

APPLICATION NO. 176/56
BY THE GOVERNMENT OF THE KINGDOM OF GREECE
LODGED AGAINST
THE GOVERNMENT OF THE UNITED KINGDOM
OF GREAT BRITAIN AND NORTHERN IRELAND

Application of the Convention
for the Protection of Human Rights and Fundamental
Freedoms to the Island of Cyprus

REPORT
OF THE EUROPEAN COMMISSION OF HUMAN RIGHTS
(Article 31. of the Convention)

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7. The Report is accordingly divided into two parts:
- Part I is an account of the main stages of the proceedings, from the lodging of the Application to the conclusion of the Commission's work, including the endeavours to secure a friendly settlement and their failure;
 - In Part II, the Commission establishes the facts of the case under various heads and, at the end of each section, gives its opinion as to whether the facts stated therein disclose a violation of the Convention.

It should be noted that since the Application was lodged a number of changes have been made to the laws and regulations criticised by the Greek Government: some texts have been amended and others revoked, while fresh ones have been enacted. It has therefore been thought useful to reproduce the legislation in question in a separate document (Doc. A 42.127, Appendix B to this Report).

8. At its 13th Session, held at Strasbourg from 9th-21st June 1958, the Commission, after considering the Sub-Commission's Report, discussed the various points in dispute and then proceeded to vote.

The following members were present:

MM. P. BERG, Chairman in accordance with Rules 8 and 9,
C.H.M. WALLOCK,
C. TH. EUSTATHIADES,
P. FABER,
L.J.C. BEAUFORT,
A. SUSTERHENN,
S. PETREN,
Mme G. JANSSEN-PEVTSCHIN,
MM. M. SØRENSEN,
J. CROSBIE,
N. ERIM,

MM. F.M. DOMINEDO and F. SKARPHEDINSSON apologised for their inability to attend.

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After a working meeting held from 22nd-25th July 1958, the Commission discussed and adopted the text of the present Report at its 14th Session, which lasted from 27th August to 2nd September 1958, and at which all the members were present except M. BEAUFORT.

MM. F.M. DOMINEDO and F. SKARPHEDINSSON, who attended both the meeting of the Working Party and the last-mentioned session, requested their colleagues' authorisation to include their opinion in this Report. The Commission agreed, specifying however that the opinion of these two members would appear in each case at the end of the opinions expressed at the 13th session.

P A R T I

HISTORY OF PROCEEDINGS

Chapter I - INSTITUTION OF PROCEEDINGS

9. Introduction and registration of the Application

By letter dated 7th May 1956, (Doc. A 27.546), M.N. Cambalouris, Permanent Representative of Greece to the Council of Europe, requested the Secretary-General to transmit to the President of the European Commission of Human Rights an Application of the Greek Government, (Doc. A 27.559) enclosed with his letter, "concerning violations of the Convention for the Protection of Human Rights and Fundamental Freedoms" in the Island of Cyprus.

On the same day, in the absence of the Secretary-General, M. Cambalouris handed the above letter and Application to M. von Schmieden, Director of Research in the Secretariat General.

Also on 7th May 1956, M. von Schmieden transmitted these two documents to M.P. Modinos, Director of Human Rights, with a note informing him that:

"When transmitting these documents, M. Cambalouris added that his Government was particularly anxious that the question should be submitted for consideration as soon as possible by the competent Commission, in accordance with its existing Rules of Procedure, in view of the urgency and hence the importance of the matter in the eyes of the Greek Government" (Doc. A 27.547).

On the same day, the Application of the Greek Government was entered as Application No. 176/56 in the special register kept by the Secretariat of the Commission (Rule 13).

10. Content of the Application

In its Application, the Greek Government alleged "violations by the Government and administrative authorities of Cyprus of the Convention for the Protection of Human Rights and Fundamental Freedoms, violations for which the British Government must be held responsible" (Doc. A 27.559, p.1).

The Application was divided into four sections (A, B, C and D).

- (a) In Section A (pp. 1 to 5), the Greek Government traced the historical background of the Cyprus question from 1878 to the present-day.
- (b) In Section B (pp. 6 to 10), they maintained that "the exceptional measures adopted by the British administration authorities in Cyprus have meant the denial of nearly all human rights and fundamental freedoms in the island". They alleged the violation, by certain "legislative and administrative measures" and by "the action taken by administrative bodies", of the following articles of the Convention: Article 3 (many cases of torture - sentence of whipping, introduced by Article 75, paragraph 2, of Emergency Regulation No. 731 - various forms of collective punishment, introduced by Emergency Regulation No. 732); Articles 5 and 6 (arbitrary arrest, detention and deportation); Articles 8, 9, 10 and 11 (breaking into houses, censorship of correspondence, prohibition of the right to manifest opinions freely, etc.) of the Convention.
- (c) In Section C (pp. 11 to 13), the Greek Government denied that the measures complained of were covered by Article 15, which authorised Contracting Parties to derogate from their obligations under the Convention on certain conditions. They contended that the United Kingdom Government failed to observe those conditions, both in form and in substance.
- (d) Section D of the Application (p. 14) contained the conclusions of the Greek Government, which read as follows:

"For these reasons, the Greek Government request the European Commission of Human Rights to give urgent and priority consideration to its complaints against the United Kingdom Government for having infringed the above-mentioned provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, and to make such proposals as it considers appropriate in order to ensure the observance of human rights and fundamental freedoms in Cyprus".

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11. Communication of the Application to the defending Government

By note verbale of 8th May 1956, the Secretariat General, having been duly authorised by the President of the Commission (Rule 44 of the Rules of Procedure, transmitted a copy of Application No. 176/56 to the Foreign Office of the United Kingdom, informed it of the above-quoted statement of Mr. Cambalouris and notified it that the Application would be on the agenda of the next session of the Commission, due to be held in Strasbourg from 28th May to 2nd June 1956 (Doc. A 27.601).

12. Appointment of the representatives of the Parties

In letters of 7th and 28th May 1956 (Docs. A 27.546 and A 27.886), M. Cambalouris informed the Commission that the Greek Government had chosen him as their Agent and that M. H. Rolin, Professor at the University of Brussels, and M. Ch. Christides, Barrister at the Court of Cassation, Athens, had been appointed Counsel in this case.

By note verbale of 26th May 1956 (Doc. A 27.847), the Permanent Representative of the United Kingdom to the Council of Europe informed the Secretary General that the United Kingdom Government had appointed Mr. F.A. Vallat, Deputy Legal Adviser to the Foreign Office, to act as their Agent in the proceedings relating to Application No. 176/56 and Mr. H.G. Darwin, Assistant Legal Adviser to the Foreign Office, to act as Mr. Vallat's Assistant.

Chapter II - EXAMINATION OF THE ADMISSIBILITY OF THE APPLICATION BY THE PLENARY COMMISSION.

13. On the instructions of the President of the Commission, the Secretariat, in its note verbale of 8th May, 1956 (Doc. A 27.601), had asked the Foreign Office to submit its written comments on the admissibility of the Application (Rule 44 of the Rules of Procedure), if possible before 28th May 1956. It had also pointed out that it would be for the Commission to lay down, if need be, the procedure to be followed in applying Rule 46 of the Rules of Procedure,

On 25th May 1956 the Agent of the British Government addressed to the Commission, through the good offices of the United Kingdom Permanent Representative to the Council of Europe, a reasoned request for a further period of three months (Doc. A 27.847). The Agent of the Greek Government, in a letter dated 28th May 1956, gave his reasons for considering that the United Kingdom Government should not be allowed more time (Doc. A. 27.884).

14. Decision of 28th May 1956

Application No. 176/56 of the Greek Government was one of the matters due to be considered by the Commission at its 5th plenary Session, which was held at Strasbourg from 28th May to 2nd June 1956 (Doc. DH (56) 8 final). In accordance with Rules 8 and 9 of the Rules of Procedure, M.P. Berg assumed the presidency of the Commission for the purpose of this Application, since Mr. C.H.M. Waldock and M.C. Th. Eustathiades, President and Vice-President of the Commission respectively, were unable to act by reason of their nationality.

At its sitting of 28th May 1956, after having deliberated on the procedure to be followed, the Commission adopted a decision worded as follows:

"The European Commission of Human Rights,
Having regard to the Application of the Greek Government dated 7th May 1956, registered by the Secretariat of the Commission on the same date as No. 176/56;

Having regard to the communication from Mr. Vallat,
Agent of the United Kingdom Government, dated
25th May 1956;

Having regard to the communication from M. Cambalouris,
Agent of the Greek Government, dated 28th May 1956;

Decides to treat this matter as one of priority;

Before deciding on the question of admissibility,

Invites the Agent of the United Kingdom Government to
appear before it at 10 a.m. on Friday, 1st June 1956,
to explain, without going into the merits of the case,
the grounds of objection to admissibility which the
United Kingdom Government may wish to put forward;

Invites the Agent of the Greek Government to attend
this sitting in order to submit his observations".
(Doc. A 27.890; see also Minutes, Doc A.28.666).

15. Hearing of 1st June 1956 in the presence of the Parties

In accordance with the above decision, the Commission, at
its sitting of 1st June 1956, heard the representatives of the
Parties state their views on the admissibility of the
Application.

The following appeared before the Commission:

- for the Applicant: M. N. Cambalouris, Agent of the
Greek Government, assisted by M. H. Rolin and
M. Ch. Christides, Counsel;
- for the Defendant: Mr. F.A. Vallat, Agent of the
United Kingdom Government, assisted by Mr. G. Meade
and Mr. R. Milward, United Kingdom Permanent
Representative and Deputy Permanent Representative
to the Council of Europe respectively.

- (a) The Agent of the United Kingdom Government, who was
called first, began by saying that he could not at
that stage commit his Government, which had not yet
decided whether or in what form they would contest
the admissibility of the Application. After explain-
ing that his remarks would be based on a preliminary
examination of the Application, he submitted in
substance:

- that the considerations relating to the admissibility of the Application were not necessarily the same with regard to all parts of it;
- that there was no express definition in the Convention or in the Rules of Procedure of the grounds on which an application under Article 24 of the Convention might be regarded by the Commission as admissible or inadmissible;
- that it was clear from several provisions in the Rules of Procedure, however, that some such grounds did exist and that they might be similar to those relevant to individual applications;
- that such grounds were not confined to those listed in Article 27 of the Convention;
- that the British Government might possibly argue that the Application did not comply with Rule 41 of the Rules of Procedure, that it did not comply with Article 26 of the Convention, that it did not comply with the tests which should be followed by the Commission, such as those indicated in Article 27 of the Convention, and, finally, that some of the facts alleged, even if established, did not disclose any breach of the Convention.

In conclusion, the Agent of the British Government, emphasising the complexity of the question, requested the Commission to allow his Government adequate time for its consideration and the submission of their observations on admissibility (Doc. A 28.035).

(b) After pointing out that the Agent of the British Government, in spite of the invitation contained in the decision of 28th May 1956, had failed to submit their observations on admissibility, and after reiterating their opposition to any extension of the time granted to the United Kingdom Government, the representatives of the Greek Government submitted in substance:

- that Article 27 of the Convention dealt exhaustively with the question of admissibility;
- that only paragraph 3 of that article, which referred to Article 26, covered both governmental and individual applications, whereas paragraphs 1 and 2 were concerned exclusively with the latter;

- that the Commission could therefore declare a governmental application inadmissible only if the stipulation in Article 26 of the Convention (exhaustion of domestic remedies and period of six months) had not been observed in the case in point;
 - that otherwise, except in cases of incompetence ratione personae or ratione materiae, which would be distinct from inadmissibility in the strict sense, the Commission should join with the merits what in other courts were regarded as grounds of objection in law or of estoppel;
 - that the Greek Government first denounced six laws or regulations in force in Cyprus, against which no domestic remedies were available to Cypriots;
 - that while the Application also cited certain individual cases, this was partly to furnish examples of the application of those laws and regulations and partly to show that the application of laws not in themselves open to criticism involved provocative practices by the police or the judiciary and treatment incompatible with Human Rights, and that the Greek Government was not claiming any damages for the individuals concerned;
 - that the Application accordingly related to a "current and persisting situation which is partly sanctioned by law and partly the result of an absolutely general practice", so that Article 26 of the Convention was not relevant to the present case" (Doc. A 28.113, pp. 1-18).
- (c) The Agent of the British Government, in his reply, drew the Commission's attention to Section B.I. (a) of the Application. He pointed out that this section referred to the torture of "a great number of Greek Cypriots", and went on to mention five cases of such torture, without indicating whether the British Government were to meet "an allegation of wholesale torture or only particular allegations concerning those five examples." Article 26 provided a ground on which the Application might in this respect be considered inadmissible. After denying that the Commission could join the question of admissibility with the merits, the Agent of the British Government again expressed the hope that his Government would be granted the time requested (Doc. A 28.113, pp. 18 - 21).

- (d) Meanwhile, the Representatives of the Greek Government announced that they withdrew Section B. I. (a) of the Application, while expressly reserving the right to reintroduce it later by means of a new application (Doc. A 28.113, pp. 21 - 25). The Agent of the British Government, while appreciating the withdrawal, expressed the opinion that the question of admissibility had not on that account entirely disappeared (Doc. A 28.113, pp. 26 - 27) (1).

16. Decision of the Commission on the admissibility of the Application (2nd June 1956)

Having deliberated in camera, the Commission on 2nd June 1956 reached the following decision concerning the admissibility of the Application:

"Whereas an Application dated May 7th 1956 has been presented by the Greek Government against the Government of the United Kingdom alleging violation of Human Rights and Fundamental Freedoms in Cyprus;

Whereas the Agent of the Government of the United Kingdom in a communication dated May 25th 1956 indicated that the Government of the United Kingdom considered that a period of three months would be required for the submission of their written comments on the admissibility of the Application of the Greek Government;

Whereas the Greek Government in a communication dated May 28th 1956 requested the Commission to decide in the course of its present Session as to the admissibility of the Application;

Whereas the Commission decided on May 28th 1956 to give precedence to the matter;

Whereas the Commission further decided, on the same date, to invite the Agent of the British Government to appear before it on Friday, 1st June 1956, at 10 a.m. to clarify to the exclusion of any grounds of objection on the merits, the grounds of objection to admissibility which the British Government may have in mind possibly to raise; and having also decided to invite the Agent of the Greek Government to be present at the above-mentioned sitting in order to submit its comments;

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(1) The Minutes of this hearing are contained in Doc. A. 28.683.

Having heard, at its meetings on June 1st 1956, Mr. Vallat, Agent of the United Kingdom Government, and M. Cambalouris, Agent of the Greek Government, as well as M. Rolin and M. Christides, Counsel for the Greek Government;

Having taken note that the Agent of the Greek Government in the course of the hearing on Friday June 1st limited the object of the Application to certain legislative measures and administrative practices of the British authorities in Cyprus and consequently withdrew section B.I. (a) of the Application, reserving all the rights of his Government to reintroduce it by a new Application;

The Commission considers that it is in possession of all the information necessary for it to decide the question of admissibility of the Application;

Whereas the provisions of Article 27, paragraphs 1 and 2, of the Convention only refer to petitions submitted under Article 25 and not to applications made by governments and are therefore inapplicable to the present case;

Whereas the provision of Article 26 concerning the exhaustion of domestic remedies according to the generally recognised rules of international law does not apply to the present Application, the scope of which is to determine the compatibility with the Convention of legislative measures and administrative practices in Cyprus;

Whereas the effects of derogations made by the Government of the United Kingdom under Article 15 of the Convention relate to the merits of the case and not to the admissibility of the Application;

Whereas the conditions laid down in Rule 41, paragraph 1, of the Rules of Procedure of the Commission have been satisfied in this case;

Whereas no other grounds for considering the Application inadmissible have been found;

Declares the Application of the Greek Government to be admissible and accordingly retains it." (Doc. A. 28.037).

Chapter III - PROCEEDINGS BEFORE THE SUB-COMMISSION⁽¹⁾

I. - Appointment of the Sub-Commission

17. By an Order issued by the President on 6th June 1956 (Doc. A 28.109), the Secretariat communicated the Commission's decision of 2nd June 1956 to the two parties concerned and invited each, should it wish to exercise the right to appoint a member of its choice as a member of the Sub-Commission, to give notice of the name of such member within twenty days of the transmission of the Order (Article 29, paragraph 2, of the Convention and Rule 15, paragraph 1, of the Rules of Procedure).

The Greek Government appointed M. C. Th. Eustathiades (letter of 15th June 1956, Doc. A. 28.293), and the United Kingdom Government, Mr. C.H.M. Waldock (letter of 21st June 1956, Doc. A 28.363).

18. On 3rd July 1956, M.P. Faber, carrying out the duties of President of the Commission in the absence of M. P. Berg, who was unable to attend, proceeded to draw by lot the names of the other members of the Sub-Commission, this in accordance with Article 29 of the Convention and Rules 15 and 18 of the Rules of Procedure.

Names were drawn in the following order:

Members: (1) M. P. Faber
(2) M. P. Berg
(3) M. A. Süsterhenn
(4) Mr. J. Crosbie
(5) M. M. Akbay

Substitutes: (1) Mme G. Janssen-Pevtschin
(2) M. F. M. Dominedo
(3) M. M. Sørensen

(Doc. A 28.479)

In pursuance of Rule 20, paragraph 1, of the Rules of Procedure, M. P. Berg assumed the duties of President of the Sub-Commission.

(1) Other than matters relating to the attempt to secure a friendly settlement. In view of their special importance, these matters are the subject of a separate chapter (Chapter IV below).

19. Later, Mme G. Janssen-Pevtschin, first Substitute, was asked to replace M. M. Akbay, who died in May 1957, as member of the Sub-Commission. M. Dominedo and M. Sørensen then became first and second Substitute respectively. Finally, on 18th July 1957, M. P. Berg drew lots by which M. S. Petren was chosen third Substitute for the Sub-Commission.

II. - Sessions and meetings

20. The Sub-Commission, thus constituted, held the following sessions and meetings:

- (a) from Thursday 27th to Saturday 29th September 1956 (Strasbourg);
- (b) from Monday 12th to Sunday 18th November 1956 (Strasbourg)⁽¹⁾;
- (c) Tuesday 18th and Wednesday 19th December 1956 (Strasbourg);
- (d) Friday 18th January 1957 (Strasbourg)⁽²⁾;
- (e) Thursday 31st January and Friday 1st February 1957 (Strasbourg);
- (f) Tuesday 5th, Thursday 7th and Friday 8th March 1957 (Strasbourg);
- (g) Thursday 28th and Friday 29th March 1957 (Strasbourg)⁽³⁾;
- (h) from Friday 28th June to Wednesday 3rd July 1957 (Strasbourg)⁽⁴⁾;
- (i) Friday 19th July 1957 (Strasbourg);

(1) Including 5 days' hearing in the presence of the Parties (14-18.11.1956).

(2) This was a meeting of the group composed of MM. Süsterhenn, Sørensen and Crosbie, who approached the representatives of the Parties in connection with the attempt to secure a friendly settlement (see Chapter IV of this part of the Report).

(3) Hearing in the presence of the Parties.

(4) Including 2 days' hearing in the presence of the Parties (2-3.7.1957).

- (j) Wednesday 28th, Thursday 29th and Saturday 31st August 1957 (Strasbourg);
- (k) from Wednesday 4th to Friday 6th September 1957 (Strasbourg)(1);
- (l) from Wednesday 9th to Saturday 12th October 1957 (Strasbourg);
- (m) Monday 16th December 1957 (Strasbourg);
- (n) from Monday 13th to Monday 27th January 1958 (Cyprus)(2);
- (o) from Monday 10th to Saturday 15th March 1958 (Strasbourg).

III. - Examination of the Application with the Representatives of the Parties

21. In order to carry out the first of its duties, that of ascertaining the facts, a Sub-Commission has at its disposal, under Article 28 (a) of the Convention, two distinct methods: examination of the application with the representatives of the Parties and investigation.

The Sub-Commission set up to consider Application No.176/56 made use of both these methods. In the first place it examined the Application with the representatives of the Parties by means of written submissions followed by oral hearings; that examination is the subject of the present Section.

In the second place it found that it was necessary to hold an investigation on the spot; this was performed by six members between 13th and 27th January 1958 and is dealt with in Section IV of this chapter.

A. PRELIMINARY EXAMINATION OF THE CASE BASED ON WRITTEN SUBMISSIONS (July - October 1956)

(1) Submission of the First Greek Memorial

22. By Order of the President, dated 6th June 1956 (Doc.A 28.110), the Agent of the Greek Government was allowed until 12th July 1956 to submit the evidence and arguments of his Government (Rule 47 the Rules of Procedure). By a second order, dated 13th July 1956 (Doc. A 28.678), the said Agent was authorised, however, at his request, to submit his Memorial after 12th July but with the minimum of delay. /.

(1) Including 2 days' hearing in the presence of the Parties (4-5.9.1957).

(2) The Investigation Party composed of MM. Sprensen, Waldock, Eustathiades, Süsterhenn, Crosbie and Dominedo (see Section IV of this chapter).

The Memorial containing the evidence and arguments of the Greek Government (Doc. A 28.657 and Annexes and Doc. A 28.780) was deposited on 24th July 1956. The Memorial was accompanied by a letter from the Agent of the Greek Government dated 24th July 1956, in which he urged that the situation in Cyprus had deteriorated and that an excessive allowance of time could not be granted to the British Government without the risk of seriously compromising the Commission's work, in particular its task of conciliation (Doc. A 28.664).

(2) Submission of first British Counter-Memorial

23. By Order of the President, dated 25th July 1956 (Doc. A 28.679), the Greek Memorial was communicated to the British Government and the latter were given until 26th September 1956 to submit their Counter-Memorial.

By letters of 30th July, 10th August and 20th September 1956 (Docs. A 28.775, A 28.903 and A 29.364), the Agent and Assistant Agent of the British Government asked for an extension of time. The Agent of the Greek Government opposed such extension in his letters of 6th September and 28th September 1956 (Docs. A 29.121 and A 29.444).

On 28th September 1956 the Sub-commission adopted the following decision relating to the British Government's request for additional time:

"The Sub-commission, after deliberation;

lays down the 20th October 1956 as the extended time-limit within which the Agent of the Government of the United Kingdom shall deposit their evidence and arguments with the Secretariat of the Commission;

In addition, but only provided that it shall be absolutely impossible for the said Agent to adhere to the time-limit laid down above, it now authorises the Secretary of the Sub-commission to accept deposit of the said evidence and arguments at any time up to 26th October 1956 at the latest;

Decides provisionally that the meeting of the Sub-commission shall be held at Strasbourg at 10 a.m. on 12th November 1956 and informs the Agents of the Governments concerned that they may be summoned to appear before the Sub-commission at 10 a.m. on 14th November 1956".
(Docs. A 29.463 and A 29.819).

By letter of 29th September 1956 (Doc. A 29.446), the Agent of the Greek Government requested permission to appear before the Sub-commission to make "a brief declaration of an urgent nature". The Sub-commission decided to hear the Agent of the Greek Government (A 29.570, p.2), who made the following declaration before it on 29th September 1956:

"After taking note of the letter of 20th September 1956 from the Agent of the British Government, Mr. Vallat, concerning an extension of the time-limit granted under the Order of 25th July 1956 to the British Government in which to submit its grounds, evidence and conclusions, my Government consider that the reasons given by the British Agent in his letter in no way justify an extension of this time-limit. In view of the extremely pressing nature of the case before you and the fact that in the absence of the Agent of the British Government it would not be possible for me, according to the statement made by the Chairman of the Commission, to elaborate all the arguments militating in favour of an immediate hearing of this case in accordance with Article 28 of the Convention, I submit a request to you to summon the Agent of the British Government to appear before the Commission to state the views of the British Government and also to permit me as a result to present my own observations and arguments in this connection."
(Doc. A 29.570, p.3).

Meeting in private, the Sub-commission decided against inviting the Agent of the United Kingdom Government to appear before it in the presence of the Agent of the Greek Government to discuss the time-limit granted to the United Kingdom Government by its decision of 28th September 1956 and accordingly confirmed this time-limit (Doc. A 29.570, p.3).

The British Counter-Memorial and the Annexes thereto (Doc. A 30.235) were deposited with the Secretariat of the Commission on 27th October 1956 and communicated immediately to the Agent of the Greek Government.

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B. ORAL HEARING OF 14th, 15th, 16th, 17th, AND 18th NOVEMBER 1956

24. In two letters, dated 29th September and 22nd October 1956 (Docs. A 29.445 and A 30.014), the Agent of the Greek Government informed the Secretariat that M. S. Mercouris, former Minister, had been appointed by his Government as Counsel to the said Agent, and that M. Ch. Christides had ceased to act in that capacity as from 15th July 1956.

The Agent of the United Kingdom Government informed the Secretariat by letter of 7th November 1956 (Doc. A 30.505), that, for the purpose of the proceedings before the Sub-commission, his Government had appointed Sir Harry Hylton-Foster, Q.C., M.P., Solicitor-General, as Chief Counsel, and would also be represented by their Agent and Assistant Agent, by .M. Deputy Permanent Representative to the Council of Europe and by Mr. J.C. McPetrie, Mr. H. Steele and Mr. K. Neale.

25. The oral hearing of the Application in the presence of the Parties took place before the Sub-commission from 14th to 18th November 1956. A full report of the sittings is on record in Doc. A 30.768. The points at issue on which the Agents and Counsel of the Parties submitted their pleas and arguments appear in Part II of this report, which deals with the establishment of the facts.

26. With regard to the pleadings, it should be noted that the Sub-commission put certain questions to both Parties at its sitting on Saturday 17th November 1956 and reserved the right to put further questions "during the subsequent course of its work". (Doc. A 30.768, pp. 180-182)(1).

The Representatives of the Parties gave partial answers to some of these questions at the sitting of Sunday 18th November (Doc. A 30.768, pp.183-187).

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(1) Availing itself of this right, the Sub-commission decided on 18th November 1956 to instruct its President to put two further questions in writing to the Agent of the British Government about collective fines and curfew (letter to M. Berg, dated 22nd November, Doc. A 38.713; see below, Part II, Chapters IV and V, paras. 215, 273 and 278).

One of Counsel for the Greek Government submitted various new documents during this sitting, particularly photographs of youths on whom sentences of whipping had been carried out, whereupon Chief Counsel for the British Government objected to the production of new evidence which he had been given no opportunity of refuting and asked the Sub-commission to give a ruling on this point of order (A 30.768, pp.187-195).

