation by a Government Proclamation or Resolution by Parliament, constituted a breach of Art. 1. Leaving aside the question whether

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there could be a separate breach of Art. 1, the respondent Government submitted that there was no effective interference with anyone's rights until the powers conferred by the Regulations were exercised. In the respondent Government's submission, the powers under the Act and the Regulations had never been used save in circumstances when Art. 15 of the Convention applied and the respondent Government had then given due notification of the fact that such powers had been exercised. The reason for these powers always being in force was simply that, if a public announcement was required before the powers of internment and detention could be exercised, the period of time which would inevitably elapse between such a public announcement and the attempt to detain individual persons, would enable those persons to escape over the border.

The respondent Government stated that they did not accept the applicant Government's submission that there was no remedy or only an illusory remedy available under domestic law for any misuse of the Regulations. The lack of justification for this submission was shown by the McE Case. In that case, the judge accepted that the powers conferred under the Regulations were wide, but he laid down that there were three grounds on which it was open to the applicant to attack the order which had been made against him. These were, first, whether the arresting officer did indeed suspect that McE had acted in one of the ways specified in the Regulation; secondly, whether he held that suspicion bona fide and honestly; and thirdly, whether he carried out the essential prerequisites to the arrest and, in particular - this being the point in issue - whether he told the person being arrested the things he was entitled to be told. The judge then held that, on the third ground, the particular exercise of power in that case could successfully be attacked.

In reply to a question from the Commission at the hearing, the respondent Government gave detailed information as to the procedure before the Advisory Committee and the way in which a case reached the Committee. In particular, the respondent Government explained that an interned person was informed in the internment order served on him of his right to make representations. The interned person himself was entitled to make representations and have his case considered by the Committee under Regulation 12. In addition, the Advisory Committee could consider internment cases on its own initiative even if the interned person had not himself made representations to the Committee. When internment was introduced in August 1971 the Advisory Committee was established under the chairmanship of His Honour Judge Brown and it commenced a review of all cases irrespective of whether the individual interned persons had made representations to the Committee. Between 4 October 1971 and 30 March 1972 the cases of 588 persons were

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considered. In 451 cases the internee concerned chose not to appear before the Committee. Of the cases considered the Committee recommended in favour of the release of 69 persons, of whom 63 were in fact released. On 15 April 1972, His Honour Judge Leonard became chairman of the Committee which was still carrying out its statutory duty of considering representations made to it by interned persons. However, the general review of all internment cases was now being carried out by the Secretary of State for Northern Ireland personally.

The Committee, under the chairmanship of Judge Leonard, had considered representations from nine interned persons and recommended the release of four of these persons, and these recommendations had been followed.

An interned person might appear before the Committee either alone or accompanied by a lawyer who could state his case. He was also entitled to legal assistance in the preparation of his written representations to the Committee. At the hearing the interned person or his lawyer was given the opportunity to question the grounds for his internment as set out in the internment order. The Committee also considered written and oral representations of police officers but, in order to protect the lives of witnesses against reprisals, the actual evidence against the interned person was not notified to him or his lawyer.

(b) Submissions of the applicant Government

In their written observations the applicant Government first replied to the respondent Government's observations concerning the alleged contravention of the Convention by reason of the existence of the Special Powers Act and the Regulations and the applicant Government referred to their submissions in this respect under Art. 1 (see pp. 29-32 above).

With regard to the respondent Government's observations on the alleged breaches of Arts. 5 and 6, the applicant Government made the following comments which applied to both Articles:

(i) The observations of the respondent Government were not relevant to the question of admissibility of the application;

(ii) The applicant Government noted the comments made by the Commission in the first decision on the admissibility of the First Greek Case (Yearbook 11, pp. 690, 726-728) where the Commission held that the provisions of Art. 27 (1) and (2) did not apply to applications submitted under Art. 24 of the Convention and, accordingly, that the question whether such an application was well-founded or not was solely a question

relating to the merits and, therefore, the effects of derogations made by the respondent Government under Art. 15 could not be considered at the stage of admissibility;

(iii) The measures taken by the respondent Government exceeded what was strictly required by the exigencies of the situation both by reason of the continuing existence of the Special Powers Act as part of their domestic legislation and in the operation by the respondent Government, and by the security forces under their control, of the said Act and Regulations and, in particular, in that:

- notwithstanding the observations made by the respondent Government concerning the Advisory Committee, the internment (as distinct from detention) of persons without trial was solely at the decision of the Minister of Home Affairs for Northern Ireland, making such use as he, in his sole discretion, might think fit of the views of an Advisory Committee which, irrespective of the religious persuasion of its Chairman, was merely advisory and not an independent judicial tribunal; there were still 447 persons interned without trial in Northern Ireland;

- the rights of representation before the Advisory Committee recently conceded to an interned person did not include a right to know the evidence on which that person was interned or the right to enquire into, cross-examine as to, or refute that evidence;

- no right whatsoever was given to an interned person to appear before, to be represented before or to give evidence before the person who made the decision as to his internment.

- no remedy whatsoever, not even that of consideration of his case by the aAdvisory Committee, was allowed to a person who was detained without trial as distinct from being interned without trial; neither was there any enforceable legal limit to the length of time for which a person might be detained. There were still some 141 persons detained without trial in Northern Ireland.

With reference to the respondent Government's submission that they were clearly entitled, within the margin of appreciation accorded to Governments, to take the view that emergency measures were required by the exigencies of the situation within the meaning of Art. 15 (1), the applicant Government pointed out

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that the margin of appreciation referred to related to the assessment of the facts justifying measures in derogation. It could not be invoked in defence of measures which restricted the rights and freedoms secured and defined by the Convention but which did not contribute in any way to safeguarding the nation against the public emergency threatening its life. In this connection reference was made to the detailed criticisms of the Special Powers Act and the Regulations made thereunder as were contained in an appendix to the application. Reference was also made to the judgment of the European Court in the Lawless Case (332/57) where, in deciding that the derogation from the Convention came within the terms of Art. 15, stress was laid on the fact that the legislation permitting internment without trial was "subject to a number of safeguards designed to prevent abuses in the operation of the system of administrative detention".

With regard to the respondent Government's statement that the Minister of Home Affairs for Northern Ireland was satisfied that each person interned "was at the time an active member of the IRA or had been actively implicated in the IRA campaign" the applicant Government submitted that:

- since neither the person interned nor the applicant Government was aware of the evidence which so satisfied the Minister of Home Affairs for Northern Ireland, and

- since the statements of many of the persons whose names were set out in Appendices 4-7 and the Addenda thereto, denied the allegations made, and

- since no independent judicial tribunal existed to examine the bases on which the Minister of Home Affairs for Northern Ireland became so satisfied,

the respondent Government's statement in this respect was unsupported in fact, and, in any event, was irrelevant to the issue of admissibility.

The applicant Government noted that it was not suggested by the respondent Government that there was any domestic or legal remedy available to any person arrested or detained (as distinct from interned) pursuant to the provisions of the Special Powers Act.

It was noted that, although the respondent Government claimed that detention and internment were measures strictly required by the exigencies of the situation and 796 persons were interned without trial between 9 August 1971 and 31 March 1972, yet in the same period of time it was possible to have over 888 persons charged in the normal process of criminal law.