After deliberating in private, the Sub-commission issued the following decision:

"The European Sub-commission of Human Rights,

Considering that, in the course of its sitting of 17th November 1956, and before putting certain questions to the Parties, it had reserved the right to put to them further questions during the subsequent course of its work;

Considering that it follows from these terms that the debates have not been closed and that at this stage of the proceedings each Party may submit observations both orally and in writing or any other document, the pertinency of which will be judged by the Sub-commission;

For these reasons:

Sets aside the objections raised on behalf of the Government of the United Kingdom;

Grants to each Party the right to submit, within the shortest possible time, its observations in writing on any declaration made or any document produced by the other Party concerning a matter which is the subject of any of the questions put to one or other of the Parties". (Doc. A 30.768, pp. 196-197).

C. FROM THE ORAL HEARING OF NOVEMBER 1956, TO THAT OF MARCH 1957

27. By letters of 17th December 1956 (Docs. A 31.186 and A 31.187), the Agent of the Greek Government transmitted to the Sub-commission certain documents referring to the enforcement of the curfew and also the text of four emergency regulations promulgated in November 1956, i.e. subsequent to the lodging of the Application.

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The question of admissibility and merits which arose in connection with legislation subsequent to 7th May 1956 are discussed in Chapter IX of Part II of this Report.

28. During the sittings held at Strasbourg on Tuesday 5th, Thursday 7th and Friday 8th March 1957, the Sub-commission, while believing that it should not abandon its efforts of reconciliation, recognised that it was important to lose no further time in completing and submitting to the Commission its report on the facts of the case. It therefore decided to divide up its work in such a way as to enable it to proceed simultaneously with the establishment of the facts and with its attempt to secure a friendly settlement (Doc. A 33.110). For this purpose it adopted, on 7th March 1957, a new Statement to the Parties (Doc. A 32.683) and, on the next day, two letters to be sent by its President to the Agents of the Parties and worded in identical terms. The letters related to a friendly settlement (see Chapter IV of this part of the Report). On the other hand, the Statement of 7th March 1957, after recapitulating in detail the events which had occurred since the Statement of 19th December 1956⁽¹⁾, contained the following two paragraphs concerning the establishment of the facts and the procedure to be followed:

"19 ... The Sub-commission, independently of the question of obtaining a friendly settlement and in order that it may be in a position, if need be, to complete without delay its report to the Commission, deems it necessary to obtain the further views of the Parties on certain outstanding points. It therefore decides to invite the Parties to present their oral observations on these points at a meeting of the Sub-commission to be held at Strasbourg on 28th March 1957. The points on which it desires to hear the further views of the Parties are:

- (1) the legal aspects of the detention and deportation orders with respect to Archbishop Makarios and his companions;
- (2) The question whether and on what basis regulations introduced by the Cyprus Government since the date of the filing of Application No. 176/56 by the Greek Government may be taken into account by the Sub-commission and afterwards the Commission itself in dealing with that Application.

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(1) For that Statement, which concerned the attempt to secure a friendly settlement, see Chapter IV of this part of the Report, para. 78.

20. In the event that the Sub-commission, after hearing the views of the Parties on point (2) decided to take into account the new regulations in dealing with the merits of Application No. 176/56, it would wish also to hear the arguments of the Parties on the question whether or not the new regulations are in conformity with the provisions of the Convention ..."
(Doc. A 32.683, pp.10-11).

D. ORAL HEARING OF 28th AND 29th MARCH 1957

29. By letters dated 20th and 25th March 1957 (Docs. A 33.116 and A 33.097), the Agent of the British Government explained the position of his Government on the above-quoted Statement of 7th March 1957. The first letter was more particularly concerned with paragraphs 19 (2) and 20 of the Statement (see Chapter IX of Part II of this Report); the second commented on the invitation to the Parties to appear on 28th March in order to present oral observations on the legal aspects of the Detention and Deportation Orders with respect to Archbishop Makarios and his companions (paragraph 19 (1) of the Statement of 7th March 1957).

30. The oral hearing took place at Strasbourg on 28th and 29th March 1957 (see Doc. A 33.305).

The following appeared before the Sub-commission:

- for the Applicant: M. N. Cambalouris, M. H. Rolin and M. G. Mercouris,
- for the Defendant: Mr. F. A. Vallat, Sir Henry Hylton-Foster, Mr. G. Meade and Mr. H. Steele.

When opening the hearing, the President read out the following statement to the representatives of the Parties:

"The Sub-commission has been dealing with the Application of the Greek Government from two aspects: (1) the establishment of the facts and (2) an attempt to obtain a friendly settlement between the Parties. At its last Session the Sub-commission, having taken into account the position of the Parties on the question of a friendly settlement, decided that its most pressing task is to establish finally the facts and the legal

contentions of the Parties in regard to them with a view to completing its Report to the Commission. Certain points still being in need of some further clarification, the Sub-commission invited the Agents of the Parties to come to Strasbourg to express their views on the points set out in the Statement of the Sub-commission of 7th March 1957.

The Sub-commission has received from the British Agent two letters of 20th and 25th March respectively, relating to paragraphs 19 and 20 of the Sub-commission's Statement. It understands that the British Agent also wishes to make an oral communication to the Sub-commission concerning paragraphs 21 and 22 of the Statement (1). If the Greek Agent has no objection, I propose to call on Mr. Vallat first to make this preliminary communication to the Sub-commission and I will then call on the Greek Agent to say whether he has any observations to communicate to the Sub-commission on those paragraphs.

After that I propose to ask the Agent of the Greek Government what are his views concerning the procedure suggested in the British Agent's letter of 20th March concerning the question of the new Regulations. The Sub-commission will be glad to know whether, without prejudice to the legal points raised by the British Government and to the application of this procedure in any future case, the Greek Government are ready to adopt the suggested procedure for dealing with the new Regulations in the present case.

Finally, on the questions of detention and deportation it will be my intention to call first on the Agent of the Greek Government to present his further arguments and then to call on the British Agent to reply." (Doc. A 33.305, pp.1-2).

32. After an explanation by the Agent of the British Government concerning paragraphs 21 and 22 of the Statement of 7th March 1957 and the letter of 8th March 1957 (2), the Representatives of both Parties gave their views on the procedure to be followed with regard to the Emergency Regulations promulgated in Cyprus after the Application had been lodged (Doc. A 33.305, pp.4-9)(3).

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- (1) For these paragraphs, which relate to the attempt to secure a friendly settlement, see Chapter IV of this Part of the Report, para. 78.
- (2) See Chapter IV of this part of the Report, para. 79.
- (3) See also Chapter IX of Part II of this Report.

On this last question, the Sub-commission rendered the following decision on 28th March 1957:

"The Sub-commission has taken into account the letter of the Agent of the United Kingdom, dated 20th March 1957, concerning the questions raised in paragraph 19 (2) of the Sub-commission's Statement of 7th March 1957 and the oral observations of the Parties concerning those questions presented at the hearing this morning. The Sub-commission notes that:

- (a) The United Kingdom Government agree to waive all their objections to admissibility in regard to the new regulations which are mentioned in paragraph 19 (2) of the Sub-Commission's Statement on condition that the Greek Government first present a Memorial and the United Kingdom Government afterwards have the opportunity of making their reply in a Counter-Memorial.
- (b) The Greek Government are willing to submit a succinct statement of their complaints in regard to the new regulations on condition that the United Kingdom Government agree to make their reply at the present session of the Sub-commission; if, however, the United Kingdom Government do not so agree, the Greek Government wish to have a short period of time in which to present their Memorial.
- (c) The United Kingdom Government are not prepared to make their reply to the Greek complaints in regard to the new regulations at the present session because they require to have time for preparing their reply.

The Sub-commission, on the basis that the United Kingdom Government agree to waive all objections to admissibility in regard to the new regulations brought into force between the filing of the Greek Application and the present day, decides that:

- (1) The Greek Government shall have 10 days after the close of the present session within which to present a Memorial setting out their complaints in regard to the new regulations mentioned in paragraph 19 (2) of the Sub-commission's Statement of 7th March 1957. In accordance with paragraph 19 of the said Statement, the Greek Government shall, if they wish, have the opportunity of also making an oral statement at the present session.

- (2) After receipt of the Greek Memorial, the United Kingdom Government shall have 20 days within which to present their Counter-Memorial.
- (3) The further procedure for investigating the Greek complaints in regard to the new regulations is reserved, including the question of an oral hearing if this should be necessary.

The Sub-commission further decides that at the present session it will hear the Parties first on the question of detention and deportation and will afterwards hear the observations of the Greek Government in regard to paragraphs 21 and 22 of the Sub-commission's Statement of 7th March 1957, in the light of the communication of the British Agent at the hearing this morning.

The Sub-commission at the same time reserves the right to raise with the Parties at a later stage of the session the matters dealt with in paragraph 18 of the Statement of 7th March 1957." (Doc. A 33.305, pp.10-11).

33. On the afternoon of 28th March 1957, Counsel for the Greek Government went into "the legal aspects of the Detention and Deportation Orders with respect to Archbishop Makarios and his companions" /Paragraph 19 (1) of the Statement of 7th March 1957 (Doc. A 33.305, pp.12-23).

On the same afternoon, the United Kingdom Secretary of State for the Colonies made the following statement in the House of Commons, and members of the Sub-commission were informed thereof by letter from Mr. Vallat (A 33.032).

"On the 20th March I informed the House that Her Majesty's Government accepted the offer of the Secretary General of the North Atlantic Treaty Organisation to use his good offices for conciliation on the Cyprus question. At the same time I said that if Archbishop Makarios would make a clear public statement calling for the cessation of violence by EOKA, a new situation would have been created and Her Majesty's Government would be ready to bring to an end his detention in Seychelles. The Archbishop has now made a statement, copies of which will be available in the Vote Office when I sit down.

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While Her Majesty's Government cannot regard this statement as the clear appeal for which they asked, nevertheless they consider that in present circumstances it is no longer necessary to continue the Archbishop's detention. I have accordingly instructed the Governor of the Seychelles with the full agreement of Sir John Harding to cancel the orders for the detention of the Archbishop and his three compatriots and to arrange passages from Seychelles by the first available vessel. I must repeat that there can be no question at this stage of their return to Cyprus. In order to promote a rapid return to normal peaceful conditions in Cyprus the Governor is prepared to offer immediately a safe conduct out of Cyprus to the leader of EOKA - Grivas. If he decides to avail himself of this offer the Government of Cyprus will make the necessary arrangements with any member of the Consular Corps in Cyprus who agrees to act for him. This offer of safe conduct is open also to any other foreign nationals who are members of EOKA and are at large in Cyprus. It will be extended to any British subjects who are members of the organisation and still at large provided they give an undertaking not to enter any British territory for so long as the legal State of Emergency continues to exist in Cyprus. I should add, Sir, that Her Majesty's Government cannot accept the Greek Government's interpretation of the United Nations Resolution which, as the House will see, the Archbishop has adopted in another part of his statement. There is nothing inconsistent between the terms of that Resolution and conciliation by the North Atlantic Treaty Organisation. Finally, I must make it clear that there can be no question of an immediate abolition of the State of Emergency in Cyprus. As and when the Governor of Cyprus considers that it is safe for relaxations of the Emergency Regulations to be made, they will be made and the House, of course, will be informed."

The statement by Archbishop Makarios to which the Secretary of State for the Colonies referred was as follows:

"The resolution of the United Nations calling for a resumption of negotiations for a peaceful, democratic and just solution of the Cyprus problem in accordance with the principles of the United Nations Charter is a starting point towards a final settlement of the issue. We understand this resolution as an expression of the wish of the United Nations for bilateral negotiations between the British Government and the people of Cyprus.

The EOKA organisation conforming with the spirit of the United Nations resolution and in order to facilitate a resumption of such negotiations declares it is ready to suspend its operations at once if I were to be released. Thus a new situation has been created opening the way for the restoration of peace in the island.

The British Government however was not satisfied with this truce offer by EOKA because its leaders declared only a suspension and not a cessation of operations. I would be extremely sorry if the road to peace thus now open were to be blocked by this argument. In my sincere desire to see peace restored in Cyprus I appeal to the EOKA organisation and to the British Government as well. I appeal to EOKA to declare a cessation of all operations given that the British Government will show a spirit of understanding by abolishing simultaneously the present State of Emergency. To this end I repeat here what I wrote in my letter dated February 2, 1956 to the Governor of Cyprus - 'Such pacification will be brought about more quickly than by anything else, by the policy to be followed simultaneously by Your Excellency. This should be a policy of appeasement capable of inspiring the citizens with a feeling of freedom and safety. Thus emergency military measures and emergency legislation should be revoked and an amnesty should be granted for all political offences.'

As regards my intention the Colonial Secretary stated that after I have made a public statement calling on EOKA for a cessation of violence then I will be free to go anywhere except Cyprus. I wish to make clear that my personal release will never be an object of bargaining. As spiritual and national leader of the Greek people of Cyprus I had and always will have as my first concern the interest of the people and not my personal welfare but I feel most deeply that my return to Cyprus will create a response from the people of the island and this will be a factor which should not be under-estimated.

The Colonial Secretary stated also that the Government felt that it was better to tackle the international aspects of the problem first by discussion in NATO but hoped to proceed with constitutional discussions later. A statement of the Greek Government interpreting rightly the spirit of the United Nations Organisation resolution has already --

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given the reply that it would not be willing to take part in discussions on the Cyprus problem within NATO and that talks should be resumed directly between the British Government and the Cyprus people. I sincerely believe that if the British Government think any Greek Cypriot could be found to negotiate in my absence that would be a waste of time.

Finally, I express the hope that the British Government will understand and appreciate my sincere desire for the restoration of peace in the island. I also express the wish that the way now open will lead towards peace in the light of a spirit of mutual trust and understanding."

34. Opening the hearing of 29th March 1957, the President of the Sub-commission first took note, on behalf of the Sub-commission, of the statement made in the House of Commons by the Secretary of State for the Colonies and then called Chief Counsel for the British Government, who put his Government's case with regard to the deportation and detention of Archbishop Makarios and his companions (Doc. A 33.305, pp.25-31).

The President then invited the Agent of the Greek Government to put forward his views on paragraphs 21 and 22 of the statement of 7th March 1957(1). The Agent of the Greek Government, having expressed pleasure at the decision to release Archbishop Makarios and his companions, proposed:

- "1. that the Agent of the British Government inform the Sub-commission of all new regulations in Cyprus which would modify those discussed before the Sub-commission;
2. that the Sub-commission extend from 10 days to 2 months the time-limit in which I am to inform it whether my Government wish to include in their application regulations subsequent to the submission of the Application and, if so, what are the de jure and de facto arguments they put forward concerning them." (Doc. A 33.305, pp.32-34).

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(1) For these paragraphs, which relate to the attempt to secure a friendly settlement, see Chapter IV of this part of the Report, para. 78.

As these two proposals were accepted by the Agent of the United Kingdom Government (Doc. A 33.305, pp.34-35), the Sub-commission, after deliberation in private (Doc. A 34.316, p.3), rendered the following decision:

"The Sub-commission has taken into account the observations of the Parties in regard to the questions set out in paragraphs 19, 20, 21 and 22 of its Statement of 7th March 1957. It has also taken note of the Statement of the Secretary of State for the Colonies made in the House of Commons on 28th March 1957, a provisional text of which has been submitted to the Sub-commission by the Agent of the United Kingdom Government.

Having regard to the proposals submitted to the Sub-commission by the Greek Agent at the conclusion of his oral observations and having regard to the acceptance of those proposals by the Agent of the United Kingdom Government, the Sub-commission revises its decision of 28th March 1957 (Doc. DH/Misc (57) 9) in the following particulars:

- (1) The Greek Government shall have two months after the close of the present session within which to present a Memorial setting out their complaints in regard to the new regulations mentioned in paragraph 19 (2) of the Sub-commission's Statement of 7th March 1957.
- (2) The further procedure for investigating the Greek complaints in regard to the new regulations is reserved, including the question of an oral hearing if this should be necessary.
- (3) The United Kingdom Government shall communicate to the Sub-commission any new laws and regulations hereafter enacted in Cyprus which modify any of those laws and regulations which have been made the subject of complaint by the Greek Government before the Sub-commission.

The Sub-commission reserves the right, after further consideration, to communicate its decisions on any of the points arising from the arguments of the Parties at the present session." (Doc. A 33.305, pp.35-36; see also Doc. DH/Misc (57) 15, contained in Appendix III to Doc. A 34.316).

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35. On 29th March 1957, after the closure of the oral hearing and before dispersing, the Sub-commission, sitting in private (Doc. A 34.316, p.3), drafted a Statement which its President communicated to the Parties by letter dated 30th March 1957. This Statement read as follows:

"The Sub-commission has taken note of the decision of the United Kingdom Government concerning the release of Archbishop Makarios from detention. It has also taken note of the declaration made on 28th March in the House of Commons by the Secretary of State for the Colonies concerning the question of the relaxation of the Emergency Regulations. The Sub-commission expresses its great satisfaction at the new development which increases the chances of success in obtaining a friendly settlement of the present case.

The Sub-commission, attaching as it does the highest importance to the task entrusted to it under Article 28 (b) of the Convention, calls upon the Parties to reconsider the question of reaching an amicable settlement. Inspired by the wish that the full enjoyment of the rights protected by the Convention may be restored in Cyprus, the Sub-commission expresses the hope that the United Kingdom Government will re-examine the Emergency legislation now in force with a view to making the greatest possible relaxations of that legislation at an early date.

The Sub-commission at the same time reserves the right, in case of the failure of its efforts to obtain a friendly settlement, forthwith to continue its task on the basis outlined in its statement of 7th March 1957 and then to decide whether the establishment of the facts requires an investigation on the spot."
(Doc. DH/Misc (57) 16, contained in Appendix IV to Doc. A 34.316).

E. FROM THE ORAL HEARING OF MARCH 1957 TO THAT OF JULY 1957

36. In a letter dated 2nd May 1957, the Agent of the United Kingdom Government referred to sub-paragraph (3) of paragraph 2 of the decision of 29th March 1957 (see paragraph 34 above) and informed the Sub-commission of various steps which the Cyprus Government were about to take in the way of revoking or relaxing certain emergency measures (Doc. A 34.101; see also Chapter IV of this part of the Report).

On 4th May 1957, the Agent of the Greek Government transmitted the following letter to the Sub-commission:

"The Sub-commission of the European Commission of Human Rights set up to examine the Greek application concerning Cyprus has agreed, at my request, to extend until 28th May the time-limit by which the Greek Government should inform the Sub-commission of their objections to the new regulations referred to in paragraph 19 of the Sub-commission's statement of 7th March 1957.

My Government do not propose to anticipate the time-limit set it, more especially since it possesses only incomplete information regarding the changes made by the United Kingdom authorities in this legislation and, before taking up a definite position, would like to examine the information which the Agent of the United Kingdom Government has been requested to supply to the Sub-commission on the subject.

However, I feel I should, without delay, draw the attention of the Sub-commission and, particularly, through you, that of the Agent of the United Kingdom Government, to the very unusual and severe measures which have been taken for nearly two months now against the village of Milikouri. Although described as a curfew, they are nothing of the sort, but a blockade of the area, cutting it off completely from the surrounding district; there would not appear to be even any legal basis for such action under the legislation in force. The United Kingdom authorities deny that the measures are intended as a punishment and say that the village is in the middle of an area where rebels are believed to be hiding. But the length of time the blockade has gone on and the lack of results so far show the action taken to be of doubtful effectiveness and, in any event, out of all proportion to the hardship caused to the people of the village.

The plight of the village has aroused the sympathy of the whole district; collections have been made for it and there have been attempts to supply it with food.

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Consequently the Greek Government have no alternative but to express their lively concern regarding the serious repercussions which these severe measures may have on public opinion in Cyprus. Since, like the United Kingdom Government, they desire the establishment, on the island, of the most favourable conditions for the resumption of negotiations between the United Kingdom authorities and the Greek Population of Cyprus, it is their ardent hope that urgent consideration will be given to bringing the measures complained of to an end.

Enclosed are extracts from Cypriot newspapers giving an account of the events described. I should be obliged if you would be kind enough to communicate them to the Agent of the United Kingdom Government and to the members of the Sub-commission." (Doc. A 34.075 and A 34.076

37. By letter of 27th May 1957 (Doc. A 34.428), the Agent of the Greek Government transmitted to the Secretariat his Government's Memorial on the emergency regulations promulgated in Cyprus since the lodging of the Application (paragraphs 19 (2) and 20 of the Statement of 7th March 1957 and decision of 29th March 1957, paragraphs 28 and 34 above). This Memorial (Doc. A 34.455) included a number of Annexes (Doc. A 34.427). In his letter, the Greek Government Agent emphasised that his Government considered it of extreme urgency "for this matter to be dealt with and, particularly, for a hearing to be arranged at which the Parties will appear before the Sub-commission."
38. On 27th May 1957, M. P. Faber, carrying out the duties of President of the Sub-commission in the absence of M.P. Berg, ruled that the final date by which the United Kingdom Government must submit their Counter-Memorial would be 26th June 1957.
39. By letter of 18th June 1957 (Doc. A 34.787), in accordance with paragraph 3 of the Decision of 29th March 1957 (see paragraph 34 above), the Agent of the United Kingdom Government communicated to the Sub-commission the text of amendments made to the emergency legislation since the application was submitted (Doc. A 34.789).

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Moreover, in accordance with the Order of the President dated 27th May 1957, the said Agent also transmitted to the Secretariat, by letter of 24th June 1957 (Doc. A 34.871), his Government's Counter-Memorial together with thirteen Annexes (Doc. A 34.870).

40. The Sub-commission met again in Strasbourg from 28th June 1957 onwards. Having considered a request by the Greek Government that it should set a date for a third oral hearing, it adopted the following decision on 28th June 1957:

"The Sub-commission, having regard to:

- (a) its Statement to the Parties of 7th March 1957;
- (b) its decisions of 28th and 29th March 1957 and its Statement to the Parties of 29th March 1957; and to
- (c) the letter and Memorial of the Greek Government of 27th May 1957 and the Counter-Memorial of the Government of the United Kingdom of 24th June 1957;

decides to invite the Agents of the Parties to appear before it on Tuesday, 2nd July 1957, at 15.00 hours to present to the Sub-commission any further oral observations which they may desire to make." (Doc. A 34.554).

41. On 1st July 1957, the Agent of the Greek Government sent the following letter to the President of the Sub-commission, marked "Very Urgent - Confidential":

"We have just learnt that Nicolas Sampson, a Cypriot journalist aged 22, who had been found not guilty of the murder of a police sergeant by the Cyprus Courts, has now been sentenced to death by the Nicosia Special Court for carrying firearms, in accordance with the provisions of the Emergency Regulations, and that his execution appears to be imminent.

In view of the revelations made at the first, widely publicised trial about some objectionable features of the methods practised by certain organs of the Cyprus police, the case of Mr. Sampson has deeply stirred the population of the island, which is apparently very anxious and disturbed about the fate of the young journalist.

Although we realise that it is not called upon to express itself on individual cases, we believe that, on this occasion, an appeal by the Sub-commission to the British authorities for mercy for the young journalist would be fully justified.

Apart from humanitarian considerations, the Sub-commission, which has taken such a close interest in the improvement in the Cyprus situation which seemed to be argued by the cessation of acts of violence and the release of Archbishop Makarios, cannot be indifferent to the reactions which the execution would be likely to arouse among the population of the island.

Moreover, the Regulations which had been applied in Sampson's case are among those which are to be discussed before the Sub-commission next Tuesday. This seems to be another reason why it is desirable for their enforcement to be temporarily suspended if possible.

I am sending a copy of this letter to the Agent of the British Government." (Doc. A 34.558).

On 1st July 1957, after deliberation, the Sub-commission issued the following decision on the special case thus brought to its attention:

"The Sub-commission at its meeting of 1st July 1957 has had brought to its attention an urgent letter from the Agent of the Greek Government of the same date stating that Nicolas Sampson, a Cypriot journalist, aged 22, has been convicted and condemned to death by the Special Court of Nicosia for carrying arms under Emergency Regulations. These Regulations are to be discussed at the Session of the Sub-commission fixed for tomorrow afternoon.

The Sub-commission decides, in order to avoid any irreparable act, to address an urgent request to the Government of the United Kingdom asking that the above-mentioned sentence on Nicolas Sampson should not be carried out until the Sub-commission has been fully informed as to the facts of this case and has had the opportunity to present to the Government of the United Kingdom such observations as it may think right to make in this matter." (Doc. A 34.562).

This decision was immediately communicated to the Parties.

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At the oral hearing of 2nd July 1957 (see below, paragraph 44), the Agent of the United Kingdom Government gave the Sub-commission certain details about the case of Mr. Sampson and concluded by asserting that this case did not come under any of the allegations of violation of the Convention contained in the Greek Government's second Memorial. (Doc. A 35.254, pp.1-3).

42. In the course of its deliberations on the same day, the Sub-commission decided that it would be advantageous, before opening the hearing in the presence of both Parties, to outline its policy and the procedure it intended to follow both in ascertaining the facts and in seeking to bring about a friendly settlement. Moreover, the Sub-commission thought it necessary to put further questions to the Agent of the United Kingdom Government. It therefore adopted, still on 1st July 1957, the following text for transmission to the two Parties:

"The Sub-commission has taken due note of the various letters and documents transmitted to it since its previous session of 28th and 29th March 1957. The hopes which the Sub-commission then entertained that the release of Archbishop Makarios from detention and the improvement of the situation in Cyprus might lead, as was already suggested in the Sub-commission's letter to the Parties of 8th March 1957, to a friendly settlement have not so far been fulfilled. In consequence, it finds it necessary to remind the Parties of the final paragraph of its Statement of 29th March 1957 in which the Sub-commission reserved the right, in case of the failure of its efforts to obtain a friendly settlement, forthwith to continue its task on the basis outlined in its Statement of 7th March 1957 and then to decide whether the establishment of the facts requires an investigation on the spot."

At the conclusion of the present hearing the Sub-commission intends to make yet one more communication to the Parties concerning the question of a friendly settlement. In the event that no favourable developments result from this communication the Sub-commission intends as quickly as possible to submit its report on the whole case to the Commission.

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Among the more important matters to be dealt with in the Sub-commission's report to the Commission is the question of the application of Article 15 to the situation in Cyprus and on this matter the Sub-commission cannot fail to observe that there has been a change in the security situation in Cyprus during the past two months. It appears from paragraph 7 of the Second Counter-Memorial of the United Kingdom Government that acts of violence in Cyprus have ceased for the time being although it also appears from the preceding paragraphs of that Counter-Memorial that the United Kingdom Government still consider that there is a threat of the resumption of violent measures by EOKA. The Sub-commission at the same time observes from the statements of the Governor of Cyprus quoted in Appendix 4 of the Second Greek Memorial that 'until the remaining terrorists are killed, captured or leave Cyprus, and until it becomes certain that there exists no further danger of a renewal of terrorism' there can be no question in his opinion of ending the state of emergency.

Having regard to the fact that Article 15 of the Convention permits derogation from the provisions of the Convention only 'in time of war or other public emergency threatening the life of the nation' and only 'to the extent strictly required by the exigencies of the situation' the Sub-commission invites the Agent of the United Kingdom Government either during the oral hearing or shortly afterwards in writing to state precisely for the information of the Commission the position taken by his Government on the question of the continuance in Cyprus of a public emergency threatening the life of the nation and in regard to the exigencies of the situation which it considers to require the continuance of the measures which still prevent the full enjoyment in Cyprus of the human rights protected by the Convention.

The Agent of the Greek Government also has the right to make his observations on this matter at the oral hearing and, if necessary, to reply to any statement made in writing by the United Kingdom Government." (Doc. A 34.560).

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F. THE ORAL HEARING OF 2nd AND 3rd JULY 1957

43. The oral hearing took place in Strasbourg on 2nd and 3rd July 1957 (cf. Doc. A 35.254).

The following persons appeared before the Sub-commission:

- for the Applicant: MM. N. Cambalouris, H. Rolin,
S. Mercouris and S. Loizides (1)
- for the Defendant: MM. F.A. Vallat, G. Meade and
H. Steele.

44. After opening the proceedings, the President read out the following Statement to the representatives of the Parties:

"By its Decision of 28th June 1957, the Sub-commission invited the Agents of the Parties to appear before it to present to the Sub-commission any further oral observations which they might decide to make. In this connection it is my duty to draw the attention of the Parties to the Sub-commission's Statements of 7th and 29th March 1957.

Since the last oral hearing the Agent of the Greek Government has submitted a Memorial, to which the Agent of the British Government has replied. In addition, the Sub-commission received on 1st July 1957 an urgent letter from the Agent of the Greek Government regarding the case of Nicolas Sampson. This letter gave rise to the Sub-commission's Decision of the same day, a Decision which has already been communicated to you. The Sub-commission desired to be thoroughly informed of the facts of the case.

Finally, I should like to draw the attention of the Agents of the Parties to the Sub-commission's new Statement of 1st July 1957, the contents of which have been communicated to them. This Statement asks in particular for a reply by the Agent of the British Government to the questions mentioned in it. As explained in this Statement, the Sub-commission has also reserved the right after hearing the Parties to make yet one more communication concerning the endeavour to bring about a friendly settlement. Failing any observations by the Parties on the foregoing, I propose to give the floor to the Agent of the Greek Government." (Doc.A 35.254,p.1).

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(1) The Agent of the Greek Government had notified the appointment of M.S. Loizides as Counsel by letter of 29th June 1957 (Doc. A 34.556)

After this Statement, the Agent of the United Kingdom Government asked leave to give certain explanations concerning the case of Nicolas Sampson (cf. Paragraph 41).

The verbatim report of the hearings is embodied in Doc. A 35.254. The points in regard to which the Agents and Counsel of the Parties developed their arguments are set out in the Second Part of this Report, which deals with the establishment of the facts.

It should be noted, however, that the submission of Mr. Mercouris created an unfavourable impression on the Sub-commission which felt obliged to make the following Statement:

"The Sub-commission informs the Parties that it finds itself unable to receive the observations made by M. Mercouris for the reasons that they went outside the limits of the subjects assigned for discussion at the hearing and that they exceeded the limits of the language to which the Sub-commission is accustomed or willing to listen." (Doc. A 35.254, p.37).

On 3rd July 1957 the Agent of the United Kingdom Government put his Government's case with regard to the new emergency measures introduced in Cyprus since the filing of the Application and replied to the observations and statements made on the previous day by the representatives of the Greek Government. As for the Sub-commission's question to him concerning the continuance in Cyprus of a public emergency threatening the life of the nation, he reserved the right to reply in writing.

Having heard the statements of the representatives of the Parties on 2nd and 3rd July 1957 the Sub-commission went into the question whether, at this stage of the proceedings, the establishment of the facts required an investigation on the spot. Bearing in mind the arguments developed so far by the Parties, the Sub-commission, after due deliberation, rendered the following Decision on 3rd July 1957:

"The Sub-commission has given the most careful attention to the statements of the Parties concerning the question of a visit to Cyprus for the purpose of establishing the facts. In its Statement to the

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Parties of 1st July 1957, the Sub-commission invited the United Kingdom Government to state precisely for the information of the Commission the position which it takes on the question of the continuance in Cyprus of a public emergency threatening the life of the nation and in regard to the exigencies of the situation which it considers to require the continuance of the measures which still prevent the full enjoyment in Cyprus of the human rights protected by the Convention. The Sub-commission now informs the Parties that it proposes to take its decision whether the establishment of the facts requires a visit to Cyprus when it has received the above-mentioned statement of the United Kingdom Government and any observations which the Greek Government may wish to make in reply. In this connection, the Sub-commission asks the Agent of the Government of the United Kingdom if possible to submit the statement of his Government within a period of 15 days from today and it would be helpful to the Commission if he could also submit within the same period his reply to the proposition concerning a friendly settlement which has been put to the Parties by the Sub-commission at the conclusion of the present Session." (Doc. A 35.254, p.60).

After the reading of this Decision to the representatives of the Parties, the Agent of the United Kingdom Government asked leave to point out that the 15 day time-limit granted to him was inadequate. He asked that this time-limit be extended to at least three weeks. (Doc. A 35.254, p.61).

After deliberation, the Sub-commission requested the Agent of the United Kingdom Government to transmit his Government's statement if possible before 20th July 1957, when the plenary Commission would be in session and the Sub-commission would hold a further meeting.

Before closing this Session, the Sub-commission decided to make a further attempt to secure a friendly settlement and prepared a statement which was read out to the representatives of the Parties before the close of the hearing. (Doc. A 35.254, p.58-60). See also below, Part I, Chapter IV of this Report paragraph 85).

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G. FROM THE ORAL HEARING OF JULY 1957 TO THAT OF SEPTEMBER 1957

45. By letter of 17th July 1957 (Doc. A 35.135), the Agent of the Greek Government transmitted his Government's reply to the proposals for a friendly settlement, contained in the Sub-commission's Statement to the Parties at the close of the oral hearing of 3rd July 1957 (cf. Part I, paragraph 44 and Part I, Chapter IV of this Report).

On the same date, the Agent of the Greek Government lodged with the Secretariat of the Commission a further Application by his Government concerning "cases of torture or maltreatment amounting to torture" alleged to have been committed in Cyprus. This Application bears the registration number 299/57. By Order of the President dated 19th July 1957 it was communicated to the United Kingdom Government, which was invited to submit its written observations on its admissibility by 20th August 1957. At its eighth plenary session, held at Strasbourg from 15th to 20th July 1957, the Commission decided to meet on 28th August 1957 to consider the admissibility of the new Application.

The Agent of the United Kingdom Government informed the Secretariat verbally that he would be unable before 15th August 1957 to submit his Government's reply to the questions asked in the Sub-commission's Statement of 1st July 1957, and to the proposals for a friendly settlement contained in the Sub-commission's Statement of 3rd July 1957. This request for an extension of the time-limit was confirmed by letter of 18th July 1957 (Doc. A 35.253), in which it was stated that the earliest date by which it would be possible to submit the replies of the United Kingdom Government was 15th August 1957.

46. At a meeting held on 19th July 1957 (during the plenary session of the Commission), the Sub-commission decided to extend the time-limit as requested by the Agent of the United Kingdom Government and gave the United Kingdom Government until 15th August 1957 to submit its reply to the questions asked in the Statement of 1st July 1957, and to the proposals for a friendly settlement of 3rd July 1957. It also decided to hold its next session at Strasbourg from 28th August 1957 onwards.

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47. By letter of 19th July 1957 (Doc. 35.269), the Agent of the United Kingdom Government informed the Sub-commission that the Greek press had published, during the period 5th to 11th July 1957 information and comment concerning the proceedings of the Sub-commission on 2nd and 3rd July 1957 and enclosed translations of extracts from Greek newspapers. He asked the Commission to conduct such enquiries and take such action as it might think proper.

48. On 14th August 1957 the Agent of the United Kingdom Government submitted a Statement, containing thirteen annexes, in response to the Statements of the Sub-commission made on 1st and 3rd July 1957. This Statement was followed by a Supplementary Statement with annexes dated 30th August 1957 on the current situation in Cyprus and referred in particular to the Sub-commission's Statement of 3rd July 1957.

By letter of 22nd August 1957 enclosing various press cuttings (Doc. A 35.560), the Agent of the Greek Government informed the Sub-commission of certain cases of curfew imposed by the Cyprus authorities after 14th March 1957.

The Agent of the United Kingdom Government replied to this letter on 29th August 1957 (Doc. A 35.722).

On 30th August 1957 and on 3rd September 1957, the Agent of the Greek Government submitted his Government's reply to the United Kingdom's Statement on 14th August 1957 and Supplementary Statement of 30th August 1957.

49. On 28th, 29th and 31st August 1957, the Sub-commission held three sittings, during which it examined the documents submitted by the Parties.

At the close of these deliberations, the Sub-commission made the following Statement to the Parties:

"Having regard to the respective reactions of the Parties to the propositions of the Sub-commission in its Statement of 3rd July 1957, the Sub-commission informs the Parties that it does not propose to proceed further with its efforts for a friendly settlement.

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The Sub-commission, before deciding upon its further steps in the case, invites the Parties to present to it orally any observations which they may desire to make by way of supplement to or comment upon the statements of the Government of the United Kingdom dated 14th, 29th and 30th August and the statements of the Greek Government dated 22nd and 30th August. The Sub-commission proposes to hold a brief session for this purpose when the arguments concerning the admissibility of Application No. 299/57 have been concluded and the date and time for this session will be fixed later by the President after obtaining the views of the Parties." (Doc. A 35.725).

H. THE ORAL HEARINGS OF 4th AND 5th SEPTEMBER 1957

50. Hearings took place in Strasbourg on 4th and 5th September 1957. The following persons appeared before the Sub-commission:

- for the Applicant: MM. N. Cambalouris, S. Mercouris and S. Loizides.
- for the Defendant: MM. F.A. Vallat, G. Meade, H. Steele and K. Neale.

The Agent of the United Kingdom Government outlined the present situation in Cyprus and explained why his Government considered that there was still a public danger threatening the life of the nation.

The Agent of the Greek Government, replying, maintained that the situation in Cyprus was calm.

At the hearing held on 5th September 1957 (morning) MM. S. Mercouris, S. Loizides and F.A. Vallat spoke, in that order.

The verbatim report of the pleadings appears in Doc. A 35.844 (see also below, First Part, Chapter III, Section IV, paragraph 54 on this Report).

IV. - THE INVESTIGATION ON THE SPOT

51. The question as to whether the Sub-commission should hold an investigation in Cyprus was first raised in a letter from the Agent of the Greek Government of 17th December 1956 (A 31.186), by which he transmitted to the Sub-commission copies of further regulations together with documents relating to these regulations and to curfew. In his letter the Agent of the Greek Government stated, inter alia:

"the only means left open to the Sub-commission for obtaining information on matters of disagreement between the Parties will be an enquiry on the spot."

52. After the close of the hearings held on 28th and 29th March 1957, the Sub-commission adopted, on 29th March 1957, a Statement which the President communicated to the Parties by letter of 30th March 1957 (cf. First Part, paragraph 35 of this Report). In this Statement the Sub-commission declared, inter alia, that in case a friendly settlement was not reached it "reserved the right forthwith to continue its task on the basis outlined in its Statement of 7th March 1957 and then to decide whether the establishment of the facts requires an investigation on the spot". (Doc. DH/Misc (57) 16, appearing in Appendix IV to Doc. A 34.316).

53. In a text adopted on 1st July 1957 and transmitted to the Parties, the Sub-commission found it necessary "to remind the Parties of the final paragraph of its Statement of 29th March 1957".

54. During the hearings held on 4th and 5th September 1957, the representatives of the Parties submitted their views on the necessity of an enquiry on the spot.

On 4th September 1957 (afternoon), the Agent of the United Kingdom Government denied such necessity (cf. Doc. A 35.844, pp.4-5).

The Agent of the Greek Government, however, submitted that the next stage of the Sub-commission's work should include an enquiry for the purpose of investigating on the spot the main controversial issues (cf. Doc. A 35.844, p.5).

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At the hearing on the morning of 5th September 1957, both Greek Counsel emphasised this submission (cf. Doc. A 35.844, pp.11 and 14).

55. On 5th and 6th September 1957, the Sub-commission held two sittings, mainly in order to determine whether the establishment of the facts required an investigation on the spot.

On 6th September 1957 the Sub-commission adopted the following decision by four votes to three:

"Whereas by its declaration of 31st August 1957 the Sub-commission informed the Parties that it would not continue its efforts to secure a friendly settlement;

Whereas at this stage the Sub-commission, in accordance with Article 28 (a) of the Convention, is called upon to complete its establishment of the facts with a view to submitting its Report to the Commission, in order that the latter may in turn present a report to the Committee of Ministers of the Council of Europe;

Whereas, after several hearings of the Agents and Counsel of the Parties and after examining the Memorials and other documents submitted by them there remain certain questions of fact which the Sub-commission must elucidate in order to conclude the task devolving upon it by virtue of Article 28 (a) of the Convention;

Whereas at the present stage the most important question for the Sub-commission in conducting its examination is to establish facts which will enable the Commission to judge as to the existence and extent of a public danger threatening the life of the nation for the purposes of Article 15 of the Convention;

Whereas the Sub-commission considers it necessary to obtain direct knowledge of these facts by an enquiry on the spot;

Whereas it is also important to carry out a direct investigation as to the circumstances in which the curfew regulations are applied;

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Whereas Article 28(a) of the Convention requires the Sub-commission to undertake, if need be, an investigation,

DECIDES to undertake an investigation on the spot for the purpose set out above.

This task will be carried out either by the entire Sub-commission or by certain of its members.

The Sub-commission requests the Parties, in accordance with Article 28 (a) of the Convention, to furnish it with all necessary facilities.

The Sub-commission draws the attention of the Parties to the fact that it is for the Sub-commission alone to publish such information concerning its work as it thinks fit." (Doc. A 35.744).

The Sub-commission instructed its Secretariat to inform the Parties of the above decision and to approach the Agent of the United Kingdom Government with a view to securing the facilities referred to in Article 28 (a) of the Convention.

The Sub-commission also reserved the right to fix the date of its enquiry in Cyprus during the session to be held by the plenary Commission from 9th October 1957.

56. After communication of the decision of 6th September 1957 the Agent of the United Kingdom Government transmitted a letter on 20th September 1957 asking the Sub-commission for clarification concerning:

- (a) the facts which the investigation would seek in order to establish whether there was a public danger threatening the life of the nation;
- (b) the nature of the enquiry into the circumstances of the curfew and the period which this enquiry would cover.

By a letter of the same date, the Agent of the United Kingdom Government requested that the issue of a press communiqué, decided upon by the Sub-commission, be deferred.

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In two notes verbales of 24th and 25th September 1957, the Agent of the United Kingdom Government also drew the President's attention to "the most serious breach of secrecy which has yet occurred during proceedings", in connection with Applications Nos. 176/56 and 299/57. These two notes verbales were the subject of an informal exchange of views between some members of the Sub-commission, on 25th and 26th September 1957, at The Hague.

57. During the tenth session of the plenary Commission, the Sub-commission held four sittings (9th - 12th October 1957), at which it adopted its reply to the two above-mentioned letters of 20th September 1957.

The Sub-commission's reply to the request for clarifications was drafted by its President on 10th October 1957 in the following terms:

"I have the honour to refer to your letter of 20th September 1957, requesting clarification of the decision taken by the Sub-commission of the European Commission of Human Rights on 6th September 1957, concerning an investigation in Cyprus. In your letter you requested clarification in particular on the following two points:

- (a) the facts to be investigated in order to enable the Sub-commission to judge as to the existence and extent of a public danger threatening the life of the nation for the purposes of Article 15 of the Convention;
- (b) the nature of the enquiry concerning curfew and the period over which the enquiry as to curfew will relate.

Your letter was duly considered by the Sub-commission at its session on 9th October and I have been requested to reply to you as follows:

The Sub-commission has taken fully into consideration the facts and arguments presented by the Government of the United Kingdom in regard to the question of an investigation on the spot in Cyprus. The Sub-commission does not fail to recognise the weight which, in matters arising under Article 15 of the Convention, it is proper to give to the views and to the evidence put forward by the Government of the territory concerned. Nevertheless, the Sub-commission considers that, in a case such as the present and in the circumstances now obtaining in Cyprus, it would not be appropriate for matters arising under Article 15 of the Convention to be appreciated by the Commission only on the basis of the evidence and views of the interested Governments. Accordingly, the Sub-commission, at its meeting of 6th September, decided that it was necessary to obtain direct knowledge of the facts relating to the existence and extent of a public danger threatening the life of the nation in Cyprus. The enquiries which the Sub-commission has in mind to make on the spot are first to obtain information concerning these matters directly from representatives of the central and local Government in Cyprus and secondly to supplement this information by putting questions to selected representatives of the various sections of the community in Cyprus.

As to curfew, the Sub-commission has in mind to investigate (1) the application of the curfew laws in recent months in connection with the removal of slogans and (2) possibly some applications of the curfew laws in the period before March 1957.

The Sub-commission takes this opportunity of emphasising that the investigations which it has in mind in regard to matters arising under Article 15 and in regard to curfew are solely for the purpose of enabling it to discharge its task of establishing the relevant facts under Article 28 (a) of the Convention. The Sub-commission will carry out these investigations on the spot without the Agents of the Parties being in attendance.

The Sub-commission has given consideration to the request of the United Kingdom Government that the publication of its Decision concerning an enquiry on the spot should be deferred in case the United Kingdom Government should wish to ask for a review of the Decision in the light of the clarifications now provided by the

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Sub-commission. Having regard, however, to the nature of the investigations which the Sub-commission proposes to make in Cyprus, it does not think that there is any occasion for a review of its Decision nor consequently for a postponement of the publication of that Decision. It believes that the details of the enquiry should be clarified in discussions with the Agent of the United Kingdom Government concerning the practical arrangements for the Sub-commission's enquiry on the spot. It trusts that the United Kingdom Government may now be in a position to enter into such discussions.

The Sub-commission considers that, having regard to the need for the Sub-commission to complete its report as quickly as possible, to which the Agent of the United Kingdom Government has drawn attention, it is desirable to publish its Decision to visit Cyprus now in order that the necessary preparations can be made. I have informed you of this Decision in my further letter of today's date."

58. The decision of the Sub-commission to carry out its investigation on the spot without the Agents of the Parties being in attendance gave rise to a protest on the part of the Agent of the Greek Government, who, by letters of 11th and 12th October 1957, gave his reasons for considering the presence of the Agents to be necessary (Docs. A 35.792 and 35.796). On 12th October 1957, the Sub-commission replied that it would conduct its enquiry without the Agents of the Parties being present (Doc. A 36.360).

59. The two notes verbales of 24th and 25th September 1957 (paragraph 56 above) in which the United Kingdom Government complained of a breach of secrecy were considered by the plenary Commission at its sitting of 12th October 1957. Having noted the documents placed before it and particularly a letter of the Agent of the Greek Government, dated 9th October 1957 (Doc. A 36.221), the Commission was unanimous in recognising the seriousness of the question referred to it. It noted with regret that in spite of the statement made by its President at the hearing of 30th August 1957, unauthorised information had appeared in the press concerning the decision reached by the Sub-commission on 6th September 1957. It considered that this leakage of information constituted a serious breach of the obligation to maintain secrecy which rested upon all participating in the proceedings of the Commission or Sub-commission.

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60. By letter of 8th November 1957, the Agent of the United Kingdom Government informed the Sub-commission that his Government was prepared to furnish the necessary facilities for an investigation in Cyprus. For reasons given in the letter, he proposed that discussion regarding practical arrangements should take place in London during the last week of November and expressed the hope that the Sub-commission would indicate in advance its views on the facilities it considered desirable and on the methods of the investigation.

On 26th and 27th November 1957, a meeting took place at the Foreign Office in London to discuss administrative arrangements for the investigation in Cyprus (Doc. A 37.510).

61. On 16th December, the Sub-commission held a meeting and discussed further the administrative arrangements for the enquiry which was entrusted to six of its members, namely:

MM. M. Sørensen, Chairman of the Investigation Party,
C.H.M. Waldoek, C.Th. Eustathiades, A. Süsterhenn,
J. Crosbie and F.M. Dominedo.

62. The Investigation Party began its work in Cyprus on 13th January 1958. From 14th to 18th January, it interviewed the following persons at NICOSIA:

Mr. A.F.J. REDDAWAY, Administrative Secretary,
Brigadier FITZGEORGE BALFOUR, Chief of Staff to the
Director of Operations,

M. M. MUNIR, Solicitor-General,

Lt. Col. G. WHITE, Chief Constable,

Mr. W.G. TUDHOPE, Director of Education,

Mr. T.P. LIGHTBODY, Deputy Director of Education,

Mr. B.G. WESTON, District Commissioner, Nicosia,

The Most Rev. Bishop ANTHIMOS of Kitium,

Dr. Th.N. DERVIS, C.B.E., Mayor of Nicosia,

Mr. Stelios PAVLIDES, C.M.G., Q.C., Chairman of the Cyprus
Bar Council.

M. Georgios CHRYSSAFINIS, Secretary-General of the Cyprus Bar,

M. John KLERIDES, Q.C., Barrister, Chairman of the Human
Rights Committee at Nicosia,

M. EMILIANIDES, Barrister, Member of the Committee of Human
Rights at Nicosia,

His Eminence the MUFTI of Nicosia,

M.R. DENKTASH, Chairman of the Federation of Cyprus Turkish
Associations,

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- M. Umit SULEIMAN, Barrister,
M. Osman OREK, Barrister, Chairman of the Turkish Town
School Committee,
M. ORHAN, Manager of the Turkish Bank of Nicosia, Ltd.,
M. SAVVIDIS, Chairman of the Cyprus Federation of Trade
and Industry,
M. MONTIS, Secretary of the above Federation,
M. SEVERIS, President of the Association of Industrialists,
M. LIATOS, Acting Secretary of the Cyprus Workers'
Confederation,
M. ZIARTIDES, Secretary of the Pan-Cyprian Federation of
Labour,
M. MICHAELIDES, Assistant Secretary of the Pan-Cyprian
Federation of Labour,
Father RUFINO, O.F.M., Catholic Church of Nicosia,
Mr. C.E. RIDGWAY, British Residents' Association,
Father Khoran JOULIJIAN, Acting Head of the Armenian
Church in Cyprus,
Father J. FORADARIS, Vicar General of the Maronite Church,
M. Georgios HATZINIKOLAOU, Chief Editor of the newspaper
"Eleftheria",
M. Vias MARKIDIS, Chief Editor of the newspaper "Ethnos",
Mr. Charles FOLEY, Director of the Times of Cyprus,
M. Ahmed Djemal GAZIOGLU, Journalist and lecturer at the
Ataturk Institute, Nicosia,
M. C. SPYRIDAKIS, Director of the Pancyprriot Gymnasium
at Nicosia,
M. S. EVANGELIDES, Secretary of the Schools' Supervision
Board,

On 20th January, the Investigation Party visited the
detention camp at PYLA where it interviewed:

- Mr. HAYMAN, Commander of the Camp,
Mr. LEWIS, official responsible for the release of
detainees,
M. Renos LYSSIOTIS, Barrister,
M. Phidias PARASKEVAIDES, Mayor of Lapithos,
The Rev. Archimandrite Constantinos LEFKOSSIATIS, Director
of the Orthodox Theological College
at Nicosia,
M. Isihios SOFOLEOUS, business executive,
M. Andronicos CHARALAMBOS, electrician.

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The Investigation Party then proceeded to FAMAGUSTA where it interviewed:

M. Andreas Ch. POUYOUROS, Mayor of Famagusta,
M. G.Z. MYLONAS, Barrister, President of the Human Rights
Committee at Famagusta,
M. S. HADJI COSTAS, Mayor of Akanthou,
M. Loucas GRIGORIOU, Mayor of Lefkoniko,
Dr. Niaza MANIERA, Representative of the Turkish Community
of Famagusta,
Mr. Allan GILLIES, District Commissioner of Famagusta.

On 21st January the Party visited the village of MILIKOURI where it interviewed:

M. Panayiotis POLYDOROU, Priest of Milikouri,
MM. FANTIS, PELIKANOS and RASPOPOULOS, representatives of
the population.

The Party also heard statements by Mr. WAYNE, Commissioner of Troodos District and Brigadier FITZGEORGE BALFOUR, Chief of Staff to the Director of Operations.

That evening and the morning of the next day, 22nd January, were spent at PAPHOS where the Party interviewed:

M. Jacoves JACOVIDIS, Mayor of Paphos,
M. MUFTIZADE, District Commissioner,
M. Shakir LIKAY, Barrister, Representative of the Turkish
Community.

On the afternoon of 22nd January, the Party proceeded to LIMASSOL where it interviewed:

M. Costas PARTASSIDIS, Mayor of Limassol,
Mr. F.M.G. WILLIAMS, District Commissioner,
Mr. ROSS-CLUNIS, former District Commissioner of Limassol,
Mr. MORGAN, Superintendent of Police,
Sir Paul PAVLIDES, ex-Member of the Executive Council,
Dr. N. DENIZER, Chairman of the "Cyprus is Turkish" Party
for the Limassol district.