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The respondent Government had requested that the question whether the measures taken were permissible under Art. 15 (1) should be considered as a preliminary question. The applicant Government referred the Commission again to the objects of their claim set out in Section A of the application and commented that, in such a case and where also it was alleged that the existence of the Special Powers Act and Regulations made thereunder were in themselves a breach of Art. 1 of the Convention, it was inappropriate that the request of the respondent Government should be acceded to.

With reference to the respondent Government's observation that the application failed to state how "the existence, as distinct from the application, of the Special Powers Act and Regulations was capable of contravening the Convention", the applicant Government referred to the obligation of Parties to secure the rights and freedoms defined in Section I of the Convention. They also referred to the statement in the Commission's decision on admissibility in the de Becker Case (application No. 214/56) to the effect that the Convention was binding on all the authorities of the Contracting Parties including the legislative authority (Yearbook 2, pp. 214, 234).

<u>At the hearing</u>, the representatives of the applicant Government maintained that their allegations under Arts. 5 and 6 should be declared admissible and that no question as to the derogation under Art. 15, the extent of the measures taken in pursuance of such derogation or its validity could arise at the admissibility stage.

In the event that the Commission would nevertheless consider the question of derogation at that stage, the applicant Government also maintained that the measures taken exceeded what was strictly required by the exigencies of the situation.

In this connection the applicant Government explained that the Act and Regulations gave to the executive three different powers of detention, namely:

- a power to detain a person for up to 48 hours which did not, under the Regulations, require suspicion either of a criminal offence having been committed or that there had been an intention to commit an offence (Regulation 10);
- a power of detention which was unlimited in time (Regulation 11).
- a power of internment in respect of which there was no effective tribunal which could inquire into the validity or soundness of the internment (Regulation 12);

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The applicant Government then asked the Commission to consider two fundamental questions in considering what measures might be strictly necessary in a situation of emergency. First, whether any authority which had the power of internment, from which there was no judicial escape, should have, for any purpose, the concurrent power to order unlimited detention? Secondly, even if a power of internment were a necessary measure in any given emergency, what conceivable administrative or practical ground could there be for denying an interned person the right to have his case considered by a judicial tribunal which had effective power to release him or to confirm his internment?

The applicant Government also recalled, that the Special Powers Act and Regulations had remained in force for 50 years and that it did not require any legislative act, even a proclamation or order-in-council, to make these powers effective. In particular, the respondent Government had justified this absence of parliamentary control over the times at which, or the circumstances under which, the power of internment could be introduced on the ground that the time required to proclaim or announce the introduction of the power of internment would enable those persons, against whom it was intended to be operated, to escape. In the applicant Government's opinion this explanation ignored, however, the fact that, even if it were announced that there were now or at any given time between 2,000 and 3,000 terrorists in Northern Ireland, the whole population of 1 1/2 million people lived permanently under the shadow of the possibility of being interned immediately and without prior notice.

The applicant Government then commented on the provisions of Regulations 10, 11 and 12. Regulation 10 provides that:

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

As regards this Regulation the applicant Government noted that it was not necessary that the officer authorising the arrest of a person should in any way suspect the person arrested or about to be arrested of doing any wrongful act, or of intending or of being involved in the doing of any such act. Moreover, under this Regulation a person might be arrested for interrogation in connection with another person but without any connection with his own activities.

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Even more drastic powers were to be found in Regulation 11 (1) which permitted any person so authorised by the civil authority, or any police constable or any soldier, to arrest without warrant any person whom he suspected of acting in a manner prejudicial to the maintenance of peace and order, or to arrest any person found with a book or document which gave ground for such suspicion. This was simply a power of arrest. However, under Regulation 11 (2) a person so arrested might, on the order of the civil authority, be detained in prison or elsewhere as directed until he was discharged by the Attorney-General or brought before a court of summary jurisdiction. This Regulation gave an unlimited power of detention. Once the arrest had been achieved by any of the officers referred to in Regulation 11 (1), the civil authority could detain a person without any reference to any court or without any form of adjudication until he was discharged. The applicant Government stated that the judgment in the McE Case showed that there was no time-limit within which a detention order under Regulation 11 (2) had to be made, nor was there any limitation of the period an arrested person could be held in custody under Regulation 11 (1). The same judgment showed that the courts could not be asked, to determine whether the grounds of suspicion on which a person was arrested and subsequently detained were reasonable or not.

The applicant Government then referred to the power of internment in Regulation 12 which provided that, on the recommendation of an officer of the RUC or of an Advisory Committee, the Minister of Home Affairs might, for the purpose of securing peace and order and where it appeared to him that it was expedient to do so, order that a person who was suspected of acting in a manner prejudicial to the preservation of peace and order should reside in a certain place and report to the police at regular intervals or be interned.

The applicant Government recalled that a person so interned had a right to have his case reviewed by an Advisory Committee which could recommend that the internment should continue or be ended. In this connection, the applicant Government repeated their submissions with regard to the procedure before the Committee and the advisory character of that Committee.

By way of comparison the applicant Government then referred to the relevant parts of the legislation in the Republic of Ireland which had been considered in the Lawless Case, namely Part VI of the Offences Against the State (Amendment) Act 1940. The applicant Government pointed out that there were important differences between the Special Powers Act and that legislation. In particular, the 1940 Act could only be brought into operation by a Government proclamation which itself was liable to annulment by Parliament. The 1940 Act also provided that an interned person had a right of

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appeal to a Detention Commission whose decision, where it ordered that an internee should be released, was binding on the executive and the courts. Moreover, the Detention Commission could require the Minister for Justice to furnish all relevant information or documents. These safeguards were considered and given much significance by the Commission in its Report in the Lawless Case (E.C.H.R. series B, 1960-61, pp. 123, 133 and 134). However, none of these safeguards was provided for, or at least not provided for in an effective form, under the Special Powers Act.

The applicant Government also referred to the statements recently made by the Secretary of State for Northern Ireland as to the respondent Government's future intentions about internment and the setting up of a new tribunal. It was submitted that, even assuming that these matters could be considered by the Commission at the admissibility stage, there was no suggestion that this new tribunal was a tribunal to which a person had access as of right and which was capable of releasing him from internment.

At the hearing the representatives of the applicant Government also developped their submission that no effective remedies were available to a person deprived of his liberty under the Special Powers Act in breach of Art. 5 of the Convention. It was true that, if there had been a failure by the security forces or the executive to comply with the precise procedural requirements of the Special Powers Act and Regulations, the courts could release a person from what would then be an invalid detention. In this context, the applicant Government stressed that the judiciary in Northern Ireland had been scrupulous in its observance of these technicalities. On the other hand, if these procedural requirements were complied with, there was no effective recourse to any ordinary court in relation to the deprivation of liberty.

In support of this submission the applicant Government referred to the judgment in the McE Case where the position of the courts in relation to the exercise of the powers under the Special Powers Act was described. In that case the judge considered, inter alia, the question whether the power of arrest under Regulation 11 (1) could be exercised on any suspicion regardless of whether it was reasonable or not. The judge held that it was sufficient if the suspicion in the mind of the arrestor was an honest and genuine suspicion and that, in an application of the sort concerned, the court could only enquire into the existence of the suspicion in the mind of the constable and whether the suspicion was an honest one.