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On the 23rd January, the Party first visited the village of APHANIA where it heard statements by representatives of the Turkish and Greek communities. It then proceeded to FAMAGUSTA where it interviewed representatives of the former Turkish community of the village of ASHA.

In the afternoon of that day, the Party continued its investigation in the villages of PARALIMNI and PHRENAROS, where it heard statements by representatives of the population. After these interviews the Party returned to FAMAGUSTA where it met Mr. Allan GILLIES, District Commissioner, in the evening.

On 24th January the Party again met at Nicosia where the following gave evidence:

M. Christakis LOIZIDES, Barrister, Municipal Councillor
of Morphou,
Mr. G.B. WESTON, District Commissioner of Nicosia,
Mr. C. GRIFFITH WILLIAMS, former Chief Justice, Chairman
of the Advisory Committee for
the Release of Detainees,
Mr. LENNARD, Secretary to the Cyprus Government, in charge
of press and information,
Mr. A.F.J. REDDAWAY, Administrative Secretary,
M. G.S. SAVVIDES, District Commissioner of Larnaca.

63. Having completed its investigation, the Party drew up its report which was presented to the plenary Commission.

V. THE DRAWING UP OF THE REPORT OF THE SUB-COMMISSION TO THE PLENARY COMMISSION

64. Although neither the Convention nor the Rules of Procedure specifically provided for a report to be prepared by the Sub-commission for the plenary Commission, the Sub-commission recognised at once that such report would be the most suitable form in which it could submit the results of its work to the Commission.

As regards the scope and nature of the material submitted, the Sub-commission, after having deliberated, decided at its sitting of 20th November 1956, that its report would contain:

- a statement of the facts ascertained as a result of hearing the Parties, and possibly of an enquiry;
- a summary of the legal arguments and of the evidence submitted by the Parties;
- an account of the Sub-commission's efforts to secure a friendly settlement in the matter.

M. Eustathiades dissented from this decision of the Sub-commission and, after the voting handed the President the following written statement for insertion in the report:

"I have the honour to refer to a few points which were raised in the deliberations during which I had an opportunity of expressing my views on the relationship between the work of the Sub-commission and of the Commission. I wish to repeat that I myself am not in agreement with a broad interpretation which would extend the scope of the Sub-commission's work beyond that of Articles 28 to 30 of the Convention. In my view Article 28 means that the Sub-commission, after an examination of the case with the representatives of the Parties and, if need be, after an investigation, shall (1) ascertain the facts and (2) place itself at the disposal of the Parties with a view to securing a friendly settlement. It seems to me that this 'ascertaining of the facts' cannot extend beyond the facts themselves and embrace legal aspects. Moreover the Sub-commission is empowered only to 'ascertain' the facts - formal 'finding' of the facts being a matter for the Commission by virtue of Article 31 of the Convention. Conversely, the Commission may not intervene until the Sub-commission has completed the task described in the above-mentioned Articles of the Convention."

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All members of the Sub-commission except M. Eustathiades considered that the arguments put forward by both parties formed an integral part of the facts of the case which the Sub-commission was required to ascertain.

65. The Sub-commission adopted its report to the plenary Commission at the session from 10th-15th March 1958.

Chapter IV. - THE ATTEMPT TO SECURE A FRIENDLY SETTLEMENT

66. On the last day of the hearings which took place before the Sub-commission from 14th to 18th November, 1958, the President, before closing the session made the following statement to the Parties:

"The Sub-commission draws the attention of the Parties to Article 28, paragraph (b), of the Convention, under which the Sub-commission is required to place itself at the disposal of the Parties with a view to securing a friendly settlement of the matter on the basis of respect for Human Rights as defined in the Convention.

The Sub-commission invites the Agents of the Parties to consider whether, in the light of the proceedings which have taken place up to date, they wish to avail themselves of the good offices of the Sub-commission with a view to examining the possibilities of a friendly settlement. The Sub-commission would be glad to be informed of the views of the Parties on this point as soon as convenient.

At the same time, the Sub-commission reserves the right itself to take up at a later stage the question of a friendly settlement between the Parties, if the Sub-commission should consider it appropriate." (Doc. A 30.768, page 199).

The Agent of the Greek Government replied in the following terms:

"We thank the Sub-commission for calling our attention to Article 28, paragraph (b) of the Convention. Frankly, I do not believe that the good offices of the Sub-commission can be of assistance either in solving the Cyprus problem or in settling the questions which form the subject of our Application.

As regards the first matter, the Governments concerned have normal diplomatic relations, and any new proposal made to my Government will receive the most careful attention.

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With regard to the violations of human rights complained of in our Application, frankly I can see no possibility of conciliation otherwise than by the withdrawal of the measures complained of, or most of them.

However, should the Sub-commission at any time wish to make suggestions to the parties, we would examine them with the most sincere desire to reach a satisfactory conclusion. At the same time I hope that this part of the Sub-commission's task will not hold up the work of establishment the facts." (Doc. A 30.768, pp. 199-200).

The Agent of the United Kingdom Government took formal note of the President's statement and said that he would bring it to the attention of his Government. He also felt bound to draw his Government's attention to the reply made by the Agent of the Greek Government.

67. The United Kingdom Government's reply to the statement of the Sub-commission was transmitted by a letter from the United Kingdom Agent dated 14th December 1956. The relevant passage was as follows:

"With reference to the statement by the President of the Sub-commission at its meeting on November 18th, calling the attention of the Parties to the duty of the Sub-commission under Article 28 (b) of the Convention, to place itself at the disposal of the Parties for the purpose of conciliation, I am to say that the United Kingdom Government do not at present wish to avail themselves of the good offices of the Sub-commission with a view to examining the possibilities of a friendly settlement, but that they have no objection to the Sub-commission or its President taking the initiative in this respect. If required I shall be able to attend at Strasbourg, during the week beginning December 17th 1956, for the purpose of receiving any indications in this regard which the Sub-commission or its President may give." (Doc. A 31.189).

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68. At its meeting of 18th December 1956, the Sub-commission considered further the question of conciliation in the light of the replies received from the Parties. After due deliberation, the Sub-commission unanimously agreed that it should persevere in its attempts to secure a friendly settlement by putting certain proposals of its own to the Parties and that these should be cast in a flexible form. It took into consideration its duty not to pre-judge an opinion on the question whether there had been a breach of the Convention. The plenary Commission, which alone was competent in this matter, would be called upon to state such opinion if attempts at conciliation failed (cf. Article 31 of the Convention).

The Sub-commission decided, as a first stage and without prejudice to any other suggestion it might subsequently think fit to make, to include the following points among its proposals for a friendly settlement:

- (a) abolition of the punishment of whipping, provided for by Regulation 75 (2) of "The Emergency Powers (Public Safety and Order) Regulations, 1955", (No. 731), amended by Amendment No. 3 of 15th December 1955;
- (b) abolition of collective punishment imposed under "The Emergency Powers (Collective Punishment) Regulations, 1955", (No. 732), amended by "The Emergency Powers (Collective Punishment) (Amendment) Regulations, 1955", (No. 819) of 21st December 1955.

With regard to the curfew, imposed in pursuance of "The Curfews Law, 1955" (Nos. 17 and 47), the Sub-commission decided to point out to the United Kingdom Government that this measure could properly be used only for the maintenance of public safety and order.

As far as the broader aspects of the Cyprus problem were concerned, the Sub-commission decided to confine itself for the time being to making available its good offices to the Parties concerned, at the same time stressing the close connection between those broader aspects and the respect for human rights in the Island. (cf. Doc. A 31.248).

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69. While the Sub-commission was framing the above decisions, the Permanent Representative of the United Kingdom to the Council of Europe transmitted by letter dated 18th December 1956 the text of a public statement which was being made on that date in Nicosia on behalf of the Governor of Cyprus concerning the relaxation of certain security measures.

The text of this statement was as follows:

"Within the next day or so the constitutional proposals prepared by Lord Radcliffe will be published and the people of Cyprus will have an opportunity of studying them for themselves. It is the Governor's earnest hope that these proposals will mark the beginning of a new and happier chapter for Cyprus and its people.

If this opportunity of making a fresh start is seized rapid progress should be possible towards restoring peace and harmony in the island. The Governor has already made clear his intention to relax the emergency measures progressively as conditions improve. As an earnest of that intention and in the hope that this may lead to a relaxation of tension and the creation of a better atmosphere for the consideration of the Radcliffe proposals, the Governor has given instructions that the following steps should be taken forthwith.

(a) The Emergency Regulations under which males under the age of 18 years may be sentenced to be whipped for certain specified offences will be revoked.

(b) The Emergency Powers (Collective Punishment) Regulations, under which fines may be levied collectively on inhabitants of particular areas, and shops and dwelling houses in such areas may be closed, will be revoked as from tomorrow.

(c) Places of public resort or entertainment will not in future be closed except temporarily as part of a particular anti-terrorist operation in a given area or for the purpose of denying the use of particular premises to terrorists.

(d) Regulations requiring persons to obtain exit permits whenever they leave the Colony are to be relaxed, so that all categories of persons will, on application, be given exception from this, excepting only certain individuals who are known to have been implicated in "EOKA" activities.

(e) The new regulations providing for the suspension of publications will be amended in such a way as to put it beyond all possible doubt that fair and honest comment or criticism regarding Government policy and actions will not expose these publications to suspension.

(f) A further review will be undertaken of the cases of all persons detained either under the Detention of Persons Law or under the Emergency Regulations with a view to releasing any who can be set at liberty without serious prejudice to the conduct of security operations. As a first step some twenty-five are to be released tomorrow subject to certain restrictions on their movements and activities. It is hoped that it will be possible to make such further releases from detention as conditions in the island improve.

The Governor wishes to make it clear that his determination to prosecute, with all possible vigour the operations against terrorists remains unchanged." (Doc. A 30.835).

The Sub-commission, having taken note of the above statement, decided to defer consideration of the new situation thus created until its meeting of the next day, 19th December 1956.

70. On 19th December 1956, the Sub-commission adopted the following statement which was sent to the Agents of the two Parties:

"The European Sub-commission of Human Rights during its meeting at Strasbourg on 18th December 1956, after deliberating, unanimously agreed that it had not only the power but also the duty to continue its efforts for a friendly settlement, as provided for in paragraph (b) of Article 28 of the European Convention on Human Rights, by communicating to the Parties on its own initiative certain proposals (Procès verbal of the session of 18th December 1956).

After this decision had been taken, the Sub-commission was notified by the Permanent Representative of the United Kingdom Government to the Council of Europe of the public statement made at Nicosia on behalf of the Governor of Cyprus on 18th December 1956, at 18.00 hours.

The Sub-commission notes with satisfaction that according to the terms of this statement the following laws have been revoked:

- (a) the Emergency Regulations under which males under the age of 18 years may be sentenced to be whipped for certain specified offences;
- (b) the Emergency Powers (Collective Punishment) Regulations, under which fines may be levied collectively on inhabitants of particular areas, and shops and dwelling houses in such areas may be closed.

It also notes with satisfaction that certain other modifications are to be made in the application of special legislative and administrative measures now in force in Cyprus.

The Sub-commission at the same time observes that a number of the legislative and administrative measures mentioned in the Application of the Greek Government are to remain in force in Cyprus, and that these measures include arrest without warrant, detention and deportation.

The Sub-commission, when examining these questions, cannot leave out of consideration the wider political problems relating to the constitutional status of Cyprus. The Sub-commission notes that by formulating constitutional proposals and by the relaxation of emergency measures prior to the publication of these proposals the United Kingdom Government recognises the interdependence between the measures of which the Sub-commission is seized and the general situation in regard to Cyprus.

The Sub-commission considers that these developments have created a climate favourable to pursuing the initiative which it has thought right to take for the purpose of securing a friendly settlement on the basis of respect for human rights.

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The Sub-commission therefore proposes to the Parties that they should accept a friendly settlement on the following basis:

- (1) The United Kingdom Government should instruct the Governor to draw the attention of the Cyprus authorities to the fact that under the relevant legislation the imposition of curfew is strictly limited to cases where this measure is expedient in the interests of public safety and for the maintenance of public order.
- (2) The United Kingdom Government should fully inform the Secretary General of the Council of Europe concerning those of the emergency laws and regulations which are now to be maintained in force in Cyprus as well as any modification of these provisions in the future.
- (3) The Greek Government should use their influence with those who control radio broadcasts from Greece with a view to ensuring that they refrain from broadcasts which might be considered as likely to incite persons in Cyprus to acts of violence.

Furthermore, in view of the fact that the full enjoyment in Cyprus of the human rights protected by the Convention is closely bound up with the solution of the political and constitutional problems, the Sub-commission holds itself at the disposal of the Parties with a view to facilitating the efforts of the Parties to obtain a friendly solution of these problems." (Doc. A 31.243).

71. The Sub-commission subsequently instructed three of its members. MM. A. Süsterhenn, M. Sørensen and J. Crosbie, to meet at Strasbourg on 18th January 1957, to receive the replies of the Parties, hear their observations, give them any explanations and clarifications necessary and examine with them the possibilities of a friendly settlement. It was arranged that the report of these three members should be considered by the Sub-commission at a short session beginning on 31st January 1957.

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72. In a letter of 14th January 1957, the Agent of the United Kingdom Government transmitted the following reply to the Sub-commission's proposals:

"I have the honour to refer to your letter of December 20th 1956, and to the Statement of the European Sub-commission of Human Rights for the purpose of obtaining a friendly settlement between the Parties signed by the President of the Sub-commission on December 19th, 1956.

I have the honour to inform you that the Government of the United Kingdom are willing to accept as a basis for a friendly settlement the three proposals set out on page 2 of that Statement.

In this connection, while the United Kingdom Government maintain that the imposition of the curfew has always been limited to cases where this measure is expedient in the interests of public safety and for the maintenance of public order and while they have no reason to suppose that the curfew would be applied otherwise in the future, they are willing to communicate with the Cyprus authorities in the manner suggested.

The United Kingdom Government are also willing to inform the Secretary General of the Council of Europe fully concerning emergency legislation in force in Cyprus as well as any future modification of such legislation. The United Kingdom Government understand that the provision of this information would not in any way alter the rights and obligations of any Party to the Convention on Human Rights or extend the rights and duties of the European Commission of Human Rights whose competence and jurisdiction remain as conferred by and set out in that Convention.

With reference to the last paragraph of your letter of December 20th, I shall be available in Strasbourg on January 18th, 1957, in my capacity as Agent of the United Kingdom Government." (Doc. A 31.918).

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73. The reply of the Greek Government took the form of a statement made by the Greek Government Agent on 18th January 1957, when he appeared before the three-member group. It was as follows:

"1. The Greek Government has noted with satisfaction the improvement in the position of the Cyprus population as a result of the Governor's public statement of 18th December 1956.

2. Although there is every reason to welcome the revocation of the laws permitting the whipping of offenders under the age of 18 years and of the regulations instituting collective punishments, it is nevertheless to be regretted that, by linking these measures with considerations of political expediency, the Governor should have denied them the permanence which would have been desirable.

3. Moreover, as the Sub-commission rightly points out, although the public statement gives promise of a reduction in the number of internments, the decrees involving deprivation of individual liberty mentioned in the Application of the Greek Government have remained untouched, so that the legal issues put before the European Commission of Human Rights in this connection are still unaffected. Even if the announced relaxations in applying the measures complained of are considered from the political standpoint, it must be admitted that no appreciable improvement in the situation can be expected so long as the deportation of Archbishop Makarios continues, in flagrant violation of Article 6 of the Convention. The British Government appears to be aware that there is no one in Cyprus with whom political negotiations can so validly be conducted as with the Archbishop. Hence it did not fail to send emissaries to the Seychelles to ascertain his views on the Radcliffe proposals. As was to be expected, however, the Archbishop refuses to discuss such matters so long as he has not been restored full freedom of movement and the opportunity to consult both his own fellow countrymen and Greek representatives.

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4. Sir John Harding's public statement makes no mention of the measures, referred to in the Greek Application, restricting freedom of opinion, freedom of assembly and freedom of the press, as guaranteed by the Convention. The Greek Government still maintains that, even if it could be assumed that the present situation in Cyprus constituted a "public emergency threatening the life of the nation" - an assumption which it categorically denies - the Commission should still acknowledge that the measures derogating from the Convention ought to have been preceded or accompanied by a notification to the Secretary General of the Council of Europe, and that this action was not taken.

5. The Greek Government regrets that the public statement of the Governor of Cyprus made no reference to the excessive use of the curfew as a method of bringing pressure to bear on the whole or part of the population. Unfortunately, insufficient confidence can be placed in the assurance proposed by the Sub-commission, namely "that under the relevant legislation the imposition of curfew is strictly limited to cases where this measure is expedient in the interests of public safety and the maintenance of public order", in view of the British authorities' refusal to recognise that these limits are plainly exceeded by the imposition of long curfew hours in certain districts, or even by the house confinement of the youth of Nicosia throughout each weekend, which has now been in force for some months.

6. On the other hand, the Greek Government has read with interest in the Governor's statement that there is to be an amendment to the new press control regulations, the text of which it communicated to the Sub-commission in a letter dated 17th December 1956. It would seem desirable that the British Government should transmit the text of the new regulations which have appeared or are about to appear on this subject not only to the Secretary General, as proposed by the Sub-commission, but also to the Sub-commission direct. The regulations in question are no doubt subsequent to the Application, and are not therefore mentioned

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therein, with the result that they could be regarded as outside the Commission's terms of reference and should if necessary form the subject of a new Application. However, such a legalistic attitude would clearly not be in the interests of true justice; there can obviously be no advantage in entrusting the investigation of conditions in Cyprus to a series of Sub-commissions, each of which would have a slightly different membership and would be bound to impede the others in their attempts at conciliation.

7. For this reason, the Greek Government also requests the Sub-commission to be good enough to invite the British Government to furnish information concerning the regulations extending the application of the death penalty and requiring the prior permission of the United Kingdom Attorney-General before charges may be brought against members of the police or the armed forces following complaints by the inhabitants of Cyprus. The first of these measures, by its exceptional nature, seems to transgress the limits laid down in Article 2 of the Convention concerning the death penalty, while the second represents a drastic curtailment of the protection against abuse of power by minor officials, which, under Articles 3, 4, 5, 8, 9, 10, etc., of the Convention, the population has a right to expect of the authorities.

8. With regard to the Sub-commission's proposals to the Greek Government, that, as part of a friendly settlement, they should "use their influence with those who control radio broadcasts from Greece with a view to ensuring that they refrain from broadcasts which might be considered as likely to incite persons in Cyprus to acts of violence", the Government is quite prepared to take such action, although the attitude of the broadcasting stations cannot be entirely dissociated from the attitude of the Greek press which is free. The Greek Government feels bound, however, to point out to the Sub-commission that its chance of success will depend not only on the degree of satisfaction obtained on the points mentioned above, but also on the progress made towards solving the political problem.

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9. With regard to the political problem, the Greek Government has noted with interest that the Sub-Commission holds itself at the disposal of the Parties with a view to facilitating their efforts to obtain a friendly solution of the political and constitutional problems. It should be noted, however, that notwithstanding the great importance it attaches to the settlement of these problems, they are primarily the concern of the population of Cyprus for whom the Greek Government can in no sense be regarded as a substitute.

Thus, in order that the Sub-commission may be in the best position to contribute, as it wishes, to a solution of the Cyprus problem, the Greek Government suggests that the Sub-commission should consult on the spot the most representative elements of the population. This would enable it to judge among other things what basis there is for the allegations in the British Memorial that the movement for self-determination has been whipped up by Athens Radio and by emissaries from Greece and is only in fact supported by a small proportion of the population.

A visit to Cyprus would also enable the Sub-commission to make sure what effective steps have been taken to fulfil the intentions announced by the Governor of Cyprus in his public statement of 18th December 1956." (Doc. A 31.900).

74. The above-mentioned three-member group, which met on 18th January 1957, examined the replies of the two Governments to the proposals of the Sub-commission and they decided to hear the explanations of the two Parties separately.

As a result of their informal interviews with the representatives of both Parties (cf. Docs. A 31.918, Appendices III and IV), the three members submitted to the Sub-commission the following proposals:

- "1. that the Sub-commission should persevere in its efforts to bring about a friendly settlement;
2. that, with this in view, the Sub-commission should propose the release of Archbishop Makarios;

3. that, so far as curfew was concerned, there was no need for any fundamental revision of the Sub-commission's request already accepted by the United Kingdom Government, except to propose to that Government that it verify whether the retention of such measures - e.g. the weekend curfew in Nicosia - was essential for public safety and public order;
 4. that the Sub-commission should request the United Kingdom Government to carry out the promised relaxation of the Press control regulations within a reasonable period and formally notify the Sub-Commission thereof;
 5. that no further proposals were called for with regard to radio broadcasts from Greece, since the Sub-commission's request had been accepted by the Greek Government;
 6. that the proposal made by the Greek Government in paragraph 9 of its statement came within the terms of reference of the Sub-commission, which alone was in a position to decide, in view of the statements of the Parties and its own functions."
(See report of 21st January 1957, Doc. A 31.918.)
75. At its session held on 31st January and 1st February 1957, the Sub-commission, having considered the report of the three-member group and decided to pursue its efforts to bring about a friendly settlement, adopted the terms of the following letter to be set to the Agent of the United Kingdom Government on 1st February 1957:

"The Sub-commission of the European Commission of Human Rights, at its meeting at Strasbourg on 31st January 1957, took note of the written communications received from the Governments of the United Kingdom and Greece in reply to its Statement of 19th December 1956, for the purpose of obtaining a friendly settlement. The Sub-commission also took account of the confidential report of its three members who met the representatives of each Party on 18th January 1957.

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The Sub-commission notes with satisfaction that the three propositions for a friendly settlement contained in its statement of 19th December 1956, are acceptable to the Government of the United Kingdom. It also notes that the third proposition is acceptable to the Greek Government and that the first and second propositions are considered by that Government to be appropriate steps towards a settlement which would, however, have to include additional measures.

The Sub-commission concludes that all the possibilities for a friendly settlement of the matter are not yet exhausted and that it is called upon to make a further effort to obtain a settlement without at this stage expressing any view on the legal issues involved. On the other hand, as the Agent of the Government of the United Kingdom is aware, the Sub-commission has been given to understand that a friendly settlement is not possible while the orders for the detention and deportation of Archbishop Makarios and his companions are maintained in force.

Accordingly, before deciding whether it would be useful to put forward any propositions in regard to this question, the Sub-commission would be pleased to be informed whether, in addition to the three points mentioned in the Statement of 19th December 1956, Her Majesty's Government would be prepared to consider any propositions in regard to the matter of the detention and deportation orders formulated on lines acceptable to Her Majesty's Government. The Sub-commission at the same time asks Her Majesty's Government to be so good as to let the Sub-commission have the views of Her Majesty's Government on this point not later than 1st March 1957.

If the addition of a proposition in regard to the detention and deportation orders is agreeable to Her Majesty's Government, the Sub-commission would propose to continue its efforts for a friendly settlement always, of course, on the basis that the legislation concerning corporal punishment and collective punishment is and continues to be revoked. The Sub-commission takes this opportunity of informing Her Majesty's Government that, in the light of the discussion of the three members with each of the Parties, it has in mind to revise the three propositions contained in the

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Statement of 19th December 1956. (...)" (The text of these propositions are embodied in the further Statement of the Sub-commission of 7th March 1957, cf. para. 78 below.) (Doc. A 32.120).

76. The Sub-commission also decided to send the following letter to the Agent of the Greek Government on 1st February 1957:

"The Sub-commission of the European Commission of Human Rights, at its meeting at Strasbourg on 31st January 1957, took note of the written communications received from the Governments of the United Kingdom and Greece in reply to its Statement of 19th December 1956, for the purpose of obtaining a friendly settlement. The Sub-commission also took account of the confidential report of its three members who met the representatives of each Party on 18th January 1957.

The Sub-commission notes that the three propositions for a friendly settlement contained in its statement of 19th December 1956, are acceptable to the Government of the United Kingdom and that the first and second propositions are considered by that Government to be appropriate steps towards a settlement which would, however, have to include additional measures.

The Sub-commission concludes that all the possibilities of a friendly settlement of the matter are not yet exhausted and that it is called upon to make a further effort to obtain a settlement without at this stage expressing an opinion on the legal issues involved.

The Sub-commission has, therefore, addressed to the Government of the United Kingdom an enquiry for the purpose of exploring the possibility of including in the Sub-commission's propositions for a friendly settlement some additional measures to meet certain points raised by the Government of Greece in discussion with the three members on 18th January 1957. The Sub-commission has asked that it may receive the reply of the United Kingdom Government not later than 1st March 1957, and the Sub-commission will communicate its views to the Greek Government as soon as it has had an opportunity of considering the reply of the Government of the United Kingdom.

The Sub-commission wishes to take this opportunity to reaffirm that a revocation of the existing emergency legislation in Cyprus - apart from any detailed legal consideration - depends very largely on a cessation of the present state of violence in the island.

The Sub-commission reserves the right to revert to this question in the light of the reply of the Government of the United Kingdom". (Doc. A 32.121).

The Sub-commission recognised that both the above letters were of a unilateral and confidential nature, comparable with the approaches made to the representatives of the two Parties by MM. A. Süsterhenn, M. Sørensen and J. Crosbie and that their contents would not, therefore, be revealed to the Party to which they were not addressed.

It decided, moreover, to await the replies of the Parties to these letters before considering the expediency of holding an investigation on the spot as requested by the Greek Government.

77. The reply of the United Kingdom Agent to the confidential letter mentioned above was communicated on 27th February 1957. (The text of this letter appears in para. 78 below.)

78. At its sittings held on 5th, 7th and 8th March 1957, the Sub-commission defined its position in a further Statement of 7th March to the Parties which was as follows:

"1. The Sub-commission of the European Commission of Human Rights, in its previous Statement, dated 19th December 1956, on the question of obtaining a friendly settlement between the Parties, took note with satisfaction that on the previous day the Government of Cyprus had revoked the following laws:

- (a) The Emergency Regulations under which males under the age of 18 years might be sentenced to be whipped for certain specified offences.
- (b) The Emergency Powers (Collective Punishment) Regulations under which fines might be levied collectively on inhabitants of particular areas and shops and dwelling houses in such areas might be closed.