The applicant Government argued that this judgment showed that relief was only possible if mala fides could be established. In view of the serious practical difficulties involved in proving such mala fides this remedy was purely illusory. In support of

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this argument reference was made to de Smith "The Judicial Review of Administrative Action" (second ed. p. 315). The applicant Government added that the right of a detained person to obtain access to a solicitor was irrelevant in view of the very limited competence left to the courts in this respect.

5. Under Art. 6

(a) Submissions of the respondent Government

With regard to the alleged breach of Art. 6 in relation to persons interned without trial, the respondent Government first referred in their written observations to the European Court's decision in the Lawless Case that "the rules set forth in Art. 5, para. 1 (b) and Art. 6 respectively are irrelevant to the present proceedings ... the latter because there was no criminal charge against him" (judgment of 1 July 1961, p. 51). The respondent Government stated that no allegation of fact was made in the present instance in relation to Art. 6 other than that certain persons were interned without trial; in particular, there was no assertion of a criminal charge in respect of the persons interned without trial. Indeed such an assertion would be at variance with the allegations of a breach of Art. 5. The respondent Government submitted that, according to the above decision of the Court, Art. 6 was equally irrelevant to the present proceedings.

The respondent Government then referred to the Commission's decision on the admissibility of application No. 788/60 (Austria v. Italy, Yearbook 4, pp. 116, 180-182) with regard to the argument put forward by the respondent Government in that case that the complaints did not come within the competence of the Commission ratione materiae. In reply to this argument the Commission had held that the provisions of Art. 27 (2) were not applicable to an application under Art. 24 and it had found that the complaints set forth in the application were not outside the general scope of the Convention.

The respondent Government stated that their submission in the present case as regards Art. 6 was to be distinguished from the argument ratione materiae in the previous case in that their present argument was directly based on a decision of the European Court in a case which was directly relevant and in which the issue was determined as a matter of law. The legal issue was the same in the present case. So far as concerned Art. 27 (2) that Article required the Commission to consider inadmissible a petition under Art. 25 which it considered, inter alia, incompatible with the provisions of the Convention. It was submitted that such a provision did not preclude the Commission from rejecting a particular allegation or declining to examine it further, whether on the merits or otherwise, in a case where

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it was apparent that, as a matter of law, the examination could only concern an issue which in the light of the decision of the Court, was irrelevant. The Commission, it was submitted, had the power, by virtue of its function and irrespective of specific provisions, to refuse to give further consideration to issues which had been raised in disregard of the jurisprudence of the Convention. In connection with this submission the respondent Government referred the Commission to the decision of the International Court of Justice not to adjudicate upon the merits of the claim in the Northern Cameroons Case (I.C.J. Reports 1963, pp. 15, 38).

Such a course, it was submitted, was equally appropriate in proceedings before the Commission where it would be meaningless to pursue a particular claim.

Accordingly the respondent Government submitted that Art. 6 was irrelevant to the present proceedings and that the allegation of a breach of that Article should be rejected or that the Commission should decline to examine that allegation further.

At the hearing the representatives of the respondent Government repeated this submission. In particular, it was argued that under the general rules of international law, as exemplified in the Northern Cameroons Case, the Commission had the power to decline to allow its judicial function to be engaged where no purpose would be served by undertaking an examination on the merits which, in the light of the Court's decision in the Lawless Case, must inevitably lead to the dismissal of the complaint.

The respondent Government also replied to the applicant Government's further argument that there had been a breach of Art. 6 on the ground that an interned or detained person should have a civil right to have his position considered in accordance with the provisions of that Article. The respondent Government submitted that an interned or detained person did in fact have such a right and that there was nothing in the application to suggest that there was any interference with that right. The respondent Government argued that the question under Art. 6 was not whether a person was wrongly detained but whether he had been wrongly deprived of the right to test the legality of his detention. The final answer to any suggestion that there was any denial of this right was provided by the McE Case, where a detained person successfully availed himself of the right to have his position determined.

(b) Submissions of the applicant Government

In the applicant Government's written observations the allegations under Arts. 5 and 6 were dealt with jointly and these submissions have been set out under Art. 5 above (pp. 64-67).

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At the hearing the representatives of the applicant Government maintained that this part of the application should be declared admissible and made further submissions under Art. 6. They pointed out that the arguments originally put forward by the respondent Government related only to the determination of a criminal charge. However, Art. 6 (1) applied equally to the determination of civil rights and obligations. In the applicant Government's submission a person who was detained or interned under the Special Powers Act and Regulations was deprived of his right to liberty. He therefore had a civil right to have his position considered and was entitled to a fair and impartial hearing in accordance with Art. 6 (1). However, the Act gave a detained person, whether he was detained for short or unlimited periods, no right of access to any form of tribunal for the determination of this civil right. This was not only contrary to a particular facet of Art. 6 (1) but violated the whole concept of the Article.

A person who was interned (as distinct from detained) had the possibility to go before the Advisory Committee but that Committee did not, in the applicant Government's submission, have the effective powers or characteristics laid down in Art. 6 (1).

The applicant Government argued that the finding of the European Court in the Lawless Case, as regards the application of Art. 6 to an interned person, was not decisive as it dealt only with the question of a criminal charge. The arguments put forward by the applicant Government in the present case in regard to Art. 6 (1) were never before the Commission nor considered ex officio by it in the Lawless Case. The applicant Government did not accept the respondent Government's submission that the requirements of Art. 6 (1) were satisfied because a person, who was detained or interned, could go to a court either on the ground that the order of detention or internment was not made in accordance with the strict requirements of the Act or in order to try to establish bad faith on the part of the arrestor. In the applicant Government's view the right concerned was the right of liberty and, a person seeking a determination of that right should, at the minimum, be entitled to a determination as to whether total deprivation of his liberty was in accordance with natural justice. No principle of international law could set a lesser standard, nor could Art. 6 (1) be given less meaning than that. As long as the law of Northern Ireland did not give any public court the power to consider and make an effective decision as to the reasonableness of the suspicion on which a person had been deprived of his liberty, that person did not have the right to a determination of his civil rights as provided for in Art. 6 (1).

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6. Under Art. 14

(a) Submissions of the respondent Government

In their written observations the respondent Government referred to part F of the application (p. 17 above) and first recalled their submissions with regard to the substantive allegations of a breach of Art. 6. Having regard to these submissions the respondent Government took the view that there was no issue which fell to be considered under this head in relation to Art. 6.

As regards the alleged discrimination with regard to rights conferred by Arts. 5 and 8, the respondent Government observed that it appeared to be the basis of the applicant Government's complaint that the powers to search homes and to arrest, detain and intern persons had been exercised on the ground that those against whom the powers were exercised merely held certain unspecified political opinions and not on grounds connected with the activities of the persons concerned. The respondent Government denied that the exercise of the powers to detain or intern persons or to search homes had been or was being carried out with discrimination on grounds of political opinion in contravention of Art. 14 of the Convention.