It also took note with satisfaction that certain other modifications were to be made by the Government of Cyprus in the application of special legislative and administrative measures then in force in Cyprus, namely, the following modifications:

- (a) Places of public resort or entertainment would not thereafter be closed except temporarily as part of a particular anti-terrorist operation in a given area or for the purpose of denying the use of particular premises to terrorists.
- (b) Regulations requiring persons to obtain exit permits whenever they leave the Colony were to be relaxed, so that all categories of persons would, on application, be given exception from this requirement, excepting only certain individuals who are known to have been implicated in "EOKA" activities.
- (c) The new Regulations providing for the suspension of publications would be amended in such a way as to put it beyond all possible doubt that fair and honest comment or criticism regarding government policy and actions would not expose these publications to suspension.
- (d) A further review would be undertaken of the cases of all persons detained either under the Detention of Persons Law or under the Emergency Regulations with a view to releasing any who can be set at liberty without serious prejudice to the conduct of security operations and some 25 persons would be released immediately subject to certain restrictions on their movements and activities.

2. The Sub-commission at the same time observed that a number of the legislative and administrative measures mentioned in the Application of the Greek Government were to remain in force in Cyprus, and that these measures included arrest without warrant, detention and deportation.

3. The Sub-commission further noted that by formulating constitutional proposals and by the relaxation of emergency measures prior to the publication of these proposals the United Kingdom Government recognised the interdependence between the measures of which the Sub-Commission is seized and the general situation in regard to Cyprus.

4. The Sub-commission then proposed to the Parties that they should accept a friendly settlement on the following basis:

- (1) The United Kingdom Government should instruct the Governor to draw the attention of the Cyprus authorities to the fact that under the relevant legislation the imposition of curfew is strictly limited to cases where this measure is expedient in the interests of public safety and for the maintenance of public order.
- (2) The United Kingdom Government should fully inform the Secretary General of the Council of Europe concerning those of the emergency laws and regulations which are now to be maintained in force in Cyprus as well as any modification of these provisions in the future.
- (3) The Greek Government should use their influence with those who control radio broadcasts from Greece with a view to ensuring that they refrain from broadcasts which might be considered as likely to incite persons in Cyprus to acts of violence.

5. Finally, in view of the close link between the full enjoyment in Cyprus of the Human Rights protected by the Convention and the solution of the constitutional and political problems, the Sub-commission placed itself at the disposal of the Parties in regard also to the friendly solution of these problems.

6. The United Kingdom Government in a letter of 14th January 1957, accepted, as a basis for a friendly settlement, the three proposals set out in paragraph 4 above. In so doing, it made two points:

- (a) It maintained that the imposition of curfew had always been limited to cases where this measure was expedient in the interests of public safety and for the maintenance of public order.

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- (b) It understood that the provision of information to the Secretary General of the Council of Europe concerning the Emergency legislation in force in Cyprus, as well as any future modification of such legislation, would not alter the rights and obligations of any Party to the Convention or extend the rights and duties of the Commission.

7. The Greek Government in a written statement submitted to the Sub-commission on 18th January 1957, expressed itself as quite prepared with respect to radio broadcasts from Greece to take the action indicated in the third of the Sub-commission's propositions set out in paragraph 4 above. At the same time it made the following points:

- (a) While welcoming the revocation of the laws allowing whipping of offenders under the age of 18 years and the regulations instituting collective punishments, it regretted the form of the announcement as not indicating that the revocation of these measures was permanent.
- (b) While noting that there was promise of a reduction in the number of internments, it observed that the decreases involving deprivation of individual liberty mentioned in the Application remained untouched and that the legal issues presented to the Commission in this connection were still unaffected. It also emphasised that, even from the political standpoint, no appreciable improvement in the situation could be expected so long as the deportation of Archbishop Makarios continued which it maintained to be a flagrant violation of Article 6 of the Convention.
- (c) It noted that no amelioration had been announced with respect to the measures mentioned in the Application restricting freedom of opinion, freedom of assembly and freedom of the press, as guaranteed by the Convention and maintained that these measures derogating from the Convention ought, on any basis, to have been preceded or accompanied by a notification to the Secretary General of the Council of Europe under Article 15. At the same time, it reiterated its contention that the present situation in Cyprus does not constitute a "public emergency threatening the life of the nation".

(d) It regretted that no amelioration had been announced with respect to what it asserted to be an excessive use of the curfew and expressed doubts as to the efficacy of the assurance to be given by the United Kingdom under the first of the Sub-commission's proposals, having regard to the attitude of the British authorities.

8. The Greek Government also referred to new regulations for the control of the Press, the text of which it had communicated to the Sub-commission in a letter of 17th December 1956. While noting with interest the announcement of the Governor of Cyprus that these new regulations were to be amended, it maintained that the United Kingdom Government should transmit the text of any amending regulations not only to the Secretary General, under the second of the Sub-commission's proposals set out in paragraph 4 above, but also to the Sub-commission direct. In this connection it contended that although the new Press control regulations were subsequent to the Application, it would be unduly legalistic and contrary to the interests of true justice to regard them as outside the Commission's terms of reference. There would be no advantage in making new applications and entrusting the investigation of conditions in Cyprus to a series of Sub-commissions, each with a slightly different membership.

9. The Greek Government took a similar position in regard to certain new regulations extending the death penalty and requiring the prior permission of the Attorney-General in Cyprus before charges may be brought against members of the police or the armed forces following complaints by the inhabitants of Cyprus. It further contended that the first regulation concerning the death penalty, by its exceptional nature, transgressed the limits of Article 2 of the Convention and that the second regulation was a drastic curtailment of the protection against the abuse of power by minor officials to which the population, it alleged, had a right under Articles 3, 4, 5, 8, 9, 10, etc., of the Convention.

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10. As to the settlement of the political problem, the Greek Government, noting that it was primarily the concern of the population of Cyprus, suggested that the Sub-Commission should consult on the spot the most representative elements of the population.

11. A Committee of three Members, appointed by the Sub-commission and composed of M. Süsterhenn, M. Sørensen and Mr. Crosbie, met at Strasbourg on 18th January 1957, and discussed with the Agent of each Party in turn the possibilities of a friendly settlement in the light of the replies of the two Governments. It emerged from these discussions that the Greek Government considered that the questions of detention and deportation were of fundamental importance for the purpose of obtaining a friendly settlement and that no friendly settlement was possible so long as the deportation order against Archbishop Makarios remained in force. On the legal aspects of this question, the Agent of the United Kingdom said that they had been examined as thoroughly as they could be in the United Kingdom and that the notice of derogation sent to the Secretary General had been thoroughly considered and carefully drafted. While ready to refer any point to his Government, he could not hold out any prospect of a change of legal view. On the political aspects of the question, the Agent of the United Kingdom also said that he did not at the moment see any prospect of a change of view. The Archbishop had been asked to renounce the use of terrorism as an instrument for securing political aims in Cyprus and had refused to do so. The United Kingdom Government's attitude towards the Archbishop's position was unlikely to change until he was prepared to adopt a different attitude towards the use of terrorist methods in Cyprus. The Agent of the United Kingdom was prepared to bring the point to the attention of his Government but said that it would be unrealistic not to be discouraging about its probable response.

12. On the Greek Government's side, the following also emerged during the discussion:

- (a) The Greek Government would regard some form of legal undertaking that the corporal punishment and collective punishment laws would remain definitively revoked as a necessary element in a friendly settlement.
- (b) While remarking that there had been an amelioration of the practice in regard to curfew since the Governor of Cyprus' announcement of 18th December 1956, the Greek Government took the view that the requirement concerning curfew contained in the first of the Sub-commission's proposals set out in paragraph 4 above did not go far enough.
- (c) The Greek Government contended that the new regulations concerning control of the Press, extension of the death penalty and legal proceedings against officials, police or armed forces, which had been introduced after the filing of Application No. 176/56, should be taken into account by the Sub-commission not merely in connection with its task of conciliation but also in connection with its consideration of that Application. It argued that where an Application concerns administrative measures any new regulations promulgated in the period up to the conclusion of the work of the Sub-commission should be taken into account. Otherwise, a series of Sub-commissions might have to be established of differing membership and with overlapping functions. At the same time it recognised that if new measures were to be taken into account by the Sub-commission, it might be necessary to hear the Parties again with respect to these measures.
- (d) The Greek Government maintained its suggestion that the Sub-commission should make direct contact with representative elements of the population in Cyprus.

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13. On the United Kingdom Government's side, the following points emerged during the discussion:

- (a) The United Kingdom Government took the position that the new measures do not form part of the present Application. It also represented that the taking of these measures was necessary for the protection of the population and said that it would be impossible for the Government, even for the purpose of obtaining a friendly settlement, to give any undertaking in regard to the introduction of new measures.
- (b) The United Kingdom Government said that the new regulation requiring permission for legal proceedings against officials, police and armed forces had been the subject of much misunderstanding. It did not relate to civil proceedings at all and only provided that prosecutions against officials, police and armed forces for acts committed in the course of their official duties should not be instituted without the permission of the Attorney-General.
- (c) The Agent of the United Kingdom was ready to refer to his Government for their favourable consideration, a suggestion that any general curfew measures, such as the Nicosia weekend curfew, should be re-examined with a view to making certain that their continuance in force was necessary for the maintenance of public safety and order.
- (d) On the wider political and constitutional issues, the United Kingdom Government took the position that the functions of the Commission are those defined in the Convention. The Sub-commission had fulfilled a useful role in dealing with the Human Rights aspects of the problem but it would be a very fundamental step to use it for a totally different, political function. The United Kingdom did not think it a useful step to take, it would raise very basic constitutional questions inside the Council of Europe.

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(e) On the specific question raised by the Greek Government of a visit by the Sub-commission to Cyprus, this appeared to envisage a visit for certain political purposes and to carry the objection to a political use of the Commission a stage further. If, on the other hand, the Sub-commission were to ask for facilities for a visit in connection with the application of the Convention, such a request for such a purpose would certainly receive proper consideration by the United Kingdom Government.

14. The Sub-commission, in the light of the written communications of the two Governments and of the discussions of the Agents with its three members, concluded that all the possibilities of a friendly settlement had not yet been exhausted. On 1st February, therefore, it addressed letters to each of the two Governments.

15. In its letter of 1st February 1957, to the Greek Government the Sub-commission reaffirms its view that a revocation of the existing emergency legislation in Cyprus, leaving aside any legal considerations, depends very largely on a cessation of the present state of violence in the island. It also reserved the right to revert to this question in the light of the United Kingdom Government's reply on certain points which the Sub-commission was raising with that Government.

16. In its letter to the United Kingdom Government, after observing that a friendly settlement did not appear to be possible while the orders for the detention and deportation of Archbishop Makarios and his companions remained in force, it enquired whether, in addition to the three propositions set out in paragraph 4 above, Her Majesty's Government would be prepared to consider any propositions in regard to the matter of the detention and deportation orders formulated on lines acceptable to Her Majesty's Government. The Sub-commission at the same time informed Her Majesty's Government that, in the light of the discussion of the three members with each of the Parties, it had in mind to revise its three earlier propositions so that they would now read as follows:

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- (1) The United Kingdom Government should instruct the Governor to draw the attention of the Cyprus authorities to the fact that under the relevant legislation the imposition of curfew is strictly limited to cases where this measure is expedient in the interests of public safety and for the maintenance of public order. The Cyprus authorities would furthermore keep under review orders imposing curfew for continuing periods with a view to verifying that their maintenance in force is required.
- (2) The United Kingdom Government should fully inform the Secretary General of the Council of Europe concerning those of the emergency laws and regulations which are now to be maintained in force in Cyprus as well as any modification of these provisions in the future, such as the amendment envisaged by the statement issued on behalf of the Governor of Cyprus on December 18th 1956, to the regulations for the suspension of publications.
- (3) The Greek Government should use their influence with those who control radio broadcasts from Greece with a view to ensuring that they refrain from broadcasts which might be considered as likely to incite persons in Cyprus to acts of violence.

The Sub-commission stated that, if the addition of a proposition in regard to the detention and deportation orders were agreeable to Her Majesty's Government, it would propose to continue its efforts for a friendly settlement and asked for a reply on this point not later than 1st March 1957.

17. The reply of the United Kingdom Government was given in a letter of 27th February 1957, and was as follows:

"I have the honour to refer to the letter (H 1583) dated February 1, 1957, from the President of the European Sub-commission of Human Rights.

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This has been carefully considered by the Government of the United Kingdom and they are willing to accept as a basis for a friendly settlement the three revised proposals set out at the end of that letter.

The United Kingdom Government do not wish to dismiss out of hand any proposition that may be made by the Sub-commission before they have seen it. They recall, however, that the detention and deportation of Archbishop Makarios and his companions were decided upon after very careful consideration of the legal position and in the light of the security situation in Cyprus. In the opinion of the United Kingdom Government, that situation has not changed in such a way as to affect the grounds of their decision. They do not believe that any proposition in relation to those persons can usefully be put forward by the Sub-commission until the security situation has changed, whether as a consequence of a settlement of the larger Cyprus problem or otherwise. Therefore, while the United Kingdom Government are grateful for the endeavours of the Sub-commission, they do not believe, particularly in the light of the attitude of the Greek Government, that any proposition of the kind suggested would be likely to yield a settlement of the present case. "

18. At the present stage of the work of the Sub-commission, therefore, the situation appears to be that, while the Greek Government considers a friendly settlement to be impossible so long as the detention and deportation orders with respect to Archbishop Makarios and his companions remain in force, the United Kingdom Government does not believe that any proposition in relation to those persons can usefully be put forward by the Sub-commission until the security situation in Cyprus has changed, whether as a consequence of a settlement of the larger Cyprus problem or otherwise. In these circumstances, the Sub-commission concludes that the possibilities of obtaining a friendly settlement are now small and are almost non-existent unless some material change can be brought about,

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on the one hand, in the situation of Archbishop Makarios or, on the other, in the security situation in Cyprus.

19. The Sub-commission, independently of the question of obtaining a friendly settlement and in order that it may be in a position, if need be, to complete without delay its report to the Commission, deems it necessary to obtain the further views of the Parties on certain outstanding points. It therefore decides to invite the Parties to present their oral observations on these points at a meeting of the Sub-commission to be held at Strasbourg on 28th March 1957. The points on which it desires to hear the further views of the Parties are:

- (1) The legal aspects of the detention and deportation orders with respect to Archbishop Makarios and his companions.
- (2) The question whether and on what basis regulations introduced by the Cyprus Government since the date of the filing of Application No. 176/56 by the Greek Government may be taken into account by the Sub-commission and afterwards the Commission itself in dealing with that Application.

20. In the event that the Sub-commission, after hearing the views of the Parties on point (2) decided to take into account the new regulations in dealing with the merits of Application No. 176/56, it would wish also to hear the arguments of the Parties on the question whether or not the new regulations are in conformity with the provisions of the Convention.

21. The Sub-commission would, in addition, be pleased to be informed by the Government of the United Kingdom either at the oral hearing or in writing whether the Sub-commission and the Commission in any subsequent consideration of the present Application may proceed upon the basis that the laws allowing corporal punishment of males under the age of 18 years and the collective punishment Regulations are and will continue to remain revoked.

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22. The Sub-commission would also be pleased to be informed by the Parties either at the oral hearing or in writing whether, in the event of a final breakdown in the efforts to obtain a friendly settlement, they would be prepared to maintain their acceptance of any of the Sub-commission's three propositions set out in paragraph 16 above and, if so, to what extent." (Doc. A 32.683).

79. This further Statement of 7th March 1957, was followed up by a letter dated 8th March 1957, in which the President of the Sub-commission informed the Parties as follows:

"In its Statement of 7th March 1957, the Sub-commission has recorded what steps it has taken until now with a view to reaching a friendly settlement of the Cyprus case and what has been the attitude taken by the Parties towards the proposals and suggestions put forward by the Sub-commission. In paragraph 18 of its Statement the Sub-commission has indicated that the present position appears to be that 'while the Greek Government considers a friendly settlement to be impossible so long as the detention and deportation orders with respect to Archbishop Makarios and his companions remain in force, the United Kingdom Government does not believe that any proposition in relation to those persons can usefully be put forward by the Sub-commission until the security situation in Cyprus has changed, whether as a consequence of a settlement of the larger Cyprus problem or otherwise."

In view of this situation, the Sub-commission has not deemed it expedient to formulate any new specific proposal for a friendly settlement, but has decided, as set forth in the statement, to invite the Parties to present their oral observations on certain outstanding points at a meeting to be held at Strasbourg on 28th March 1957, in connection with the completion of its report.

The Sub-commission believes, however, that it interprets the wishes of the Parties correctly in holding that meanwhile it should remain vigilant to seize any new opportunities for a friendly settlement.

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The Sub-commission has no wish and no mandate to mix itself in the settlement of the political and constitutional problems of Cyprus. Having regard, however, to the close connection between the security situation in Cyprus and the questions of Human Rights submitted to the Commission, it has felt bound to examine whether it could be of any assistance in finding a way out of the present deadlock caused by the apparent inter-relation between the security situation in Cyprus and the maintenance of the detention and deportation orders in regard to Archbishop Makarios and his companions.

With this end in view it has considered the possibility of bringing about contemporaneously the cessation of violence in the island and the release of Archbishop Makarios and his companions, and whether the good offices of the Sub-commission could be usefully employed for the achievement of this subject. The cessation of violence and the release of Archbishop Makarios and his companions would naturally be expected to be speedily followed by a removal of the emergency laws and in this way to restore to the inhabitants of the island the normal enjoyment of the rights and freedoms guaranteed by the Convention.

If such a role should be entrusted by the Parties to the Sub-commission, the means of action at its disposal such as, for example, certain communications with representatives of the people of the island, formal appeal to the people of the island, would require to be defined by means of an exchange of views with the United Kingdom Government." (Doc. A 32.682).

80. On 16th March 1957, the Agent of the Greek Government sent the following reply to the Sub-commission's letter:

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"My Government has read with interest your communication of 8th March, in which you suggest that the Parties entrust to the Sub-commission the task of obtaining contemporaneously the cessation of violence in Cyprus and the release of Archbishop Makarios.

The Greek Government very much regrets that it cannot agree to this proposal. By making the release of Archbishop Makarios conditional upon the cessation of violence it would appear not only to admit the responsibility which the British authorities impute to the Ethnarch, despite his protestations, but also to agree to the cessation of measures taken in violation of the Convention being subjected to certain conditions. Though there are, therefore, legal obstacles to the fulfillment of the task set out in your letter of 8th March, the Greek Government can only hope that the Sub-commission will nonetheless not give up trying to persuade the United Kingdom Government of the need no longer to detain the Ethnarch.

The recent resolution of the United Nations General Assembly recommending the resumption of negotiations has only served to accentuate the urgency of this release, since the negotiations can be usefully pursued only with the true representatives of the Greek Cypriot people. The Bureau of the Ethnarchy, in a communiqué of 27th February 1957, and the Association of Mayors of the fourteen principal towns in the island, in a resolution a few days later, have reaffirmed that the Greek Cypriot people have no other representative than Mgr. Makarios.

We are quite sure that the day the Sub-commission decides to go to Cyprus and to make contact with the population it will soon be convinced of the accuracy of our statement in this respect.

Pending therefore the removal of the obstacle which for more than a year has prevented the resumption of negotiations, I can only approve the decision of the Sub-commission to pursue its mission of enquiry, I have duly noted that a meeting for this purpose has been arranged for 28th March, and I shall not fail to attend with my counsel, MM. Mercouris and Rolin." (Doc. 32.881).

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81. Furthermore, in a letter of 12th March 1957, the Agent of the Greek Government requested the Secretariat to telegraph to the President of the Sub-commission and to Mr. Vallat the following statement addressed to the President:

"With reference to my communication of 16th March I have the honour to call your attention to the proclamation of M. Dighenis. I attach the text which was published in the world press. You will see that while my Government was not able to take the responsibility of agreeing to the Sub-commission's suggestions, the initiative taken by EOKA now puts the onus of re-opening negotiations, in accordance with the recommendation of the United Nations General Assembly of 20th February upon the United Kingdom Government alone.

In view of the importance of this new development and the need to know the United Kingdom Government's attitude before the meeting of 28th March, you may perhaps feel able to suggest to Mr. Vallat that, considering the present prospects of the liberation of Archbishop Makarios and his return to Cyprus, a communication from the United Kingdom Government on the lines of these suggestions would be a favourable development." (Doc. 32.925).

82. The United Kingdom Government's reply to the letter of the President of the Sub-commission dated 8th March 1957, was given orally by the Agent of that Government during his appearance before the Sub-commission on 28th March 1957.

At the beginning of the sitting, the Agent of the United Kingdom Government made the following statement:

"Mr. President, if you have no objection I should at the same time, like to make a few remarks about your letter of March 8th, which was sent at the same time as the Statement. In your letter of March 8th you said that the Sub-commission had considered the possibility of bringing about contemporaneously the cessation of violence in Cyprus and the release of Archbishop Makarios and his

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companions. In his letter of March 16th the Agent for the Greek Government said that they could not agree to the suggestion that the Parties should entrust this task to the Sub-commission. By a letter dated March 20th I, writing as Agent for the United Kingdom Government, told the Director of Human Rights that your letter was still under consideration in the United Kingdom. May I assure you, Sir, and members of the Sub-commission that it was not for lack of courtesy or attention that your letter has remained unanswered. The only reason has been the crowded events during the last week or so.

Members of the Sub-commission will no doubt have seen that on March 20th the Secretary of State for the Colonies made a statement in the House of Commons in which he said that Her Majesty's Government were in principle willing to accept the offer by the Secretary General of the North Atlantic Treaty Organisation of his good offices for conciliation on the Cyprus question. His statement continued (and here I quote):

'Her Majesty's Government have noted the declaration of the leader of EOKA that his organisation would suspend its operations as soon as Archbishop Makarios was released. The Governor of the Seychelles is today drawing the attention of the Archbishop to that declaration and to the statement which I am now making. As the House knows, the Archbishop has been asked on many occasions whether he will make a public statement calling for the cessation of violence by EOKA. He is now being asked whether in these new circumstances he is prepared to do so. If, as we hope, he makes a clear statement to this effect a new situation will have been created. In that event Her Majesty's Government will be ready to bring an end to his detention in the Seychelles. There can be no question at this stage of his return to Cyprus.'

The outcome of this latest approach is still uncertain. As members of the Sub-commission will be well aware from the Press, it is actually under discussion now, and meanwhile I submit it would be premature to comment further on your letter." (Doc. A 33.305, pp. 2-3).

83. A few hours after this statement by the United Kingdom Agent, the Sub-commission received notification of the further statement made to the House of Commons by the Secretary of State for the Colonies announcing the release of Archbishop Makarios and his companions.

The Sub-commission took this opportunity of expressing to the Parties:

"its great satisfaction at the new development of the situation with regard to Cyprus, a development which increases the chances of success in obtaining a friendly settlement of the present case."

and calling upon them:

"to reconsider the question of reaching a friendly settlement." (Doc. A 34.316, Appendix IV - Doc. DH/Misc. (57) 16 - See also above, para. 35).

84. On 2nd May 1957, the Agent of the United Kingdom Government sent the following letter to the Director of Human Rights:

"I have the honour to refer to sub-paragraph (3) of paragraph 2 of the decision of the European Sub-commission of Human Rights dated March 29th 1957 (document DH/Misc (57) 15) (1) and to inform you that the following statement was issued by the Government of Cyprus on April 4:

1. The Governor has now decided to take certain steps with a view to creating conditions favourable to a peaceful settlement.

2. The Emergency Regulations are being amended so as to abolish the death penalty for all offences under these Regulations except those of discharging a firearm at a person, carrying a firearm without lawful authority or excuse, and throwing or using a bomb or other explosive with the intention of causing death or bodily harm. In cases which are already the subject of enquiry or

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(1) See above, para. 34.

legal proceedings and which involve offences other than those excepted above, the effect of the amendment will be to substitute the punishment of imprisonment for the death penalty provided the case has not proceeded to the stage of an information having been signed against the accused.

3. As for cases which have already proceeded beyond that stage the Governor will, as already stated by the Secretary of State in the House of Commons, consider the cessation of violence as a relevant consideration of a public nature to be taken into account in the exercise of the prerogative although it would not be the only or decisive factor.

4. The Emergency Powers (Control of Sale and Circulation of Publications) Regulations 1956 will be revoked.

5. The Bishop of Kitium and the Secretary of the Ethnarchy will be released from house detention.

6. A further review will be undertaken of the cases of all detained persons with a view to releasing any who can now be set at liberty without serious prejudice to public safety and order.

7. The Orders providing for the control of taxis and the various prohibitions on the use of bicycles will be revoked.

8. The Governor will consider further relaxations of emergency measures as conditions in the island make it safe to do so.'

I shall be sending to you as soon as possible copies of the modifications to the Cyprus laws and regulations as required by sub-paragraph (3) of paragraph 2 of the above-mentioned decision."

85. At its seventh session, held from 28th June to 3rd July 1957, the Sub-commission decided to hold a further hearing in the presence of the Parties so that the latter might furnish explanations with regard to the emergency measures introduced in Cyprus since the filing of the Application and comment on developments since the release of Archbishop Makarios. (See above, paras. 43-44, and below, Chapter IX of Part II).

In the light of the Memorials exchanged and the documents produced and having heard the pleadings of the representatives of the Parties, the Sub-commission considered that it should make a new attempt to bring about a friendly settlement. Although the representatives of the Greek Government stressed the need for establishing the facts without delay, the Sub-commission considered itself justified by certain favourable developments in persevering with its task and putting forward further proposals for a friendly settlement.

The Sub-commission therefore prepared a statement dated 1st July 1957 which was read out to the Parties on 3rd July 1957, before the close of the hearing.

This statement was worded as follows:

"The Sub-commission, in its statement to the Parties of 29th March 1957, took note of the decision of the United Kingdom Government concerning the release of Archbishop Makarios from detention and of the declaration made on 28th March 1957 in the House of Commons by the Secretary of State for the Colonies concerning the relaxation of the Emergency Regulations. The Sub-commission expressed its great satisfaction at these developments which appeared to it to increase the chances of obtaining a friendly settlement and called upon the Parties to reconsider the question of reaching a friendly settlement. It further expressed the hope that the United Kingdom Government would re-examine the Emergency legislation in force with a view to making the greatest possible relaxations of that legislation."