The relevant powers (Regulations 4, 10, 11 and 12 of the Special Powers Regulations) were exerciseable only for the preservation of the peace and the maintenance of order or, in some cases, where it was suspected that an offence against the Regulations had been, or was being, or was about to be, committed. It would be an improper exercise of these powers to exercise them merely on the ground that a person had particular views or views which differed from those of the Government and it was open to any person, against whom any of these powers had been exercised, to challenge the legality of their exercise in the courts of Northern Ireland by an action for habeas corpus, for damages for trespass (including false imprisonment), or for a declaration that the powers were unlawfully exercised, as appropriate.

It was submitted that the above-mentioned remedies constituted an effective remedy for the purposes of Art. 26 and that the applicant Government had neither adduced any reason why these remedies should not be exhausted by the persons to whom the allegations in Part F of their application related nor had the applicant Government demonstrated that such remedies had been exhausted as required by Art. 26. Accordingly, it was further submitted that, insofar as the application alleged a breach of Art. 14 in relation to Arts. 5, 6 or 8 in respect of the exercise of powers to search homes and to arrest, detain and intern under the Special Powers Regulations, the application should be rejected as inadmissible under Arts. 26 and 27 (3).

At the hearing the representatives of the respondent Government first pointed out that, although the application itself only alleged discrimination in the exercise of the power to detain, intern and search homes, the material referred to in this part of the application included much wider allegations of discrimination which, in the respondent Government's view, were wholly unsubstantiated by evidence. The respondent Government's observations were, however, only concerned with the three specific grounds.

The respondent Government emphasised that the purpose of the emergency measures was not to prevent or inhibit the free expression of political views opposed to those of the Government of Northern Ireland, nor to suppress those who were dedicated to changing the form of government by constitutional and democratic means. However, it could not be tolerated in any democratic society that deliberate attempts were made to change the form or method of government by undemocratic, unconstitutional and unlawful means. This had always been the avowed aim of the IRA, namely to destroy the democratic constitution in Northern Ireland by resorting to flagrant acts of terrorism and intimidation. The respondent Government were aware that there were other organisations in Northern Ireland which were also prepared to use unlawful means to bring to an end the existing form of democratic government in the province. The organisations outlawed under Regulation 24A of the Special Powers Act included the Ulster Volunteer Force which was associated with a different faction of extremists. However, the most serious threat to peace and order in the province in August 1971 did not come from these other organisations but from the two wings of the IRA. Even if certain acts of violence were carried out at the time by other illegal organisations, the threat posed by such organisations could not remotely be compared with the acts of terrorism which were being carried out daily by the IRA.

Since the emergency measures were intended to contain this serious threat to the province, it was inevitable that those most directly affected by the implementation of the Act were supporters of the IRA, but it was not because they held and expressed views which were opposed to the Government that they were detained, interned or had their houses searched; it was because they were known or thought to be actively engaged with the IRA in achieving their political aims by violent means. Moreover, in considering the alleged discrimination the reasons why the powers had been invoked and the circumstances in which they were being used had to be kept in mind. There was no discrimination within the meaning of Art. 14 if these powers were being exercised only against those who had rendered themselves liable to them and not against those who had not.

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The respondent Government repeated that, if the powers concerned were exercised against certain people because of their political opinions or religious belief and not on proper security grounds, the exercise of the powers would be in bad faith. The case-law of the British courts clearly established that, where it was alleged that a power had been exercised in bad faith and bad faith was proven, the courts would give relief in respect of that power. In the respondent Government's submission there was no reason, either in principle or on the decided cases, to indicate that an exercise in bad faith of a power under the Special Powers Act would not be remedied by the courts in the same way as any other power. There were therefore adequate domestic remedies available and these remedies had not been exhausted.

(b) Submissions of the applicant Government

In their written observations the applicant Government Government commented on the written observations made by the respondent Government with regard to the alleged breaches of Art. 14.

The applicant Government asked the Commission to note that while they had submitted affidavits and statements contained in appendices to the application from responsible Members of Parliament, solicitors, journalists and businessmen in support of their contention that the exercise by the respondent Government and by the security forces under their control of their powers to detain and intern persons had been and was being carried out with discrimination on the grounds of political opinion, the only observation of the respondent Government in this respect was a denial simpliciter of the matters alleged without any contradiction of the detailed allegations contained in the said appendices.

As regards the remedies indicated by the respondent Government with regard to this part of the application the applicant Government stated that it was not open to anyone to challenge the legality of the exercise of the powers of detention, internment or search in the courts by way of habeas corpus, an action for trespass or false imprisonment or by way of declaration that the powers were unlawfully exercised. Provided the detention, internment or search was made pursuant to the provisions of the Special Powers Act and Regulations there was no such or any other domestic remedy available to any person provided that such detention or internment was made strictly in accordance with the legal requirements of the Special Powers Act. In this context reference was again made to the decision in R. (O'H) v. Governor of Belfast Prison (/1922/ 56 I.L.T.R. 170).

It was further submitted that, where the strict legal requirements of the Special Powers Act were complied with, the law of the respondent Government afforded no relief to a person detained or interned without trial even if his detention or internment was decreed on a basis of discrimination as to his political opinion.

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It was further to be noted that, in their observations on the substantive allegations of breaches of Arts. 5 and 6, it was not suggested by the respondent Government that any domestic remedies could apply.

At the hearing the representatives of the applicant Government shortly summarised the material which they had submitted to the Commission in support of their complaint under Art. 14. They pointed out that this material consisted of a series of statements asserting that, with particular reference to powers of detention, internment and search, these powers had been operated with discrimination in the sense that they had frequently, if not oppressively, been operated against a section of the population holding one political opinion, but not against another section of the population which held a different political opinion and which was apparently prepared to achieve their political ends by the same violent means.

In the applicant Government's submission the essence of discrimination with the meaning of Art. 14 of the Convention was not that something was done against one person, but that it was not done against all people equally. The respondent Government had suggested that there had been a failure to exhaust the domestic remedies because a person could technically seek a remedy in relation to the exercise of one of the special powers against him if he could plead that it had been done mala fide. In this connection the applicant Government recalled their submissions with regard to the possibility and practicability of such an action, which had been described as an "illusory remedy". However, even assuming that such a remedy existed, it was not, in the applicant Government's view, an appropriate or sufficient remedy for a breach of Art. 14. Such a breach consisted essentially of the failure of the executive to apply equally the powers against all persons in the community to whom such powers were applicable. The only effective domestic remedy in relation to Art. 14 would be if an order of mandamus could be obtained from some judicial authority directing the executive to use its powers without discrimination. In this context the applicant Government referred, by way of example, to the position of an innocent person who was living in a particular area surrounded by people of a particular political opinion whose opinion he might share without nevertheless agreeing with the use of violent means. This person might be constantly searched and his house invaded in pursuance of a search and it might well be that in that particular street or area constant searching was justifiable. However, there would be discrimination if a person holding a different political opinion, whether approving or condemning violence, found himself totally unmolested.