The documents submitted by the Parties to the Sub-commission since its session of 28th and 29th March 1957 appear to show that:

- (1) acts of violence have not taken place in Cyprus for upwards of two months but the United Kingdom Government considers that there is still a threat of a resumption of acts of violence on the part of EOKA;

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- (2) there have been some modifications of the Emergency legislation but the great bulk of that legislation remains in force;
- (3) the prospect of a friendly settlement is small so long as the great bulk of the Emergency legislation is still maintained in force in Cyprus.

The Sub-commission notes that during the course of the proceedings to obtain a friendly settlement the Government of the United Kingdom has been pleased:-

- (1) to state that its present policy is not to reintroduce the laws and regulations allowing corporal punishment of males under the age of 18 years and collective punishment;
- (2) to state that it would instruct the Governor of Cyprus to draw the attention of the Cyprus authorities to the fact that under the relevant legislation the imposition of curfew is strictly limited to cases where this measure is expedient in the interests of public safety and for the maintenance of public order and would also request the Cyprus authorities to keep under review orders imposing curfew for continuing periods with a view to verifying that their maintenance in force is required;
- (3) to release Archbishop Makarios and his companions from detention in the Seychelles;
- (4) to introduce certain modifications of the Emergency measures in force in Cyprus and to state that further relaxations of these measures would be considered as conditions in Cyprus permitted;
- (5) to undertake to communicate to the Sub-commission any new laws and regulations enacted in Cyprus which modify any of those laws and regulations which have been made the subject of complaint by the Greek Government before the Sub-commission.

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The Sub-commission also notes that the Greek Government on its side has been pleased to state that it would use its influence with those who control radio broadcasts from Greece with a view to ensuring that they refrain from broadcasts which might be considered as likely to incite persons in Cyprus to acts of violence.

These favourable developments encourage the Sub-commission to make a further effort to obtain a friendly settlement. The Sub-commission notes that the Counsel for the Greek Government desired that the Sub-commission should proceed without delay to the establishment of the facts. Nevertheless the Sub-commission believing that the highest task entrusted to it in the present case is to secure as quickly as possible for the people of Cyprus the full enjoyment of the rights and freedoms protected by the Convention, invites the Parties to consider the following proposition:

- (1) The United Kingdom Government should suspend for a trial period of three or six months the application of all or nearly all of the Emergency measures now in force in Cyprus which prevent the population from enjoying to the full the rights and freedoms protected by the Convention; and in this connection the Government of the United Kingdom would naturally refrain from executing the death sentence in cases to which it was not applicable before the Emergency legislation was brought into force. During the same period the proceedings under the present application would remain in abeyance;
- (2) If at the end of the above-mentioned trial period the freedom from acts of violence which at present exists in Cyprus continues to be maintained, the United Kingdom Government should revoke the whole body of the Emergency measures and the Greek Government should agree to accept a friendly settlement under Article 28 (b) of the Convention;
- (3) If, on the other hand, acts of violence should be resumed during the above-mentioned trial period, the United Kingdom Government would be free to re-examine the situation and the Sub-commission would take up again its consideration of the case."
(Doc. A 35.254, pp. 58-60).

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When it invited the Agent of the United Kingdom Government to reply to the questions put to him in the above Statement of 1st July 1957, the Sub-commission also asked him to transmit his Government's reply to the proposals contained in that Statement for a friendly settlement, if possible, within the same time-limit of three weeks.

86. The Greek Government's reply to the above proposals was transmitted in a letter from its Agent, dated 17th July 1957, which was as follows:

"The Greek Government desires once again to pay a sincere tribute to the persevering effort of the Sub-commission to restore the people of Cyprus, as speedily as possible, to the full enjoyment of human rights and fundamental freedoms by obtaining the suspension and subsequent abrogation of the emergency measures now in force.

It is happy to record its fundamental agreement with the relevant proposals of the Sub-commission.

The following reservations must nevertheless be expressed:

1. The suspended application for a period of three or six months of all or 'almost all' the emergency measures now in force in Cyprus should in any case cover the Regulations which were the subject of the Application of 7th May 1956, those mentioned in the exchange of notes in May 1957 and discussed during the meetings of 2nd and 3rd July 1957, and finally the order entitled Special Court Laws 1955 to (No.2) 1956. It should further cover the Emergency Powers (Public Safety & Order Amendment No. 9) Regulations 1956, published under No. 713 in the Cyprus Gazette for 28th July 1956, authorising any police officer or member of the military, naval or air forces to 'take such action or use such force as may appear reasonably necessary to ensure compliance with the present regulations' and in particular to obtain the required information from persons under interrogation. The severity of these latter Regulations became apparent to the Greek Government when examining various cases of maltreatment or torture which are the subject of a new Application filed this day. With

regard to the Regulations styled Special Court Laws 1955 to (No.2) 1956, it should certainly be mentioned that like the Regulations on internment (The Detention of Persons Laws 1955), they have been prolonged until 31st October 1957. Both will then expire unless extended for a further six months by the Governor (cf. the Detention of Persons (Continuance) Order 1957, and the Special Court (Continuance) Order 1957, both dated 11th April 1957). It would appear to be in the spirit of the Sub-commission's proposal for the Governor to refrain from prolonging these two orders when their validity expires on 31st October.

2. The suspension of all or some of the emergency measures should include not only the release of prisoners, but also the reinstatement in their posts of those who held public appointments and lost them merely because of their internment. In this connection the Greek Government draws the attention of the Commission to the appended application filed on 9th April 1957 with the Secretary of State for the Colonies by a group of internees thus situated, an application on which no action has so far been taken.

Similarly those persons who have been forcibly deported should be readmitted to Cyprus, including the Cypriots at present detained in Wormwood Scrubbs (sic) or elsewhere in the United Kingdom and whose penalty is being aggravated through their being deprived for a prolonged period of visits from their families.

3. Finally, although the Greek Government is prepared, in accordance with the suggestions made to it, to seek a friendly settlement under the terms of Article 28 (b) of the Convention if all the emergency measures are abolished, it should be understood that such a settlement could apply only to the procedure introduced in the Application of 7th May 1956, which is before the Sub-commission for consideration, to the exclusion of the procedure initiated in the Application of today's date concerning tortures. It is felt to be desirable, moreover, that the facts mentioned therein should be fully clarified." (Doc. A 35.135).

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A copy of an appeal to the Secretary of State for the Colonies from the Committee of Detained Government Employees, dated 9th April 1957, was attached to that letter.

The United Kingdom Government's reply to the proposals contained in the above statement of the Sub-commission appeared in paragraphs 2, 3, 4 and 5 of the Memorial dated 14th August 1957, the text of which was as follows:

"(...) 2. The proposition contained three paragraphs. The first part of paragraph (1) read as follows:

'The United Kingdom Government should suspend for a trial period of three or six months the application of all or nearly all of the emergency measures now in force in Cyprus which prevent the population from enjoying to the full the rights and freedoms protected by the Convention.'

3. The implications of this proposal are not clear to the Government of the United Kingdom because while it refers to the rights and freedoms protected by the Convention, the paragraph continues by quoting as an example the execution of the death sentence which cannot in itself on any view be contrary to the Convention. On the other hand, it is manifest that the proposal is closely linked to the Sub-commission's request for information. If the continuance of the emergency threatening the life of the nation in Cyprus requires the application or maintenance in force of a substantial part of the emergency measures, it follows that, as a responsible government, the United Kingdom Government could not accept the first part of the Sub-commission's proposition. In the view of the United Kingdom Government, the threat to the life of the nation has not ceased to exist. It is, therefore, impossible to suspend the application of all or nearly all of the emergency measures for a period of three or six months. The United Kingdom cannot accept the first paragraph of the Sub-commission's proposition. Accordingly, consideration of the second and third paragraphs does not arise.

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4. As normally happens, the emergency in Cyprus has not opened and shut like a book. It developed, reached a peak of violence and has - at least for the time being - begun to wane. Measures to deal with the emergency have been adopted and applied as required by the exigencies of the situation. When the emergency was at its height, there was naturally the maximum application of emergency measures. These have helped to bring the situation under control, to protect the vast majority of the people of Cyprus from the outrages of the terrorists and to restore freedom from fear and true liberty of the individual. As circumstances have allowed, the Cyprus authorities have relaxed the emergency measures. These measures have been kept under careful and constant review, but the outlook for the future has not been improved by the campaign of vilification against the Cyprus authorities launched by Archbishop Makarios with the apparent support and sympathy of the Greek Government. A heavy responsibility rests on the shoulders of all who are in any way concerned with affairs in Cyprus to do their best to ensure that she is not again subjected to the bloodshed and brutalities of EOKA.

5. In spite of the goodwill and numerous concessions by the United Kingdom Government, the demands by the Greek Government become even greater and more extravagant. Having regard to the attitude of the Greek Government towards the situation in Cyprus and towards the work of the Sub-commission, the United Kingdom Government cannot be optimistic about the prospects for a friendly settlement." (Doc. 35.489).

87. The above two replies from the Governments concerned (see para. 86 above) were examined by the Sub-commission at the sittings held on 28th, 29th and 31st August 1957.

In a statement dated 31st August 1957, the Sub-commission informed the Parties that, in view of their reactions to the proposals put forward on 3rd July 1957, it did "not propose to proceed further with its efforts for a friendly settlement." (Doc. A 35.725).

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The Agent of the United Kingdom Government said when appearing before the Sub-commission on 4th September 1957:

"First of all, I can only agree with regret that a friendly settlement of Application No. 176/57 appears to be impossible" (see verbatim report, Doc. A 35.844, page 1).

The Agent of the Greek Government had already stated in his Note of 30th August 1957:

"2. The Greek Government which, in its Note of 17th July 1957, had signified its agreement in principle to the suggestions of the Sub-commission, cannot but express its regret that they have been rejected by the United Kingdom. This attitude would seem to bring the Sub-commission's efforts to a standstill, leaving it nothing further to do but draft its report." (Doc. A 35.718).

PART II

THE ESTABLISHMENT OF THE FACTS
AND THE OPINION OF THE COMMISSION

PART II

THE ESTABLISHMENT OF THE FACTS
AND THE OPINION OF THE COMMISSION

INTRODUCTION

I. GENERAL CONSIDERATIONS

88. To aid the Committee of Ministers in their task of examining the conclusions of this Report, the Commission considers that, in the interests of orderly presentation, the second part should be sub-divided as follows:

- (a) A statement of the facts in the case, as found by the Commission;
- (b) A summary of the legal arguments submitted by the Agents and Counsel of the two States concerned;
- (c) The opinion of the Commission as to whether the findings show a violation by the United Kingdom of its obligations under the Convention;
- (d) The individual or dissenting opinion of those members who have exercised the right conferred upon them by Article 31, paragraph 1, final sentence, of the Convention.

89. The Commission wishes to emphasise that as regards (b) and (c) it has not felt itself bound by the legal contentions of the Parties. Having been set up, in accordance with Article 19 of the Convention, to ensure observance of the engagements undertaken by the Contracting Parties, the Commission cannot merely restrict itself to the legal conclusions reached by the latter: it is its duty to submit ex officio, wherever necessary, such arguments as will conduce to the formation of its opinion.

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II. THE POINTS AT ISSUE

90. In the Memorial tabled on 24th July 1956 (Doc. A 28.657), the Greek Government complained of the following acts as contrary to the provisions of Articles 3, 5, 6, 8, 9, 10, 11 and 15 of the Convention:

- (1) Whipping;
- (2) The imposition of collective punishment, in the form of:
 - (a) collective fines,
 - (b) closing of shops and dwelling-houses,
 - (c) abuse of curfew,
 - (d) occupation or destruction of buildings or plantations;
- (3) Illegal arrest and detention and deportations;
- (4) Violation of the privacy of homes and freedom of opinion, expression, information and assembly.

According to the Greek Memorial, the violations of the Convention fall into three categories:

- (a) Violations through legislation, in the form of Orders issued by the Governor of Cyprus by virtue of the emergency powers vested in him;
- (b) Violations by means of administrative acts by order of the Governor or his Deputies (Commissioners);
- (c) A considerable number of violations in the form of molestations, severe torture, all kinds of offences against persons or their property, alleged to have been committed by military, police or civilian subordinates of the British administration in Cyprus.

But in the same Memorial (pages 4 and 5), the Greek Government stated:

"In order to facilitate the Commission's work and to enable it to take immediate and effective action, the Greek Government accordingly limits itself to requesting the Commission to take a decision on the

legislative texts and general administrative measures introduced by the British authorities in Cyprus, whose practical application cannot be contested by the British Government which has confirmed their existence many times before Parliament.

Thus the Greek Government, notwithstanding various facts and incidents mentioned in this Memorial which are in any case generally known, having been reported by the British Press at home and in Cyprus, wishes to make it clear that these cases are only mentioned here to illustrate the situation brought about by these measures. Its application is strictly confined to requesting the Commission to take a decision on the question of principle, namely on whether the above-mentioned legislative and administrative measures constitute violations of the Convention and other obligations in international law which the British Government is bound to respect under this Convention."

91. The Memorial tabled by the United Kingdom Government on 17th October 1956 (Doc. A 30.235), after a short introduction and a historical survey of the events, proceeded to set out the facts in the same order.

During the oral hearing of the Application, on the proposal of Mr. Rolin in which Sir Harry Hilton-Foster concurred (sitting of 14th November 1956, Doc. A 30.768, page 12), the representatives of the Parties dealt with the various points separately in accordance with the order adopted in the Memorials.

92. The legislative measures taken by the Cyprus Government since the Application was lodged should also be included among the points at issue. These measures were brought to the knowledge of the Sub-commission in a letter from M. Cambalouris, dated 17th December 1956 (Doc. A 31.187).

The above-mentioned measures are accorded a separate chapter at the end of this part of the report (Chapter IX).

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93. Finally, it should be pointed out that Article 15 of the Convention, to which the third part of the Greek Application referred, was not dealt with separately by the Parties, but was invoked several times as the occasion arose, mainly during the discussions on arrests, detentions and deportations.

The Commission considered that there would be some advantage in changing, in its report, the order in which the facts were presented and in beginning with Article 15, which authorises any Contracting Party, under certain conditions, to derogate from its obligations under the Convention. Admittedly no derogation is authorised in Article 2, except in cases of death resulting from lawful acts of war, nor in Articles 3, 4 (paragraph 1) or 7. Article 3 is invoked by the Greek Government in connection both with whipping and with collective punishments. But as the subjects are inter-related and the validity of a derogation may have an influence on most of the questions submitted for consideration by the Commission, both de facto and de jure, it seemed preferable for the chapter on Article 15 to precede the chapters dealing with the particular measures denounced by the Greek Government.

Moreover, since the Commission has expressed in general terms its opinion on the question whether or not it would pronounce upon measures rescinded while the case was sub judice, it seemed reasonable to place the chapter in question at the beginning of this part of the Report.

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Chapter I - THE QUESTION WHETHER THE COMMISSION SHOULD EXPRESS
AN OPINION ON MEASURES WHICH HAVE BEEN REVOKED

I. OPINION OF THE COMMISSION

94. During the period when the Application of the Greek Government was pending before the Commission, certain of the legislative and administrative measures which were the object of the Application were revoked by the British authorities. This was the case in particular with regard to the Emergency Powers Regulations No. 731, Regulation 75 (2) and No. 732 of 26th November 1955, concerning corporal punishment and collective punishment, respectively, which were revoked on 18th December 1956, and in regard to the order of 14th March 1956, concerning the detention of Archbishop Makarios and his companions in the Seychelles, which was revoked on 28th March 1957. The revocation of these measures took place at times when the Sub-commission was investigating with the Parties the possibility of reaching a friendly settlement under which the Government of the United Kingdom should agree to accept certain engagements with respect to the matters dealt with in these measures (see First Part, Chapter IV of the present report).

95. The Commission is called upon to decide whether it should now express an opinion on the question whether or not these measures, when in force, were compatible with the provisions of the Convention. Bearing in mind that the Greek Application did not contain a request for compensation for individuals, this is a question on which no clear guidance is given by the Articles of the Convention which define the functions and task of the Commission. It is laid down in Article 30 that if a friendly settlement of a case before the Commission is reached, the Sub-commission shall draw up a report which shall be confined to a brief statement of the facts and the solution reached. It appears to follow that the Commission is not in that case to express any opinion on the legal issues to which the application might have given rise. On the other hand, Article 31 provides that in case a solution is not reached, the Commission shall draw up a report on the facts and state its opinion "whether the facts found disclose a breach by the State concerned of its obligations under the Convention."

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According to Article 32, the Committee of Ministers shall, on the basis of this report, decide whether or not there has been a violation of the Convention, and in the affirmative case prescribe a period within which the High Contracting Party concerned must take the measures required by the decision of the Committee of Ministers.

It emerges from these provisions that the Commission is not a judicial tribunal called upon to decide a legal controversy between the Parties. If the grounds on which a complaint is made are removed as a result of the intervention of the Commission - acting through a Sub-commission - and the matter is thus settled, an opinion on the legal issues involved is not called for. If, on the other hand, the grounds of complaint are not thus removed, and if the Committee of Ministers finds that there has been a breach of the Convention, measures shall be taken to assure respect of the Convention. Emphasis seems to be placed on procedures to terminate a factual or legal situation which may be incompatible with the Convention rather than on any abstract condemnation of the Government which may be found to be at fault.

96. The Convention does not expressly provide how the Commission shall act if, as in the present case, some of the grounds of complaint are removed in the course of the proceedings, but others remain, and a friendly settlement covering all controversial points has not been secured.

In the absence of explicit provisions on this point, the question must be decided in the light of the general function attributed to the Commission by the Convention. As the Commission is not conceived as a judicial tribunal, its function is not primarily to express opinions on abstract points of law to which a case before it may give rise, but rather to exercise a conciliatory function with a view to ensuring the observance of the Convention and the maximum enjoyment of the rights of freedoms guaranteed by it. If a Government, against whom complaint is made, modifies its position in the course of proceedings before the Commission and revokes measures which are alleged to be in violation of the Convention, the conciliatory function of the Commission seems to be most faithfully accomplished if the Commission takes official note

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of this revocation without expressing an opinion on the legal issues in question. Indeed, such an expression of opinion, if unfavourable to the Government, might be taken to involve an abstract condemnation of measures which the Government has found it right not to maintain, and in a general way it would hardly serve the main function of the Commission, namely to assure the maximum enjoyment of the rights and freedoms guaranteed by the Convention, if a Government would expose itself to such a condemnation even after having taken steps to remove causes of complaint.

For these reasons, the Commission decided by seven votes to four that it was not called upon to express an opinion on the question whether legislative and administrative measures which were among those referred to in the complaint of the Greek Government, but were revoked during the proceedings before the Commission, involve a breach of the Convention.

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II. OPINION OF THE MINORITY

97. Four members of the Commission, MM. EUSTATHIADES, SÜSTERHENN, PETREN and Mme. JANSSEN-PEVTSCHIN, considered that the Commission should have decided the issue whether the measures complained of in the Greek Application but since revoked, in particular the legislation concerning corporal punishment and collective punishment, constituted a breach of the Convention. On this point, they expressed the following dissident opinion:

Although, at the first stage of its intervention, the Commission must do its utmost to bring about a friendly settlement and may, to this end, take into account considerations of expediency, this does not apply where it has proved impossible to reach a friendly settlement between the Parties. Under the terms of Article 31, paragraph 1 of the Convention, only in the event of a friendly settlement would the Commission be absolved from pronouncing whether or not there has been a breach of the Convention.

At that stage of the proceedings, the role of the Commission is primarily a legal and technical one, as defined in Article 31, paragraph 1.

Its task is to furnish the higher authority, namely the Committee of Ministers, with a Report on the facts and its legal opinion on them in the light of the Convention.

However, under paragraph 3 of the above-mentioned article, it may also, when transmitting the Report, make such proposals as it thinks fit.

As regards the preparation of the Report, the Commission in determining whether or not the Convention has been violated, has no authority to disregard measures which have been, but are now no longer, applied.

It would be a different matter if the Applicant had withdrawn some of his complaints. But, failing such withdrawal, the Commission must reply to the Applicant on the actual complaints made.

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A decision by the Commission on the measures that have now been revoked was all the more desirable as the British Government has stated to the Sub-commission that it was not prepared to give an assurance that these measures would not be re-imposed.

98. MM. DOMINEDO and SKARPEDINSSON stated at the 14th Session of the Commission that, if they had participated in the vote taken at the previous Session, they would have supported the opinion of the minority on this point.

99. ADDITIONAL REMARKS BY M. EUSTATHIADES

While I fully subscribe to the foregoing opinion, I would add the following additional remarks:

If the opposite point of view were accepted, an inadmissible situation would arise. The Applicant Party, which, as in the present case, has not withdrawn its complaints concerning the measures temporarily revoked by the Defendant Party without any assurance that they will not be re-imposed, would be obliged to lodge a fresh Application containing complaints identical to those directed against the measures in question. It would thus again set in motion, ab initio, the slow and intricate machinery of proceedings before the Commission - thereby, to say the least, immeasurably weakening the protection of human rights safeguarded by the Convention.

Consequently, the revocation of the measures complained of, which, we would emphasise, is by no means final failing an appropriate undertaking by the Defendant Government, gives no satisfaction to the Applicant Party, except to a very small degree, and in any case gives no satisfaction to the victims of the said measures.

Let us consider not merely the interests of the Applicant Government - which incidentally is no more than the spokesman of the injured individuals - but also of the victims themselves. It is their interests which the Convention is intended to protect. The natural reaction is to reject an argument which rides roughshod over these individual rights and interests and thereby frustrates the paramount aim of the Convention. What is more, the

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victims are both morally and materially justified in expecting a pronouncement by the Commission on measures which, even if provisionally withdrawn, were in fact applied for a certain period; for, if the Commission makes no such pronouncement, the victims will be deprived of the twofold satisfaction, first, of seeing that the Government which applied the measures stands condemned, and secondly, of possibly obtaining compensation as a result of proposals by the Commission (Article 31, paragraph 3) or by the Committee of Ministers (Article 32).

The adoption of the argument which we consider unacceptable would mean that the generally recognised function of the Commission and the purpose of the Convention were disregarded. Furthermore, the letter of the Convention would also be flouted, since under Article 31 "the Commission shall draw up a report ... and state its opinion as to whether the facts found disclose a breach ... of the obligations under the Convention". In the present case the application over a period of the measures concerned is unquestionably a "fact found" within the meaning of the Article, making it incumbent on the Commission to state its opinion whether or not there has been a breach of the Convention.

With regard to the application, over a period, of measures subsequently, voluntarily and provisionally, withdrawn, the situation would be quite different if we had before us a "solution" within the meaning of the Convention ("solution reached", Articles 30 and 31), i.e. a solution accepted by the Parties as the result of a friendly settlement. But the Greek Government has not withdrawn its complaints against the measures applied and revoked, neither has the British Government abandoned its point of view on the legitimacy, vis-à-vis the Convention of the measures revoked. Both allegations are thus still pending.

Over and above the satisfaction of the Applicant Government and of the victims, there remains the satisfaction of the Commission itself. This is impossible if the opposite argument is adopted. Great Britain denies that the revocation of the measures was due to the Commission's intervention; the Commission does not consider itself authorised to state that the revocation resulted from its efforts at conciliation. The revocation therefore took place for other reasons, reasons of political expediency based on factors freely appreciated by the British Government. It follows that the Commission is prevented from playing its proper role in two ways: by refraining from stating its opinion, and by being simultaneously deprived of the credit for achieving a friendly settlement.

Chapter II - ARTICLE 15 OF THE CONVENTION

Section I : General Considerations

I. TEXT OF ARTICLE 15

100. Article 15 of the European Convention on Human Rights reads as follows:

"(1) In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

(2) No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

(3) Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed."

101. The problems raised by Article 15, on which the Commission had to render an opinion, were highly complex. Questions of fact and questions of law had to be considered in turn, and the difficulty of examining them was increased by the fact that the Parties did not deal separately in their memorials and pleadings with Article 15 - as was the case in the Application - but touched on it when discussing the legality of certain emergency measures such as collective punishment, arrest, detention and deportation, etc.

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But before beginning an examination of these questions, it will be well to give a chronological list of the legislation enacted and applied in Cyprus, and the notifications made by the United Kingdom Government under Article 15 of the Convention.

II. LEGISLATIVE TEXTS AND NOTIFICATIONS OF DEROGATION

102. (a) On 5th May 1955 the Cyprus Gazette No. 3821 published under the title "The Curfews Law, 1955 (No.17)" a law to provide for the imposition of curfews in the interests of public safety and the maintenance of public order. (The text will be found in Appendix B to the present report, p.1. It is reproduced at the beginning of chapter V below (the curfew).)

Article 2 of the above-mentioned law was amended on 5th October 1955 to authorise the Governor to delegate his powers subject to specified conditions ("The Curfews (Amendment) Law, 1955 (No.47)", Appendix B, p.1).

(b) On 15th July 1955 the Cyprus Gazette No. 3839 published under the title "The Detention of Persons Law, 1955 (No.26)" a law to make provision for the detention of persons in certain circumstances. The law was to commence on 16th July 1955 and remain in force until 31st October 1955, provided that the Governor might, by an Order to be published in the Gazette, continue its operation for any further period or periods of six months. (Appendix B, pp.2-4). The text is reproduced at the beginning of chapter VI, B, below (detention.)).

On 26th October 1956 a law was introduced to amend Article 2, paragraph 4, of the above-mentioned Law (Detention of Persons (Amendment) Law, 1955 (No.53), (Appendix B, p.2).

(c) On 7th October 1955, the United Kingdom Permanent Representative to the Council of Europe presented the following Note Verbale to the Secretary General:

"A public emergency within the meaning of Article 15 (1) of the Convention exists in the following territory for whose international relations Her Majesty's Government in the United Kingdom are responsible.

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Cyprus - Certain emergency powers were brought into operation in the Colony of Cyprus on the 16th July 1955, owing to the commission of acts of violence including murder and sabotage and in order to prevent attempts at the subversion of the lawfully constituted Government.

The United Kingdom Permanent Representative has the honour to state that under legislation enacted to confer upon them powers for the purpose of bringing the emergency to an end, the Government of the Colony of Cyprus have taken and, to the extent strictly required by the exigencies of the situation, have exercised or are exercising powers to detain persons which involve derogating in certain respects from the obligations imposed by Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The United Kingdom Permanent Representative has however the honour to add that all persons now in detention are permitted, in accordance with the provisions of the relevant Regulations, to have their cases reviewed by a Committee under a judicially qualified chairman."