At the hearing the Commission asked the applicant Government to indicate the elements in the situation today within the territory of the respondent Government which they considered incompatible with the Convention. The applicant Government answered that the provisions of the Special Powers Act and the Regulations made under it, and the methods implementing these measures, remained today unchanged from the position outlined in the application and this present situation was incompatible with the respondent Government's obligations under Arts. 1, 5, 6 and 14.

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APPLICATION NO. 5451/72

I. The applicant Government's application

In their submissions of 3 March 1972 the applicant Government referred the Commission to the Northern Ireland Act 1972, an Act passed by the Parliament of the United Kingdom on 24 February 1972. The applicant Government alleged that the Act was of itself a failure by the respondent Government to comply with the obligations imposed on them by Art. 1 of the Convention, in that it constituted a positive denial to persons resident in Northern Ireland of the rights defined in Art. 7 of the Convention.

The full text of the Northern Ireland Act 1972 was attached to the submissions. Section I, which is the operative part of the Act, provides as follows:

"The limitations imposed by para. 3 of Section 4 (1) of the Government of Ireland Act 1920 on the powers of the Parliament of Northern Ireland to make laws shall not have effect, and shall be deemed never to have had effect, to preclude the inclusion in laws made by that Parliament for the peace, order and good government of Northern Ireland of all provision relating to members of Her Majesty's Forces as such or to things done by them when on duty, and in particular shall not preclude, and shall be deemed never to have precluded, the conferment on them by, under or in pursuance of any such law of powers, authorities, privileges or immunities in relation to the preservation of the peace or maintenance of order in Northern Ireland."

It was further alleged that the Act was per se a breach of Art. 7 in that it provided that persons were held guilty of offences for acts and omissions which did not constitute criminal offences under national or international law at the time they were committed.

The applicant Government referred the Commission to a judgment of the Divisional Court of the High Court of Northern Ireland on 23 February 1972 (1). In this case five persons had been convicted by a Magistrates' Court for having remained in an "assembly of three or more persons" after having been ordered to disperse by a commissioned officer of Her Majesty's Forces, contrary to Regulation 38 (1) of the Regulations made under the Civil Authorities (Special Powers) Act (Northern Ireland) 1922. The five persons concerned applied to the Divisional Court of the High Court of Northern Ireland to have their convictions quashed. In their application

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(1) The Queen (at the prosecution of J H and others) v. The Justices of the Peace for the County and City of Londonderry.

they alleged that, having regard to Section 4 (1) (3) of the Government of Ireland Act 1920, Regulation 38 (1) was outside the competence of the Northern Ireland Parliament and of the Minister who purported to make the Regulations. This argument was accepted by the Court and the convictions were quashed.

The applicant Government submitted that the effect of the judgment of the Divisional Court was that failure to comply with an order of a member of the security forces given under the Regulations to the Act of 1922 was not an offence under that Act.

It was further submitted that by the Northern Ireland Act 1972 the respondent Government had by law enacted that such failures to comply with orders of its security forces were now criminal offences although they did not constitute criminal offences at the time they took place. It was therefore argued that the Act of 1972 was a breach of Art. 7 of the Convention.

Finally, it was submitted by the applicant Government that no domestic remedies were available for any person who might be found guilty of a criminal offence by reason of the provisions of the 1972 Act.

II. Submissions of the Parties on admissibility

A. Written observations on admissibility

1. Submissions of the respondent Government

The respondent Government denied that the Northern Ireland Act 1972 constituted a contravention of Art. 7 of the Convention.

In their observations the Government outlined first the background to the passing of the Act. They referred to the power conferred on the Parliament of Northern Ireland by Section 4 of the Government of Ireland Act 1920 to make laws for the "peace, order and good government of Northern Ireland" subject to certain limitations; in particular, laws in respect of the Army or in respect of military matters were reserved for the United Kingdom Parliament. The judgment of the Divisional Court on 23 February 1972 turned upon the interpretation of Section 4 of the Act of 1920, which affected the extent of the powers conferred on the Northern Ireland Parliament under the Act. The Court was concerned in particular with the validity of Regulation 38 (1) of the Regulations made under the Special Powers Act 1922. Accepting the arguments put forward by the applicants in the case, the Court held that Regulation 38 (1) was *ultra vires* and therefore void, since it purported to confer powers on members of the armed forces on duty and as such was contrary to Section 4 (1)(3) of the Act of 1920.

The respondent Government went on to state that, on the same day as the judgment was given, the Parliament of the United Kingdom passed the Northern Ireland Act 1972. In introducing the Bill in the House of Commons the Attorney-General had made the following statement:

> "The judgment of the High Court ... goes contrary to what was previously thought to have been the law ... It affects solely the exercise of powers under the Special Powers Act by the military. ... the Government decided that it would be indefensible to leave the Army without the essential powers which enable it to discharge the duties for which it was sent to Northern Ireland while the legal processes of any appeal were carried through."

The Attorney-General had also given an undertaking to the House that any prosecution then pending, which would have failed on the assumption that the judgment of the Divisional Court was correct in law, would be abandoned and no new prosecution of that kind would be initiated in relation to past events insofar as they were within the reasoning of that judgment.

The respondent Government continued their observations with submissions on the admissibility of the application. The Government submitted that the terms of the application were not such as to raise an issue under Art. 7, particularly having regard to the undertaking of the Attorney-General. It was stated that not only did the Act not hold any person guilty of an offence, as alleged in the application, but the undertaking ensured a withdrawal of any proceedings which might have been pending, and precluded any person for being prosecuted, for any relevant offence in respect of acts or omissions prior to the enactment of the Act of 1972.

It was further submitted that the application did not raise any issue falling for investigation by the Commission. The Commission was requested to decline to give any further consideration to the application and, as a consequence, to decline to admit the application.

In the alternative, it was submitted that, if the Commission were to decide that the terms of the 1972 Act did raise an issue falling to be considered further under Art. 7 of the Convention, the terms of the Attorney-General's undertaking demonstrated that the application of the Act by the law enforcement authorities would be such as to avoid any action by them which could conceivably give rise to a breach of Art. 7 by reason of the enactment of the Act. The respondent Government submitted that in the circumstances the function of the Commission, namely to ensure the observance of the engagements undertaken by the High Contracting Parties,

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was achieved. It was also submitted that the object of the applicant Government's claim, which was "to ensure that the respondent Government will secure to everyone in Northern Ireland the rights and freedoms defined in Section I of the Convention... ", was achieved. The Commission was accordingly requested to decline to proceed further with its examination of the application.

2. Submissions of the applicant Government

In their observations in reply the applicant Government reminded the Commission that Parliament was the supreme law-making body in the United Kingdom and laws passed by it could not be overruled by the courts. It was further pointed out that an undertaking given in the United Kingdom Parliament by the Attorney-General did not become part of the domestic law of the country and no court could give to it any legal effect.

It was submitted by the applicant Government that, in order to prevent the Northern Ireland Act 1972 from having the effect of making criminal offences certain actions which were committed before the passing of the Act, it would be necessary to have an express provision in the Act to that effect.

The applicant Government maintained that the mere existence of the 1972 Act and the potential exercise of the powers contained in it constituted a clear and sufficient breach of Art. 7 of the Convention.

B. Oral submissions at the hearing on admissibility

1. Submissions of the respondent Government

In their oral submissions the respondent Government maintained and developed the arguments already put forward in their written observations.

After explaining the circumstances in which the Northern Ireland Act 1972 came to be passed and denying the allegation of the applicant Government that the Act was per se a breach of Art. 7, the Attorney-General, on behalf of the respondent Government, made the following statement to the Commission:

> "The submission, then, of the United Kingdom Government is that in fact no one has been and no one will be held guilty by reason of the 1972 Act of a criminal offence on account of any act or omission which did not constitute a criminal offence at the time when it was committed, because of the undertaking which I, the Attorney-General, gave to the House of Commons; and I

tell the Commission as Attorney-General for the United Kingdom that no one has been so held guilty and no one will be so held guilty as a result of this Act."

At a later stage in the hearing, the Attorney-General made the following further statement.

"I repeat formally to this Commission the undertaking which I gave in Parliament, on behalf of the Attorney-General for Northern Ireland, which was to the effect that any prosecution now pending which would fail if the judgment in the H case stood would be arrested or stopped and that no new prosecution of that kind would be initiated in relation to the past.

The effect of that undertaking was and is that no prosecution which might have failed as a result of the decision in the H case can now reach the courts in relation to events which occurred prior to the passing of that Act in 1972, and under the powers vested in me as Attorney-General for Northern Ireland I can and shall ensure that in the unlikely event of a private prosecution being brought for an offence prior to this Act in 1972, that prosecutions will not proceed. I have powers to ensure that. I repeat again that no one has been held guilty as a result of the 1972 Act for an act or omission which did not constitute a criminal offence at the time it was committed and no one will be so held guilty."

Submissions were made during the course of the hearing by the respondent Government on the weight which the Commission should attach to an undertaking publicly given on behalf of a Government of one of the High Contracting Parties. Further arguments were also put forward in support of the respondent Government's contention that this application should be declared inadmissible.

It was submitted that, in view of the undertaking given by the Attorney-General, it was clear beyond argument that the right which is stated in Art. 7 had been secured, and that the only reasonable course for the Commission to adopt was therefore to devote no more time to the application. Answering the argument of the applicant Government that this was not a ground for inadmissibility mentioned in the Convention, the respondent Government referred to the Commission's decision on the admissibility of application No. 214/56 (De Becker v. Belgium, Yearbook 2, p. 214). This case was cited as authority for the respondent Government's contention that an application might

be declared inadmissible on a ground which was not expressly mentioned in the Convention, but which rested on a generally recognised principle of international law. Reference was also made to the judgment of the International Court of Justice in the Northern Cameroons Case (I.C.J. Reports 1963, p. 15). In its judgment the Court had stated that there were inherent limitations on the exercise of the judicial function which the Court as a court of justice could never ignore. The Court had gone on to add that no purpose would be served by undertaking an examination of the merits in the case for the purpose of reaching a decision which, for reasons already given by the Court, ineluctably must be made.

The respondent Government submitted that the International Court of Justice was expressing the limitation on its function as a general principle of international law which was generally applicable to international tribunals. The Government considered that in the present application the ultimate decision that there had been no violation of the Convention was one which ineluctably must be made. It was therefore submitted that to proceed further with investigation of the case would not be a proper discharge of the Commission's duties.

2. Submissions of the applicant Government

The applicant Government originally maintained their allegation that the Northern Ireland Act 1972 constituted a breach of Art. 7 of the Convention and also of Art. 1 read in conjunction with Art. 7.

Towards the end of the hearing, however, the Attorney-General, on behalf of the applicant Government, made the following statement to the Commission:

> "Having regard to the comprehensive undertaking which was given yesterday by my learned friend the Attorney-General of the United Kingdom in relation to the non-commencement of any prosecution of the kind which we consider to be possible following the passage of the Act of 1972, and also his undertaking that, if anyone commenced a private prosecution, he would prevent its being continued, which power we accept that he has, the matters that concerned my Government in relation to this Act are satisfied. As he has given this undertaking before this international Commission, I feel that it is proper for me now to withdraw our supplementary application which dealt with Art. 7."

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THE LAW

I. Application No. 5310/71

1. The Commission observes that the applicant Government have stated that the object and purpose of the present application is to seek a determination of the compatibility with the Convention of certain legislative measures and administrative practices and not to obtain compensation or reparation in respect of any wrong done to any individual person. In particular, the applicant Government have stated that they are bringing their applications in respect of breaches of treaty, that is to say, to ensure the observance of the Convention, and not as measures of diplomatic protection and that therefore the rule of exhaustion of domestic remedies as it is to be understood in international law under Art. 26 does not apply to this application. At the hearing on admissibility, the applicant Government were asked to indicate which elements in the situation today within the territory of the respondent Government they considered inconsistent with the Convention. The Commission refers to the terms of the applicant Government's reply (reproduced on p. 19 above) according to which the legislative measures and administrative practices defined therein were incompatible with the respondent Government's obligations under Arts. 1, 2, 3, 5, 6 and 14 of the Convention.

2. The Commission has first examined the applicant Government's allegation that the deaths of 22 persons referred to in the application were caused by the security forces of the respondent Government in breach of Art. 2 of the Convention and that these deaths showed a failure by the respondent Government, as a matter of administrative practice, to protect by law the right to life of persons within their jurisdiction in Northern Ireland.

The respondent Government have submitted that this part of the application should be rejected in accordance with Arts. 26 and 27 (3) of the Convention on the ground of non-exhaustion of domestic remedies.

The applicant Government have submitted in reply that Art. 26 does not apply in a case where an administrative practice in violation of the Convention is alleged.

It is true that the Commission has repeatedly held, with regard to applications introduced under Art. 24 of the Convention, that the rule requiring the exhaustion of domestic remedies does not apply where an application raises, as a general issue, the compatibility with the Convention of "legislative measures and administrative practices" (see the decisions on admissibility in the First Cyprus Case (Yearbook 2, pp. 182, 184), the First Greek Case (Yearbook 11, pp. 690, 726 and pp. 730, 768-770) and the Second Greek Case (Collection of Decisions 34, pp. 70, 73).

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However, in accordance with the Commission's case-law, it is not sufficient that the existence of such legislative measures or administrative practices should be merely alleged; it is also necessary, in order to exclude the application of the rule requiring the exhaustion of domestic remedies on such grounds, that the existence of the alleged measures or practices is shown by means of substantial evidence (see, in this respect, the second decision on admissibility in the First Greek Case, loc. cit at p. 770).

In the present case the Commission, having taken into account the submissions of both Parties, does not find that the applicant Government have offered substantial evidence to show that an administrative practice exists as alleged by the applicant Government.

In these circumstances, the Commission could not deal with the matter of the 22 deaths unless and until it were shown, as required by Art. 26, that the domestic remedies which are available under the law of Northern Ireland have been exhausted. As the applicant Government have not shown this to be the case, the Commission must under Art. 27 (3) declare this part of the application inadmissible. The Commission observes in this connection that the applicant Government have argued, as already described, that where breaches of treaty are alleged, the rule of exhaustion of remedies does not apply. Nevertheless, the Commission finds that it is required by Art. 27 (3) of the Convention to apply the rule as set out in Art. 26 to any application whether brought under Art. 24 or Art. 25.