(d) By his Proclamation No. 730 of 26th November 1956, Sir John Harding, Governor of Cyprus, acting under the emergency powers conferred by an Order in Council of 9th March 1939 entitled "The Emergency Powers Orders in Council, 1939", as amended on 25th November 1952 by "The Emergency Powers (Amendment) Order in Council, 1952", announced:

- that a state of emergency existed in the colony;
- that the provisions of the principal order should have effect in the Colony on and from the date of the Proclamation (26th November 1955).

(For text of Orders in Council, see page I and for Proclamation, page VII of Appendix B).

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(e) On the same day (26th November 1955) the Governor followed up the above-mentioned Proclamation by enacting "The Emergency Powers (Public Safety and Order) Regulations, 1955, No. 731" by virtue of his new powers (Appendix B, pp.5-91).

A further Regulation (No. 732) relating to collective punishment, was enacted on 26th November 1955 (The Emergency Powers (Collective Punishment) Regulations, 1955 (No. 732)) and was amended on 21st December 1955, by Regulation No. 819. (For text, see chapter IV below (Collective Punishments), and Appendix B, pp. 92-97).

(f) On 12th March 1956, Number 16 of the "Seychelles Government Gazette" published Ordinance No. 1 of 1956, which was enacted by the Governor of the Colony of Seychelles with the advice and consent of the Colony's legislative Council and provided for the detention of persons deported or brought or sent to the Colony from Cyprus (Appendix B, pp. 98-101. The text is reproduced in Chapter VI, C below (deportation.))

By virtue of the powers vested in him by the above Ordinance, the Governor decided on 14th March 1956, with the approval of the Secretary of State, to order "the detention of Michael Kykkotis, Archbishop Makarios III, during Her Majesty's pleasure at the island of Mahé, Seychelles" (Appendix B; p. 98).

It should be noted that Archbishop Makarios was deported from the island of Cyprus on 9th March 1956, under Article of the "Emergency Powers Regulations No. 731" of 26th November 1955.

(g) On 13th April 1956, the United Kingdom Permanent Representative to the Council of Europe presented to the Secretary General the following Note Verbale:

"A public emergency within the meaning of Article 15 (1) of the Convention exists in the following territory for whose international relations Her Majesty's Government in the United Kingdom are responsible.

Cyprus - Certain further emergency powers were brought into operation in the Colony of Cyprus on the 26th November 1955, owing to the commission of acts of violence including murder and sabotage and in order to prevent attempts at subversion of the lawfully constituted Government.

The United Kingdom Permanent Representative has the honour to state that under legislation enacted to confer upon them powers for the purpose of bringing the emergency to an end, the Government of the Colony of Cyprus have exercised powers to deport persons from the Colony of Cyprus to the Colony of Seychelles; and the Government of the Colony of Seychelles have taken and to the extent strictly required by the exigencies of the situation are exercising powers to detain those persons, which involve derogating in certain respects from the obligations imposed by Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms."

III. ANALYSIS OF ARTICLE 15

103. Paragraph 1 of Article 15 lists the conditions in which any Contracting Party may take measures derogating from its obligations under the Convention.

Measures derogating from the Convention may be decreed:

- (a) in time of war or other public emergency threatening the life of the nation;
- (b) to the extent strictly required by the exigencies of the situation;
- (c) the measures taken must not be inconsistent with other obligations under international law.

Paragraph 2 of Article 15, on the other hand, forbids any derogation:

- (a) from Article 2 (everyone's right to life shall be protected by law) except in respect of deaths resulting from lawful acts of war;

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- (b) from Article 3 (no one shall be subjected to torture or to inhuman or degrading treatment or punishment);
- (c) from Article 4 paragraph 1 (no one shall be held in slavery or servitude);
- (d) from Article 7 (a guarantee that criminal laws will not be applied retroactively).

No Contracting Party may derogate from the above-mentioned Articles, listed in Article 15, paragraph 2, even in time of war or other public emergency threatening the life of the nation.

Paragraph 3 of Article 15 provides that any Party avail itself of this right of derogation "shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor". Similarly, such Party shall inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are then once again being fully executed.

IV. QUESTIONS RAISED BY THE EXAMINATION OF ARTICLE 15

104. The first question to be examined by the Commission was whether, at the time when the emergency measures were introduced, there existed in Cyprus "a public emergency threatening the life of the nation". But to answer it the meaning and scope of the word "nation" had first to be determined. Next, to appreciate the extent of the "public emergency" and to ascertain if and when it was "threatening the life of the nation" it had also to be determined how far the Commission was entitled to exercise powers of control over a Contracting Party which availed itself of the right of derogation provided in Article 15. And if it was recognised that such danger existed when the derogation took place, could the Commission exercise its right of control during the entire period of the derogation and state, for example, that the emergency had ceased to exist or had so far diminished that the derogation was no longer justified?

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The second question on which the Commission had to pronounce was whether the measures derogating from the Party's obligations under the Convention were "strictly required by the exigencies of the situation". What power had the Commission to assess the scope of the derogation in the light of those exigencies?

The Commission had also to determine whether the measures concerned were, or were not, "inconsistent with other obligations under international law". Did such obligations exist in the present instance, affecting the right of derogation exercised by the United Kingdom?

Lastly, it had to be determined whether the two Notes sent to the Secretary General of the Council of Europe on 7th October 1955 and 13th April 1956 complied with the conditions of Article 15, paragraph 3. How soon after the enactment of emergency legislation should the Secretary General be informed? If there was delay in notifying him, what bearing had this on the validity of the derogation? Was notification a mere formality or a condition affecting Article 15 of the Convention? Was it necessary to give a precise list of the Articles from which the measures derogate and what should be the consequences of an omission?

105. These questions will be dealt with in turn in the present chapter, which is wholly devoted to Article 15 of the Convention. An account of the respective arguments of the Parties will be given under each head, together with the establishment of the facts, the opinion of the Commission and the dissenting opinion of the minority.

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Section II : The public emergency threatening the life of the nation

I. ARGUMENTS OF THE PARTIES

106. In its Application, the Greek Government submitted that "the fundamental conditions of a public emergency threatening the life of a nation were not fulfilled in this case, since tension in the relations between the population of Cyprus and the local authorities had not become sufficiently acute to justify exceptional measures. A few demonstrations and the setting-off of a few home-made and harmless bombs could not be regarded as a threat to the life of the nation" (Doc. A 27.558, p.14).

In its Memorial of 24th July 1956, the Greek Government asserted that the Detention of Persons Law was enacted on 15th July 1955, whereas "the first British soldier was killed on 27th October 1955" (Doc. A 28.657, page 34). To prove this the Greek Government produced an article from the "Cyprus Mail" published on 28th October 1955 under the heading "First British soldier killed by Terrorists" (Greek Memorial, Appendix 81 - Doc. A 28.780).

107. The United Kingdom Counter-Memorial of 17th October 1956 refuted the historical account of events given in the Greek Application and outlined the circumstances and reasons which demanded the introduction of the emergency legislation (Doc. A 30.235, paras. 5 to 23).

As proof of the existence of a public emergency threatening the life of the nation, the British Counter-Memorial cited, among other facts, the following:

- (a) November 1954, arrival in Cyprus of the terrorist leader, Grivas, to take over command of operations (Ibid, para. 16).
- (b) 18th December 1954, riot at Limassol (Ibid, para. 14 and Annex II).

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- (c) January 1955, capture of the caique "Aghios Giorghios" laden with arms and munitions (Ibid, para. 15, p.6);
- (d) a series of major crimes perpetrated between 1st April 1955 and 15th July 1955, when the Detention of Persons Law No. 26 mentioned in para. 6 above was enacted (Ibid, para. 17);
- (e) a catalogue of murders and attempted murders of soldiers and police officers between 30th June and 26th November 1955, when the "Emergency Powers Regulations No. 731" referred to in para. 6 above were enacted (Ibid, para. 19);
- (f) a series of crimes calculated to inspire terror in the population, committed between 28th November 1955 and 26th July 1956 (Ibid, para. 32, pp.10 to 13). The British Government produces a number of documents in support of these facts, which will be found in Annexes I to XIX).

According to the British Government,

"The frequency with which crimes ... were being committed was such that the protection of the public could no longer be left entirely to the normal processes of law, and the enactment of such an emergency measure as the Detention of Persons Law was fully justified by the overriding need to secure the safety of the community and the restoration and maintenance of public order" (Ibid, para. 18).

It was further claimed:

"that for the past eighteen months the people of Cyprus have been faced with a subversive and violent movement of an abhorrent nature seeking to overthrow the Government by force" (Ibid, para. 23). Before the first British soldier was killed there were threats of damage to property and of murder, which showed that a public emergency threatening the life of the nation already existed in Cyprus in July 1955 (para. 83), an emergency which was aggravated by the terrorist organisation known as EOKA. This body, according to the British Government, was supported morally and materially from outside and its design was to practise and foster sedition (para. 84).

II. HEARINGS OF THE SUB-COMMISSION FROM 14TH
TO 18TH NOVEMBER 1956

108. At the hearing of the Application, Mr. Rolin, Counsel for the Greek Government, expressed astonishment that the British Government should have invoked a public emergency threatening the life of the nation. He referred to the annual report by the Cyprus administration, which, although it deplored the unsettled situation and the disturbances in Cyprus during 1955, showed that production, trade and tax returns were on the increase (Doc. A 30.768, Report, p.134).

Counsel for the Greek Government classed as "counter-terrorism" what the British Government called "terrorism" and asked "who began it and on what scale?" (Doc. A 30.768) Report, p.8). Quoting an article published in the "Manchester Guardian" and another written by Salvador de Madariaga, which included the words "I will not say that the position of the Cypriots is identical with that of the Resistance (during the War) but it is similar". Mr. Rolin attempted to trace the connection between violence and counter-terrorism (Ibid, pp.9 and 10).

Furthermore, in the course of his arguments on corporal punishment, Mr. Rolin referred in this particular connection to the Geneva Conventions relative to the treatment of Prisoners of War and to the Protection of Civilian Persons in time of War; and declared that there was and still is an armed conflict in the island of Cyprus. (Ibid, pp.29-30 and 46). Likewise, when arguing his case on collective punishment, he referred to a judgment given at the Nuremberg trials concerning the Barbarossa Order and stated:

"In pursuance of the Collective Punishment Regulations people are being punished who are not directly concerned in the attacks on the British police forces" (Report pp. 87-88).

Another Counsel for the Greek Government, describing the political situation in the island of Cyprus after the unsuccessful Greek appeal to the United Nations, said:

"This was the beginning of the Cypriot revolt aimed at obtaining recognition of the principle of self-determination which had been denied them."
(Report p.170).

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109. The Solicitor General, Sir Harry Hylton-Foster, replying to Mr. Rolin's invocation of Article 3 of the 1949 Conventions, denied the existence of an armed conflict in these terms:

"No one is carrying arms openly. No doubt there are many individual murders being committed with fire arms. No one is wearing uniforms or arm-bands. No, there is no nearer approach to a pitched battle than an ambush involving two or three vehicles."
(Report p.63).

However, Counsel for the United Kingdom Government drew the Sub-commission's attention to the extracts from the Grivas diaries appearing in Appendix 3 of the British Counter-Memorial. These diaries, he claimed, showed that before the emergency measures were taken, the EOKA Organisation was in process of constitution and was preparing for terrorism. Lengthy quotations from the diaries were given at the hearing on 17th November 1956 (Ibid, pp.160-167).

110. The Agent of the Greek Government expressed surprise at the great importance attached to the alleged discovery of the Grivas diaries, whose authenticity had been disputed. He protested against the insinuations and accusations levelled at Archbishop Makarios and quoted the testimony of Mr. Noel Baker, who in the House of Commons on 19th July 1956 had said: "... there is no more moderate element than the Archbishop of Cyprus himself...". The Agent of the Greek Government considered that only the Cypriot element, a purely Greek element, was in danger in Cyprus, for under cover of the emergency measures, the British Government was systematically denationalising the island (Ibid, pp. 173-176).

Counsel for the British Government submitted that the Grivas diaries were significant and important elements towards determining whether, at the period in question, there was or was not an emergency threatening the life of the nation. He also said that he was ready, if the authenticity of the documents was challenged, to submit them to any expert on matters of handwriting whom the Commission might appoint (Ibid, p.178).

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III. QUESTIONS ASKED BY THE SUB-COMMISSION

111. With a view to establishing the facts, the Sub-commission put the following question to the representatives of the Greek Government at its meeting on 17th November 1956:

"Can the Commission assume that, with the exception of the Grivas diaries, the facts set out in Annexes III, IV, VI, XV, and XIX to the Counter-Memorial of the United Kingdom Government are not disputed by the Greek Government except as appears from the oral and written pleadings of the Agent and advisers of the latter Government?" (Doc. A 30.768, p.180).

The Agent of the Greek Government replied, on 18th November 1956, as follows:

"With regard to the first question the Greek Government, which denies the authenticity of the documents produced by the British Government under the title of the "Grivas Diaries", also seriously disputes the facts alleged in the other documents appearing in Appendices III, IV, VI, XV and XIX to the Counter-Memorial. In most cases, it would be difficult for the Greek Government to verify the facts alleged because of the obstacles which its agents would encounter in pursuing investigations in Cyprus.

In view of this, it goes without saying that the Greek Government Agent does not propose to dispute that the island has witnessed a certain number of individual attacks causing in some cases injury or loss of life." (Ibid, p.183).

112. The Sub-commission furthermore invited the Agent of the British Government to "bring up-to-date the lists in Parts I and II of Annexes VI to the Counter-Memorial of the Government of the United Kingdom." (Doc. A 30.768, p.180).

Annex VI is divided into two parts, the first containing an analysis of deaths and personal injuries and the second giving a chronological account of the crimes committed during the period 1st April 1955 to 30th June 1956.

In response to the request of the Commission, the British Government submitted as an appendix to its answers to the Sub-commission's questions (Doc. A 31.551) an addendum to Annex VI, covering the period 1st July to 30th November 1956.

IV. THE UNDERSTANDING OF THE WORD "NATION"

113. At the hearing of the Application (Session of 14th-18th November 1956), Counsel for the Greek Government expressed astonishment that the British Government should have invoked a public emergency threatening the life of the nation and asked "For what nation is it? Could it be that the British Government recognises the existence of a Cypriot nation? That might have important political consequences. If it is not the Cypriot nation but the whole nation represented by the High Contracting Party, I do not think that we can flatter Colonel Grivas - he would take it as a Great compliment - by saying that he has threatened the life of the whole British nation." (Report, p.133). And if it were agreed that so far as the life of the nation was concerned, "it was Cyprus and not the United Kingdom which was meant", even in that event it could not be claimed that in November 1955 "the very existence of Cyprus was threatened by an emergency" (Ibid, p.134).

114. Counsel for the United Kingdom Government, pleading before the Sub-commission on 17th November 1957, contended that the term "nation" meant in the present instance the island of Cyprus. "Nation", he said, "in the Convention is clearly something distinct from 'Party' with a capital 'P'" (Ibid, p.159).

115. The same question was also discussed by the representatives of the Parties at the Sub-commission's session on 28th and 29th March 1957. Counsel for the Greek Government agreed that the term "nation" did not necessarily mean the entire British Commonwealth, but could be applied to Cyprus. And he added:

"When we first argued that the Commonwealth was not endangered by events, in Cyprus we were told that in Article 15 the word 'nation' did not refer to the Commonwealth but to the local community. If it is taken to mean this in the case of Cyprus for purposes of interpreting Article 15, I would ask you with what right it can be said in the case of the Seychelles that the Governor of the Seychelles may, under Article 15, derogate from Article 5 because of a public emergency threatening the life not of the Colony of the Seychelles but of the Colony of Cyprus." (Doc. A 33.305, p.20).

For his part, Counsel for the United Kingdom Government said:

"It is common ground that there must exist a public emergency threatening the life of the nation. It is common ground that the nation there referred to is for this purpose the nation in Cyprus, the 'collectivité en place' - I think this was my learned friend's phrase which was very convenient." (Ibid, p.26).

But, according to the Counsel for the British Government, the right of derogation cannot be geographically limited to the area on which the measures might be legally taken. If an emergency existed and the measures were within the extent required by the exigencies of the situation, they might be taken anywhere within the control of the particular Contracting Power (Ibid, p.27).

V. POWER OF THE COMMISSION TO EXERCISE CONTROL

116. With regard to the power of the Commission to verify the existence of a public emergency, the British Government submitted that this question should be resolved in favour of the view taken by the competent authorities in Cyprus, for "a decision of this kind is at least prima facie one with the sovereign powers of the Government of the territory in which the emergency arises."

In support of this contention the Counter-Memorial quotes the view of Mr. E. Lauterpacht, who wrote in the "International Law Quarterly" (July 1956, p.432):

"It is arguable that the determination of the British Government that the situation in Cyprus was one of 'public emergency threatening the life of the nation' ... is a matter within their sole discretion."

According to the United Kingdom Government, "there is at least a strong presumption in favour of the determination by the Government" (Doc. 30.235, para. 85).

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117. Counsel for the Greek Government, pleading before the Sub-commission, said that such a contention appeared to be based on "a strange confusion between municipal and international law". Since the Commission was competent to judge whether a State that claimed the right to derogate had not violated its obligations under international law, and also to satisfy itself that there had been no derogation from Article 15, para. 2, there was no denying that the Commission might verify whether a public emergency existed and, if so, whether, in its derogation, the High Contracting Party had gone further than was strictly required by the exigencies of the situation. The fact that in accordance with British emergency powers it was left to the discretion of the Governor to judge whether an emergency existed or not, meant no more than that the Governor was invested with discretionary powers. That was merely a provision of English law under which the Governor was still responsible to the British authorities for the way in which he used his powers. Nor did it alter the fact that the United Kingdom was responsible to the Contracting Parties for its Governor's actions. Since the States were granted the right to derogate only in clearly defined circumstances, "it would be quite permissible to consider that a High Contracting Party had only to invoke a public emergency threatening the life of the nation in order to pigeon-hole most of the Articles of this Convention and render them ineffective." (Doc. A 30.768, pp.129-131).

With regard to Mr. E. Lauterpacht's opinion, Counsel for the Greek Government, after observing that the gentleman in question was not the judge Sir Hersch Lauterpacht "but his very distinguished son who is following in his footsteps", emphasised that the author's words were "it is arguable", which was "the reverse of categorical; it means it is tenable, it can be pleaded ..." and it showed that Mr. Lauterpacht Junior "cautiously refrains from supporting this view" (Ibid, pp.133-134).

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118. The Agent of the United Kingdom Government, during his pleading, replied as follows:

"It was suggested by my distinguished opponent that the United Kingdom Government were denying the right of the Sub-commission to examine the question of the existence of an emergency for the purpose of Article 15. Mr. President, no such submission is made in the United Kingdom Counter-Memorial and no such submission is made now. May I refer to the paragraph in question, paragraph 85, where there is a quotation that was read yesterday from Mr. E. Lauterpacht. The point made by the United Kingdom Government there is that there is at least a strong presumption in favour of the determination by the Government. We have never suggested it is beyond the competence of this Commission to form a view on the existence of an emergency and similarly we have never suggested that this Commission is not competent to form a view on the necessity of the measures required to meet the emergency. But what we do suggest is that the Government of the territory is in the best position to judge whether an emergency threatening the life of the nation has arisen. That is a question on which governments always tend to reserve their own discretion, and, I submit, it would be very, very risky if the Commission were not at least to lean very favourably towards the opinion of the Government, because the Government has in its possession all the relevant information, much of which must, in the nature of things, be subject to security classifications. And the same considerations apply to the measures which have to be taken to meet the emergency. I suggest that the Commission should not examine too critically what a Government has considered necessary to meet an emergency." (Ibid, pp.147-148).

119. Once this slight difference between the two opinions had been shown to exist, the Commission rightly considered that the Parties recognised its competence in the present instance to verify the existence of a public emergency threatening the life of the nation.

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VI. ACTION TAKEN BY THE SUB-COMMISSION

120. The question of the existence of a public emergency threatening the life of the nation, like that of determining whether the measures applied in Cyprus were strictly required (see Section III below), was studied by the Parties and the Sub-commission during the whole period of the proceedings.

It should be emphasised that political factors have several times intervened to change the situation which existed in Cyprus when the case was first brought (May 1956), during the hearing of the Application (November 1956) or during the later stages of the proceedings, which took two years. As the Sub-commission observed to the Parties on the occasion of its first attempt at a friendly settlement (December 1956), the full enjoyment in Cyprus of the rights and freedoms safeguarded by the Convention was closely linked with the solution of the political and constitutional problems disturbing the island.

Thus on 18th December 1956, when certain constitutional proposals were put forward by Lord Radcliffe, the Governor of Cyprus announced the revocation of certain measures and penalties which had been applied under his emergency powers. On 28th March 1957 the Secretary of State for the Colonies said in the House of Commons that "in present **circumstances**" it was no longer necessary to continue the detention of Archbishop Makarios in Seychelles (Annex III to the second British Counter-Memorial, 28th June 1957, Doc. A 34.870). The declaration by the Colonial Secretary was followed by that of the Governor of Cyprus, rescinding or amending some of the Emergency Regulations (Ibid Annex IV). Following the truce proclaimed by EOKA other measures were also revoked or mitigated. (Appendix B to the present Report contains the text of the Emergency Regulations, the date when they came into force and subsequent amendments or revocations).

121. These events, however, once again raised the question whether there was still in Cyprus a public emergency threatening the life of the nation and whether the emergency legislation was being maintained to the extent strictly required by the exigencies of the situation.

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Thus from April 1957 onwards the Sub-commission was faced with the same problem, but in another guise, namely the need for maintaining the Emergency Regulations.

122. In its second Memorial, dated 27th May 1957, the Greek Government complained that "almost the whole" of the emergency legislation had in fact remained in force, although no more acts of terrorism had been reported in the island during the preceding two months. It reproved the Governor for saying that "until the remaining terrorists are killed, captured or leave the island, and until it becomes certain that there exists no further danger of a renewal of terrorism, there can be no question of ending the state of emergency" (Doc. A 34.455, Appendix IV).

For its part, the British Government, in its second Counter-Memorial of 28th June 1957, said that the emergency legislation could not be revoked because the "threat of renewed terrorism" still hung over Cyprus. Although EOKA had found it tactically convenient to "suspend" operations, there was no reason to assume that it would not once more resort to violence. (Doc. A 34.870, para. VI).

123. The Sub-commission again invited the representatives of the Parties to appear before it on 2nd and 3rd July 1957, mainly for the purpose of discussing the legality of certain emergency measures introduced in Cyprus since the Greek Application was lodged. On that occasion it adopted, on 1st July 1957, a declaration containing the following observations:

"... Having regard to the fact that Article 15 of the Convention permits derogation from the provisions of the Convention only 'in time of war or other public emergency threatening the life of the nation' and only 'to the extent strictly required by the exigencies of the situation' the Sub-commission invites the Agent of the United Kingdom Government either during the oral hearing or shortly afterwards in writing to state precisely for the information of the Commission the position taken by his Government on the question of the continuance in Cyprus of a public emergency threatening the life of the nation and in regard to the exigencies of the situation which it considers to require the continuance of the

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measures which still prevent the full enjoyment in Cyprus of the human rights protected by the Convention....".

In this connection the Greek Government's representatives stressed the fact that during the last three months there had been no loss of human life in Cyprus, although the emergency measures were still in force (Doc. A 35.254, pp.7 and 31).

The Agent of the United Kingdom Government asserted in his turn that "although for the time being terrorism has died down, the threat of a revival has by no means disappeared" (Ibid, p.46).

124. In order to show that the threat persisted the British Government submitted two statements to the Sub-commission, the first on 14th August 1957 (Doc. A 35.489) and the second on 30th August 1957 (Doc. A 35.726).

The first statement included the following passage:

"As normally happens, the Emergency in Cyprus has not opened and shut like a book. It developed, reached a peak of violence and has - at least for the time being - begun to wane. Measures to deal with the Emergency have been adopted and applied as required by the exigencies of the situation. When the emergency was at its height, there was naturally the maximum application of emergency measures. These have helped to bring the situation under control, to protect the vast majority of the people of Cyprus from the outrages of the terrorists and to restore freedom from fear and true liberty of the individual. As circumstances have allowed, the Cyprus authorities have relaxed the Emergency measures. These measures have been kept under careful and constant review, but the outlook for the future has not been improved by the campaign of vilification against the Cyprus authorities launched by Archbishop Makarios with the apparent support and sympathy of the Greek Government ..." (Doc. 35.489,p.2).

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To show that the public emergency was not over and that the measures in respect of which the two derogations had been notified must be maintained the United Kingdom Government submitted a list of "subversive activities" since 14th March 1957 and referred to the seizure of a number of weapons (ibid, paras. 14 and 15). Twelve annexes were appended to the statement of 14th August 1957.

At the end of the statement the following conclusions were given:

"In response to the Sub-commission's statement of July 3, 1957, the United Kingdom Government state that, in their view, there is still an Emergency threatening the life of the nation in Cyprus and that the application of the Emergency measures which is still taking place is required by the exigencies of the situation."

The second statement of 30th August 1957 was chiefly intended to present the Sub-commission with the text of certain recent pamphlets distributed by EOKA (Doc. A 35.726, Annex I) or of speeches delivered (ibid, Annex III) together with examples of threats or attacks carried out by EOKA against left-wing organisations or left-wing trade unionists (ibid, pp. 6-9).

125. The Agent of the Greek Government, in his Observations of 30th August 1957, protested "against the way in which the British Government consistently ignores the real sentiments of the Greek Cypriot population". Greek national feeling in Cyprus was as spontaneous and deep-rooted as in all the other islands, which, in 1821 and later, had gained their independence as parts of Greece. He added, inter alia:

"It is regrettable that human lives have been lost in the incidents which have for a certain time disturbed public order in Cyprus, but it is unjust to place responsibility for them entirely on the perpetrators of outrages and lay no blame on the authorities which have embittered the population by refusing, for seventy five years, to meet legitimate claims put forward in a peaceable manner." (Doc. A 35.718, p.2).