3. The Commission has next considered the applicant Government's allegations that persons in custody have been subjected to treatment which constitutes torture and inhuman and degrading treatment and punishment within the meaning of Art. 3 of the Convention and that such treatment constituted an administrative practice.

The respondent Government have submitted that the Commission should make a distinction between different categories of alleged ill-treatment and should decline to proceed further with allegations in respect of the five interrogation techniques described in paras. 59-67 of the Compton Report, on the ground that these techniques have been discontinued. The respondent Government have also submitted that, in any event, there has been a failure to exhaust the domestic remedies with regard to all allegations of a breach of Art. 3.

The applicant Government have objected to such a distinction between the forms of ill-treatment alleged on the following grounds: first, the kinds of treatment of the persons in custody are closely interrelated and show a recurring pattern;

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further it is admitted by the respondent Government that interrogation in depth, of which the five techniques previously formed part, has not been discontinued; thirdly, other forms of ill-treatment continue. The applicant Government therefore submit that the discontinuance of certain interrogation techniques should not be a bar to the admissibility of the alleged breaches of Art. 3. In the applicant Government's further submission the rule requiring the exhaustion of domestic remedies in Art. 26 does not apply to these alleged breaches as they constitute an administrative practice; or, alternatively, no effective or adequate remedy is available in respect of the matters complained of, even if the rule were found to be applicable.

The Commission has first considered the submissions of the Parties with regard to the five interrogation techniques referred to in the Compton Report. It is not in dispute that these techniques - which consisted in hooding, noise, wall-standing, deprivation of sleep and bread and water diet - were employed as an aid to the interrogation of persons taken into custody pursuant to the provisions of the Special Powers Act and the Regulations made under it. The respondent Government have also confirmed that the use of the techniques in question by the security forces was authorised at the time, although the respondent Government subsequently decided that these techniques should no longer be used.

Having regard to the respondent Government's observations and, in particular, the relevant parts of the Compton and Parker Reports, the Commission finds that there can be no doubt that the employment of these interrogation techniques constituted an "administrative practice". It follows that, in accordance with the Commission's above-mentioned jurisprudence, the rule of exhaustion of domestic remedies does not apply to the applicant Government's allegations under Art. 3 in respect of them. The allegations relating to the five particular techniques can therefore not be declared inadmissible under Arts. 26 and 27 (3) of the Convention. The question remains, however, whether or not the Commission, as requested by the respondent Government, should decline to proceed further with its examination of these techniques in view of the fact that they have been discontinued.

Without in any way pronouncing at this stage on the question whether or not the allegations under Art. 3 are well-founded, the Commission has carried out a preliminary examination of the evidence and other material submitted by the applicant Government in support of their allegations of forms of ill-treatment other than the five techniques. The Commission observes first that, while generally stating that the facts alleged are not admitted, the respondent Government have not offered any counter-evidence or made detailed comments on the material presented by the applicant Government.

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Secondly, the Commission finds that the allegations of ill-treatment contrary to Art. 3, must be examined as a whole and the other forms of ill-treatment alleged cannot be considered in isolation from, or without having regard to, the five previously authorised techniques. The Commission has already held that the five techniques constituted an administrative practice to which the domestic remedies' rule in Art. 26 does not apply. On the evidence now before it, the Commission finds that other forms of ill-treatment are alleged as forming part of the admitted administrative practice of interrogation in depth and that, therefore, the domestic remedies' rule cannot be properly applied to these allegations. The further examination of all other questions regarding the extent of such an administrative practice and its consistency with the provisions of the Convention relates to the merits and cannot be considered by the Commission at the stage of admissibility.

The Commission therefore retains for an examination of the merits the applicant Government's allegations that the treatment of persons in custody, in particular the methods of interrogation of such persons, constitutes an administrative practice in breach of Art. 3 of the Convention.

4. The Commission has next considered the applicant Government's allegation that internment without trial and detention under the Special Powers Act and Regulations as carried out in Northern Ireland violates Arts. 5 and 6 of the Convention.

First, as regards Art. 5 the respondent Government have referred to the right of derogation accorded to States under Art. 15 (1) of the Convention and submitted that the operation of the powers of internment and detention in Northern Ireland did not constitute a contravention of their obligations under the Convention since the measures were taken in a time of public emergency threatening the life of the nation and were strictly required by the exigencies of the situation. The respondent Government have requested further that the Commission should consider, as a preliminary question, the issue whether the measures taken were measures permitted under Art. 15 (1).

Secondly, as regards the alleged violation of Art. 6 of the Convention the respondent Government have referred to the finding of the European Court in the Lawless Case that Art. 6 was irrelevant to the proceedings in that case on the ground that there was no "criminal charge" against Lawless. The respondent Government have submitted that, in the light of the Court's judgment, Art. 6 is equally irrelevant to the present proceedings. Moreover, the respondent Government have rejected the applicant Government's further argument that there has been a breach of this Article in that interned or detained persons have been denied a civil right to have their

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right to liberty considered in accordance with the requirements of Art. 6. The respondent Government have denied that there has, in fact, been any interference with such a right and, in this connection, referred to proceedings actually brought before the courts in Northern Ireland. In the respondent Government's submission the allegation of a breach of Art. 6 should be rejected or the Commission should decline to examine it further.

The applicant Government have stated in reply that the respondent Government's submissions in this respect are irrelevant to the issue of admissibility. In particular, the effects of a derogation under Art. 15 (1) cannot be considered at the present stage. At the same time the applicant Government add that, while admitting that there has been at all material times in Northern Ireland a public emergency within the meaning of the said Article, the measures taken by the respondent Government exceeded what was and is strictly required by the exigencies of the situation.

The Commission recalls that it has consistently held that the provisions of Art. 27 (1) and (2) of the Convention refer only to petitions submitted under Art. 25 and not to applications made by Governments. In particular, an application under Art. 24 cannot be rejected in accordance with para. (2) of Art. 27 as being manifestly ill-founded and it follows that the question whether such an application is well-founded or not and whether or not there is a consequent breach of the Convention are solely questions relating to the merits of the case. Therefore, the effects of derogation made by the respondent Government under Art. 15 of the Convention cannot be considered at the present stage of admissibility. Consequently, the Commission reserves for an examination of the merits the question whether the measures concerned were or are justified under Art. 15 (see the decisions on the admissibility in the First Cyprus Case, Yearbook 2, pp. 730, 768). It also follows that the Commission cannot, at the stage of admissibility, consider the question whether or not the provisions of Art. 6 are relevant to the applicant Government's present complaint, or whether or not the allegations of a breach of this Article are well-founded.

The Commission therefore finds that the matters relating to internment and detention in connection with Arts. 5, 6 and 15 of the Convention are admissible.

5. The Commission has then considered the applicant Government's allegation that the exercise by the respondent Government of their powers to detain and intern persons under the Special Powers Act and Regulations has been and is carried out with discrimination on grounds of political opinion in violation of Art. 14 of the Convention.

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The respondent Government have denied that these powers have been operated in violation of Art. 14 and stated that to exercise these powers against a person merely on grounds of that person having had certain political views would be an improper exercise of such powers which could be challenged by the person concerned in the courts of Northern Ireland. The respondent Government have submitted, in the first place, that adequate domestic remedies are available and have not been exhausted and that this part of the application should therefore be rejected as inadmissible under Arts. 26 and 27 (3) of the Convention. Secondly, the respondent Government have referred to their right of derogation under Art. 15 of the Convention and submitted that, insofar as any measures taken in respect of the public emergency in Northern Ireland have effect in the fields of Art. 14 or any other Article of the Convention taken in conjunction with that Article, these measures do not constitute a contravention of the Convention. Thirdly, the respondent Government have in this context recalled their submissions as regards the irrelevance of Art. 6 to the present proceedings and have argued that Art. 14 cannot therefore be considered in connection with the rights under Art. 6.

The applicant Government have submitted generally that the condition of exhaustion of domestic remedies under Art. 26 does not apply to any part of their application, the object of which is to seek a determination of the compatibility with the Convention of certain legislative measures and administrative practices.

As a subsidiary argument, the applicant Government have submitted that, even if this domestic remedies' rule is held to be applicable, the remedies indicated by the respondent Government with regard to the present complaints do not constitute adequate and effective remedies for the purposes of Art. 26.

The Commission recalls that it has already found that the matters relating to internment and detention in connection with Arts. 5, 6 and 15 of the Convention are admissible. It finds that the applicant Government's allegation that the powers of internment and detention have been operated with discrimination in violation of Art. 14 of the Convention are so closely related to the above matters that they must be dealt with on the merits. Accordingly, the Commission retains for an examination of the merits the allegations under Art. 14 with respect to the rights guaranteed under Arts. 5 and 6 in conjunction with Art. 15 of the Convention.

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6. In this connection, the Commission observes that in their original application and supplementary submission of 22 February 1972 the applicant Government alleged that the operation by the security forces of the power to search homes had been and was carried out with discrimination on the grounds of political opinion.

The applicant Government submitted that this constituted a failure by the respondent Government to secure without discrimination to persons within their jurisdiction the rights and freedoms conferred by Art. 8 of the Convention and was therefore a breach of Art. 14.

The Commission recalls that, at the hearing, the applicant Government was asked to present final submissions indicating the elements in the situation today within the territory of the respondent Government which they considered incompatible with the Convention. In their reply the applicant Government referred only to legislative measures and practices in relation to Arts. 1, 2, 3, 5, 6 and 14 but made no express reference to Art. 8. Having regard to the terms of this reply and the oral submissions made on behalf of the applicant Government at the hearing, the Commission is bound to conclude that the allegation of a violation of Art. 14 in conjunction with Art. 8 has not been pursued by the applicant Government and that therefore the Commission is not called upon to examine this allegation any further.

7. Finally, the Commission has had regard to the applicant Government's allegation that the legislative measures and administrative practices complained of in connection with the alleged breaches of Arts. 2, 3, 5, 6 and 14 of the Convention constituted a separate or additional breach of Art. 1 of the Convention in that the respondent Government have failed to secure to everyone within their jurisdiction the rights and freedoms defined in those Articles.

The Commission, having noted the arguments submitted by the Parties in this respect, reserves to an examination of the merits the question whether there has been a breach of Art. 1 with regard to those parts of the application which it has found to be admissible.

II. <u>Application No. 5451/72</u>

In this application the applicant Government alleged that the Northern Ireland Act 1972 constituted a failure by the respondent Government to comply with the obligations imposed on it by Art. 1 of the Convention, by denying the residents in Northern Ireland the rights defined in Art. 7

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of the Convention. The applicant Government also submitted that the said Act in itself constituted a breach of Art. 7 in that it provided that persons are held guilty of offences for acts and omissions which did not constitute criminal offences under national or international law at the time they were committed.

In view of the undertaking given at the oral hearing before the Commission by the Attorney-General on behalf of the respondent Government that no one would be held guilty by reason of the 1972 Act of a criminal offence on account of any act or omission which did not constitute a criminal offence at the time it was committed, the applicant Government have declared that the matters which concerned them in relation to the Act are satisfied and have therefore withdrawn this application.

Having regard, in particular, to the terms of the undertaking made by the Attorney-General on behalf of the respondent Government, the Commission finds that there are no reasons of a general character affecting the observance of the Convention which would justify the retention of this application on its list of cases.

For these reasons the Commission

<u>Having regard to Application No. 5310/71</u>

1. <u>Declares inadmissible</u> the applicant Government's allegations under Art. 2 of the Convention in relation to the deaths of certain persons in Northern Ireland.

2. <u>Declares admissible</u> and retains, without in any way prejudging the merits of the case:

- the allegation that the treatment of persons in custody, in particular the methods of interrogation of such persons constitutes an administrative practice in breach of Art. 3 of the Convention;

- the allegations that internment without trial and detention under the Civil Authorities (Special Powers) Act (Northern Ireland) 1922 and the Regulations made thereunder constitutes an administrative practice in breach of Arts. 5 and 6 of the Convention in connection with Art. 15;

- the allegations that the exercise by the respondent Government of their power to detain and intern persons is being carried out with discrimination on the grounds of political opinion and thus constitutes a breach of Art. 14 with respect to the rights and freedoms guaranteed in Arts. 5 and 6 in conjunction with Art. 15 of the Convention;

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- the allegation that the administrative practices complained of also constitute a breach of Art. 1 of the Convention and,

Having regard to Application No. 5451/72

Decides to strike this application off its list of cases.

Secretary to the Commission | President of the Commission

(A.B. McNULTY) | (W.F. de GAAY FORTMAN)

A N N E X

Letter of 20 August 1971 from the Permanent Representative of the United Kingdom to the Council of Europe to the Secretary General of the Council of Europe

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council and has the honour to refer to the communication of the 27th June, 1957, giving notice on behalf of the Government of the United Kingdom, for the purpose of Article 15 (3) of the Convention for the Protection of Human Rights and Fundamental Freedoms, of the existence of a public emergency within the meaning of Article 15 (1) in a part of the United Kingdom, namely Northern Ireland, and of the bringing into operation therein of certain emergency powers, and also to the further communication of 25th September, 1969, in respect of serious civil disturbances which had recently occured in various parts of Northern Ireland.

Over recent months in Northern Ireland there has been a series of acts of terrorism, including murders, attempted murders, maimings, bombings, fire-raising and acts of intimidation, and more recently violent civil disturbances. The Government of Northern Ireland has therefore found it necessary since 9th August for the protection of life and the security of property and to prevent outbreaks of public disorder, to exercise, to the extent strictly required by the exigencies of the situation, powers of detention and internment.

Copies of the relevant Regulations under the Civil Authorities (Special Powers) Act (Northern Ireland) 1922 are being sent to you separately. Particular attention is drawn to those provisions of Regulation 12 which provide for the establishment of an Advisory Committee in respect of persons who are the subject of an internment order.

The United Kingdom Permanent Representative avails himself of this opportunity to renew to the Secretary General the assurances of his highest consideration.