With regard to the alleged continuance of the emergency after March 1957, the Greek Government contended "that the mere possibility of a resumption of EOKA activities does not constitute an immediate danger necessitating and justifying derogations under Article 15 of the Convention."

As to so-called seditious leaflets, posters or slogans, these were no more than "verbal demonstrations of a growing impatience which the British authorities should certainly watch attentively but which do not involve any immediate threat to public order," (ibid, p.3). Finally the Agent of the Greek Government emphasised that in its statement of 14th August 1957 the British Government dealt only with two measures which it admitted to be derogations from the Convention and in respect of which notifications had been made to the Secretary General. Although Archbishop Makarios had been released upon the repeal of Ordinance No. 1 (Seychelles Political Prisoners' Detention), Nos. 7 onwards of Regulations No. 731, under which the Archbishop had been deported from Cyprus, were still in force. According to the Greek Government:

"So far from being required by a public emergency, the attitude of the British Government on this point is a factor making for disorder; it is likely sooner or later to lead to disturbances of the peace."

Similarly, nothing, in the eyes of the Greek Government, could justify the detention of 1,004 persons which was still going on in August 1955. These were "not prisoners taken in the 'maquis' while carrying arms", but persons suspected of clandestine participation in the EOKA movement who openly followed normal occupations and were detained without trial. The Greek Government consequently submitted the following conclusions:

"The Greek Government asks the Sub-commission to state in its report that the United Kingdom Government is wrong in its argument that there exists in Cyprus a danger threatening the life of the nation and requiring the maintenance in force of measures taken in derogation of the Convention for the Protection of Human Rights.

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It asks the Commission to rule that the present situation in Cyprus is not of the character envisaged by Article 15 and that the maintenance in force of the measures complained of, far from being required by the exigencies of the security of the State, is likely to give rise to, or aggravate considerably, the danger it purports to dispel.

Alternatively, the Greek Government requests that should the Sub-commission feel unable, on the information available to it at present, to decide in favour of either Party, it should hold an enquiry in Cyprus. If the Sub-commission decides to conduct an enquiry of this kind each Party should be asked to indicate the full name, profession and address of persons best **qualified** to enlighten the Sub-commission on the present situation in Cyprus and the effect of the exceptional measures derogating from the Convention which are still in force, without prejudice to the right of the Sub-commission for its delegates to take evidence on the spot from other persons whom it may consider likely to assist its enquiries."

126. The Sub-commission again heard the Agents and Counsel of the Parties on 4th and 5th September 1957.

The Agent of the British Government observed that since his earlier communications a fresh element had intervened, namely the communal tension between the two main Cypriot populations. Recent indications showed that this had reached proportions where it was a serious threat to the life of the nation in Cyprus. Proof was provided by an explosion in a Turkish house in Omorphita, and the discovery in the garden of that house of large quantities of explosives and bombs.

The Agent of the British Government considered that the only questions now remaining were whether the measures still maintained in Cyprus were in the circumstances in accord with the Convention and whether any derogations there might be justified by the exigencies of the emergency. To both questions he replied in the affirmative.

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With regard to the usefulness of an enquiry on the spot, he stated as follows:

"Mr. President, I come finally to what, I suppose, is the outstanding question at this stage - whether there should be an inquiry on the spot in Cyprus. I have no idea (none of us has) of what may be the intention of the Sub-commission in that respect; but it would be less than honest if I were not to tell the Sub-commission that, in the present circumstances and having regard particularly to the rising communal tension, the Government of the United Kingdom would view with grave misgivings any proposal to send an investigating committee to Cyprus for the purpose of the present application. I feel bound to tell the Sub-commission of that, in view of the remarks which were made here by the Solicitor-General towards the end of March, when we were considering the situation existing before March 14th. Fortunately, I feel, personally, that it cannot be conceived that the Sub-commission would consider a local investigation necessary. The United Kingdom Government rest on the information which they have supplied. If any further information is still required on any point, the United Kingdom Government are ready and willing to provide the fullest possible information as speedily as possible."
(Doc. A 35.844, Report of the Hearings, pp. 1-4).

127. The Agent of the Greek Government expressed his surprise that the explosion and the discovery of bombs in the hands of Turkish Cypriots should have been invoked. He preferred not to comment on the fact, in order to avoid giving "a long account of the negative and completely bankrupt policy of the British Government towards the Cypriot people and the pacification of the island." One of the Greek Counsel declared:

"There is no tension between the Turks and the Greeks in Cyprus. The incident which was mentioned yesterday is not relevant to the situation. I have personal experience that we have always lived in friendship and brotherhood with the Turks. I can say personally that, when I was an advocate in Cyprus, my best friends and clients were Turks and I know that the feeling of the

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Greek majority today is that they are determined to live in brotherhood and friendship with the Turks. I also know the feeling of the great majority of the Turks and there is therefore no danger as regards relations between the two communities in Cyprus." (ibid. pp. 6 and 13).

With regard to the enquiry on the spot, the Greek Government's representatives contended that it should be ordered if the Sub-commission did not consider it had sufficiently reliable data: the object would be "to evaluate the alleged necessity of maintaining in force these measures which derogate from the Convention and their effect on the development of the situation. (Doc. A 35.732, Note dated 3rd September 1957, p.2).

VII. THE INVESTIGATION ON THE SPOT

128. The object of the enquiry ordered by the Sub-commission on 6th September 1957 was: (a) to establish the facts, so that the Commission might judge whether a public emergency threatening the life of the nation existed to an extent justifying the application of Article 15 of the Convention, and (b) to examine at first hand the circumstances in which the curfew laws were being applied. (Doc. A 35.745).

The information obtained by the Investigation Party, the statements or testimonies of persons heard and the findings made on the spot appear in the Report submitted by the Investigation Party to the Commission. In arriving at its opinion on the facts established, the Commission took into account both the arguments of the Parties and the Investigation Party's report. The latter, as one of the documents in this lengthy case, has consequently been appended to the present report (Appendix C).

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OPINION OF THE COMMISSION ON THE PUBLIC EMERGENCY
THREATENING THE LIFE OF THE NATION

129. A. Competence of the Commission

In order to establish the facts the Sub-commission invited the Agent of the United Kingdom Government, at the first appearance of the Parties (14th to 18th November 1956), to bring up to date the lists in Annex VI of the British Counter Memorial, which gave details of attacks or seditious acts committed in Cyprus. Similarly, in a statement on 1st July 1957 the Sub-commission requested the Agent of the United Kingdom Government to explain the position of his Government with regard to the persistence in Cyprus of a public danger threatening the life of the nation.

The Sub-commission thus implied that the existence or otherwise of a public danger threatening the life of the nation was a question of fact which it was its duty to establish by virtue of Article 28, paragraph 1 of the Convention.

The Parties also recognised that it was the duty of the Plenary Commission to pronounce on the question.

Finally, the disputed point whether a public danger threatening the life of the nation existed in Cyprus, led the Sub-commission to consider that it should conduct an investigation on the spot.

The Plenary Commission, having been called upon to consider this question, declares that it is competent to pronounce on the existence of a public danger which, under Article 15, would grant to the Contracting Party concerned the right to derogate from the obligations laid down in the Convention.

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130. B. The understanding of the word "nation"

The representatives of both Parties agreed that in the present case the term "nation" meant the island of Cyprus and not the United Kingdom or Commonwealth. The Commission shares that view.

As to the understanding of the word "nation", the Commission finds that the Convention is based on the notion of the State as defined by international law. It must therefore be accepted that the term "nation" means the people and its institutions, even in a non-self-governing territory, or in other words, the organised society, including the authorities responsible both under domestic and international law for the maintenance of law and order. Otherwise, a High Contracting Party, which extended the operation of the Convention to a territory for whose external relations that Party was responsible under Article 63, would not be entitled to invoke the right of derogation under Article 15 in any case of an attempt to overthrow by force the established Government of the territory. It seems inconceivable that the High Contracting Parties can have intended such a result or that any one of them would agree to extend the Convention to such territories on that basis.

131. C. The existence in Cyprus of a public emergency threatening the life of the nation

The Commission wishes to state that it is not its duty to express an opinion on the political problem of Cyprus, nor on the general aspirations of the Greek or Turkish Cypriot population. Its function is merely to establish certain facts and to draw therefrom the inevitable conclusions only in so far as the operation of the European Human Rights Convention is concerned. In order to do this the Commission need only take into consideration the events of the last few years leading up to the present situation. There are four factors to be considered: EOKA activities, the activities of the Turkish underground movement (TMT), communal tension and antagonism between right and left Greek groups.

132. 1. EOKA activities

A number of Greek Cypriots heard by the Investigation Party said that before the introduction of the Emergency legislation only sporadic acts of violence occurred and did not as such constitute a threat to the life of the nation. Violence was not resorted to on a large scale until after the introduction of the Emergency legislation, which these witnesses thus considered to be the cause, and not the effect, of the policy of violence.

From the documents and other evidence produced during the debates it is clear that the acts of violence began in Cyprus in April 1956. But the capture of the caique "Aghios Georghios" loaded with arms and munitions had already taken place in January 1955. Representatives of the Government told the Investigation Party that they had been informed of the existence of EOKA since the end of 1954 and that that organisation had from the outset been directing its activities towards the overthrowing of the existing Government for the purpose of obtaining "Enosis".

On the basis of the evidence presented to the Investigation Party there can be no doubt that EOKA is a well organised and powerful movement of armed resistance to the Government. Its strength and efficiency are proved by the extent to which it was able to pursue its policy of violence. The following figures have been submitted to the Investigation Party by the Chief Constable of Cyprus:

"From April 1955, to the end of that year 25 people were killed and 94 wounded. During 1956, 194 people were killed and 425 wounded. During 1957, 29 people were killed and 173 wounded. Of the 248 people killed, 150 were Greek Cypriot civilians, 16 English, 4 Turks, 3 other minorities and 27 members of the armed forces. Nine English policemen have been murdered, 12 Greeks, 10 Turks and 2 others. Of the wounded, 89 were Greek civilians, 42 English civilians, 16 Turkish civilians, 17 of the other minorities and 417 members of the armed forces. In the police force, 18 English, 23 Greek and 66 Turkish police officers have been wounded. From April - December 1955, there were

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242 bomb explosions. 9 ambushes and 19 armed raids on police stations, etc. During 1956, there were 975 bomb explosions, 138 serious cases of arson, 123 ambushes and 42 raids on police stations, etc. During 1957, there were 17 bomb explosions, 36 serious cases of arson, 14 ambushes and 8 raids on police stations, etc."

These figures correspond to those which have already been presented by the United Kingdom Government in the course of the proceedings in Strasbourg and they have not, in substance, been contested by the Greek Government.

In order to appreciate the importance of these figures, it should be borne in mind that the total population of Cyprus is only about 500,000. Of the above mentioned incidents, the following took place during the year 1955 until the proclamation of the state of emergency (26th November 1955); persons killed 11, persons wounded 74, bomb explosions 185, cases of arson 20, raids on police stations, etc. 3.

During the period after the proclamation of the state of emergency until 14th March 1957, when EOKA declared a truce, the following incidents took place: persons killed 245, persons wounded 636, bomb explosions 866, cases of arson 251, raids on police stations, etc. 57.

From March 1957 until mid-January 1958 the following figures apply: persons killed 10, persons wounded 23, bomb explosions 10, cases of arson 7, strikes 95, riots 43, demonstrations 73, ambushes 1, reported threats and intimidation 63, armed attacks on police and Security Forces 2.

With regard to the first period, the view of the Greek Government that there existed at that time no public danger threatening the life of the nation could not be accepted. This opinion would perhaps be justified if merely the number of incidents were taken into account. One must, however, consider that these incidents emanated from a fast-growing and militant organisation which, according to its own statements, aimed at obtaining self-determination for Cyprus by all possible means, including force and violence. These two factors together make it at least plausible to assume that there already existed, before the proclamation of the state of emergency, a public danger threatening the life of the nation.

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The assessment whether or not a public danger existed is a question of appreciation. The United Kingdom Government made such an assessment of the situation prevailing at that time and concluded that there existed a public danger threatening the life of the nation. That this appreciation by the British Government was correct was subsequently proved by the great increase of violence which occurred between November 1955 and March 1957.

As regards the second period, there can be no doubt that there existed a public danger threatening the life of the nation.

The third period began in March 1957, when a truce was declared by the EOKA leaders and continued until mid-January 1958, the time of the enquiry. According to the evidence presented by both sides a considerable improvement resulted and a state of relative tranquility developed but acts of violence occurred, although to a smaller extent, as indicated by the figures quoted above for this period, and on a somewhat different pattern. Furthermore, there was continuous and widespread intimidation of the people by EOKA in particular by the denunciation in EOKA pamphlets of alleged traitors and the subsequent killing of some persons so denounced. Representatives of the Government asserted that this period was used by EOKA to reorganise after the heavy losses inflicted upon it by the Security Forces in the course of the winter of 1956-1957. As the Administrative Secretary of the Cyprus Government put it when speaking to the Investigation Party, the organisation regained its strength to a considerable degree and was able to turn the tap of violence on and off at will. There was in fact a recurrence of serious acts of violence in the autumn which were terminated at EOKA's order on the arrival of the new Governor in December 1957.

The Investigation Party asked the leading Greek Cypriot witnesses whether they believed that the prevailing state of relative tranquility could be maintained throughout a period of the next twelve months or so. The answer was almost invariably that the outlook for the near future depends on what progress is made towards a solution of the political problems regarding the status of Cyprus. Moreover, EOKA itself had frequently stated in recent leaflets that it would resume its activities with even greater force if the British Government did not give self-determination to the people of Cyprus in the near future. (1).

(1) The establishment of the facts ceased in March 1958, when the Sub-commission submitted its report to the Plenary Commission. Subsequent events, which have confirmed the fears expressed by the Investigation Party, are not taken into consideration.

133. 2. A Turkish underground movement

Furthermore, other factors had recently come into the picture. It was asserted by a number of persons heard by the Investigation Party that a Turkish underground movement was in being, prepared to resort to violence. The Investigation Party was not able to obtain precise information on this point. The authorities stated that they had as yet no firm information in regard to this movement, but that a recent explosion in the Turkish quarter of Nicosia, causing the death of three Turkish youths, was considered to prove that explosives were being prepared for future use (1).

134. 3. Inter-communal tension

A more serious factor is the tension between the Greek and Turkish communities. This is a factor of recent date. Traditionally the two communities have lived peacefully and harmoniously together in towns and villages. In the course of the last few years, relations between the two communities have deteriorated. Greek witnesses were unanimous in declaring that the present strained relations have been artificially created and unanimous in saying that the Greek community desires to live in the same friendly relations with the Turks as they had always done in the past. Turkish witnesses, however, stated that the Turkish minority could not feel secure under Greek administration and that the Turkish community began to react when as a result of EOKA activities, they realised that Enosis might no longer remain a remote possibility.

The Investigation Party had the impression that it was a cause of resentment to the Greek community that a considerable number of young Turks were recently recruited to the police force. On the other hand, the many cases of assassination of Turkish policemen were considered by the Turkish community to be attacks on their members, although the great weight of the evidence showed that the victims had been selected in their capacity of policemen and not of Turks.

No opinion is expressed on the causes of the present tension. It is a fact, however, that the tension exists, in towns as well as villages, and has produced some regrettable incidents (2).

(1) See note at foot of page 136.

(2) See note at foot of page 136.

135. 4. Tension between right and left

Finally, a fourth factor is relevant to the problem of the emergency for the purposes of Article 15. A certain antagonism has developed between the right wing groups, as represented by EOKA and the so-called new trade unions, and the left wing groups, as represented by the old trade unions, which are under predominantly communist influence.

Persons representing the left wing groups represented to the Investigation Party that there was not at present any divergency between the two groups as to their national aspirations and their hostility to the colonial regime.

Evidence, however, was presented which shows that divergencies of a different kind do exist. Furthermore, while the Investigation Party was in Cyprus, two members of the old trade unions were killed and three wounded by masked men appearing in villages, and the trade unions called a strike in protest of this incident. It may be argued that this tension between right and left is not essentially different from similar phenomena in other countries and could not, therefore, warrant the conclusion that an emergency exists on this account. One difference exists, however, namely the fact that in Cyprus the right wing is connected with an armed underground organisation.

136. Considering all the factors set forth above, with due regard to the facts established during the examination of the case and in the light of the information collected on the spot by the Investigation Party, the Commission adopted on this point, by ten votes to one, the following opinion:

"The Commission of Human Rights is authorised by the Convention to express a critical opinion on derogations under Article 15, but the Government concerned retains, within certain limits, its discretion in appreciating the threat to the life of the nation. In the present case the Government of Cyprus has not gone beyond these limits of appreciation."

137. M. SKARPHEDINSSON stated at the 14th Session of the Commission that if he had participated in the vote taken at the previous session, he would have supported the majority opinion on this point.

138. M. DOMINEDO stated at the 14th Session of the Commission that if he had participated in the vote taken at the previous session he would have maintained on this point his opinion appearing in the Report of the Investigation Party, viz:

On the understanding of the word "nation":

"I am undecided whether the terms of Article 15, regarding a threat to the "life" of the nation, should apply strictly to the nation as an ethnic unit, or to the State as a legal entity. I therefore consider that the results of the investigation should be examined in the light of both concepts.

So far as the nation proper is concerned, which must be regarded in the present case as the ethnic (Greek Cypriot) community which forms the vast majority of the population of the island (about 420,000 as against 80,000) and has remained steadfastly faithful to its Greek origin in language, religion, way of life and sentiments, it may be said that there is no case for introducing special legislation detrimental to the liberty and 'interests of the people' (as the original draft of Article 15 read). On the contrary, such legislation should be repealed."

On the existence of a public emergency threatening the life of the nation

"I consider that, even if the State is conceded a certain power of discretion, it does not seem to have been proved that there exists a genuine threat to the very 'life' of the State, i.e. to the British Government. As admitted even by British witnesses (Reddaway) the United Kingdom Government was not at the time when legislation was introduced and is not even at the present time 'threatened' within the strict meaning of Article 15, particularly in view of the overwhelming superiority of its military forces over those of the irredentist organisation;

On the other hand, as the evidence of the two Parties directly or indirectly shows, there undoubtedly exists a very serious problem of public order, since the British Government is bound to protect the life and property of the Cypriot population. This is so not only because of the general problem, but also for special

reasons connected with relations between the communist left and the nationalist right and particularly with the tension between the Greek and Turkish communities. However, the concept of 'public order' which is entirely different from that of 'a threat to national life', is not relevant to Article 15 (which refers only to war and analogous situations). On the other hand, it is specifically mentioned elsewhere in the Convention (Article 6, para. 1 - Article 8, para. 2 - Article 9, para. 2 - Article 10, para. 2 and Article 11, para. 2)".

139. DISSENTING OPINION OF M. EUSTATHIADES

An investigation on the spot was ordered by the Sub-commission on 6th September 1957 with the object of establishing the facts, so that the Commission might assess whether a public emergency threatening the life of the nation existed to an extent justifying the application of Article 15 of the Convention. Since, however, the Commission's debates following that enquiry did not, in my view, bring to light any elements that warrant conclusions other than those drawn from the information collected in Cyprus by the Investigation Party, I am unable to express any opinions differing from those which I formed as a member of that Party on the basis of first-hand information. Now as then, I have serious doubts about the methods used in conducting the enquiry in Cyprus. The Investigation Party adopted its own interpretation of the term "nation" and then applied it to the facts. It was the facts alone which should have formed the subject of the enquiry; the meaning of the word "nation" is a matter for the Sub-commission and the Commission to decide (cf. my opinion in this connection on pages 13, et seq. of the Report of the Investigation Party). (1).

This reservation is a serious one because the reply to the question whether there exists in Cyprus "an emergency threatening the life of the nation" would appear to depend almost automatically on the interpretation of the word "nation", and the reservation still subsists even in the light of the position subsequently adopted in that regard by the Sub-commission and Commission, whose duty it was to settle this matter for the benefit of the Investigation Party and not vice versa.

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(1) See Appendix C to this Report.

Neither can I share the view of the Sub-commission and Commission, who were seemingly not minded to attach proper significance to the preparatory work which had led to the drafting of Article 15. The document on this subject, prepared by the Secretariat at the request of the Commission's President (Doc. DH (56) 4 of 22nd May 1956), was also largely unheeded, and it was not available to the Investigation Party in Cyprus. In my view it throws valuable light on the background history of Article 15 and particularly on the meaning of the expression "emergency threatening the life of the nation" as used in that Article. I cannot therefore support the opinion of the majority of the Commission on the interpretation of "nation" and "other public emergency threatening the life of the nation". Despite the obvious imprecision of Article 15, the majority did not see fit to base their thinking on the preparatory work which had gone into the drafting of the Article. This work is described in the Secretariat document already mentioned, and I shall not analyse it in detail here, as I have already done so in the explanations accompanying my detailed opinion included in the Investigation Party's Report. I shall confine myself to referring to the two aforementioned documents (Doc. DH (56) 4 of 22nd May 1956 and Doc. A 42.199 - Appendix C to this Report) and to recalling the following:

The Committee set up to prepare the draft Convention was required, by the decision of the Committee of Ministers appointing it, to take account of progress made by the competent organs of the United Nations. The draft United Nations Covenant contained an Article 4 covering the same ground as Article 15 of the European Convention and this was provisionally adopted by the Committee as follows:
"In time of war or other public emergency threatening the interests of the people, a State may ...". The Committee of Experts also considered the "Comments of the Government of the United Kingdom received by the Secretary General (of the United Nations) on 4th January 1950" which had suggested additions to the above Article but left paragraph 1 (quoted above) unchanged. On 4th February 1950, the British expert submitted to the Committee of Experts at Strasbourg an amendment of the Consultative Assembly draft, also beginning with the words: "1. In time of war or other public emergency threatening the interests of the people, a State may ...", and this United Kingdom amendment "appeared to be an almost textual reproduction of Article 4 of the draft Covenant."

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At its second session, the Committee of Experts had before it a new United Kingdom amendment which again left unchanged the clause "In time of war or other public emergency threatening the interests of the people". It will be recalled, moreover, that the Committee submitted alternative texts to the Committee of Ministers, the first of which was based on the method of precise definition. This contained an Article 2, largely embodying the British amendment and beginning as follows: "1. In time of war or other public emergency threatening the life of the nation" - which last phrase replaced "threatening the interests of the people". These two phrases were also interchanged in the draft United Nations Covenant, which is very instructive in this respect, as we shall have reason to observe more fully in due course.

It should be pointed out at this stage that both phrases were incorporated in the system of "precise definition" (which finally prevailed in the Rome Convention), whereby Articles concerning particular rights would themselves mention all permissible restrictions upon such rights and such restrictions would refer to special situations constituting a threat to order and security. Thus the British proposal was embodied in the draft Convention as a clause designed to meet a quite exceptional situation, going far beyond the concepts of security and public order, which were already covered by reason of the adoption of the system of "precise definition".

The above observations are founded on the preparatory work, which provides no evidence to the contrary, since there was no discussion of Article 15 of the Convention at the next stage, the purport of that Article being considered to have been sufficiently clarified by the work of the United Nations, whose draft Covenant was used as a model in this matter. This makes it necessary to recall certain extracts from the "annotation" prepared by the U.N. Secretary General.

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The French text of Article 4 of the United Nations Covenant qualified the phrase "danger public" by the adjective "exceptionnel". The United Nations "annotation" on this subject reads as follows: "The only kind of emergency envisaged in the Article is a public emergency, and according to paragraph 1, such an emergency can occur only when the 'life of the nation' is threatened ...". The main concern was to provide for a qualification of the kind of public emergency in which a State would be entitled to make derogations from the rights contained in the Covenant which would not be open to abuse. The present wording is based on the view that the public emergency should be of such a magnitude as to threaten the life of the nation as a whole ... It was thought that the reference to a public emergency 'which threatens the life of the nation' would avoid any doubt as to whether the intention was to refer to all or some of the people ..." (paras. 38, 39 and 40). The underlining is ours and the passage requires no further comment. Unquestionably, "as the preparatory work clearly shows, the wording of Article 15 of the European Convention on Human Rights closely follows ... that of Article 4 of the United Nations Draft Covenant." (Doc. DH (56) 4, p. 10).

Thus in the light of the work done by both the Council of Europe and the United Nations, it is my conviction as a lawyer that a public emergency threatening the life of the nation within the meaning of Article 15 is an emergency affecting "the whole nation rather than a section of the population"; an emergency, in fact, whose gravity far exceeds that of situations merely presenting problems of public security or public order, for which explicit provision is made in a number of other articles of the Convention (cf. the above opinion by M. Dominedo), authorising restrictions on the enjoyment of certain individual rights, but not derogations from whole articles.

I have been unable to change my conviction as a lawyer either as a result of the Commission's debates or in the light of the majority opinion, which takes no account of the background history of Article 15.

With regard to the reference in the majority opinion to the special régime in Cyprus, it should be observed that the peculiarity of that régime cannot be invoked to justify an interpretation of Article 15 as meaning that under a colonial system such as that in Cyprus the Government authorities are part of the nation and that a threat to these authorities is therefore a threat to the nation as a whole. That would be an unreal approach. That the power exercised by the Cyprus authorities does not emanate from the will of the people cannot be gainsaid.

If it is claimed that those who drafted the Convention had in mind only the normal pattern of organised society in which power derives from the people and the authorities represent the people - a doubtful supposition, since both at the United Nations and at Strasbourg it was known that the Covenant or Convention would contain a colonial clause - it should at the same time be admitted that the peculiar nature of colonial government does not warrant even a partial identification of the authorities with the people or nation; for quite a different situation prevails in Cyprus, where the nation is not organised according to its own wishes but is governed by a foreign power through a number of officials acting on behalf of that power, not the people.

Viewed from another angle, to adopt the fictitious premises accepted by the majority is tantamount to conferring on the colonial authorities the means of inordinately consolidating their powers at the expense of the most fundamental individual rights and freedoms, or at any rate of strengthening them to a much greater degree than is permitted by the Convention to government authorities emanating from the people and representing the nation. Indeed, it is because the Convention takes account of this peculiarity of the colonial territories - i.e. the unrepresentative nature of their government authorities - that it does not automatically extend to such territories upon ratification. Such extension requires special action on the part of the metropolitan State, in this case a special declaration extending the Convention to specified territories. And this only happens when the State freely considers that it can guarantee human rights in the colony to the same extent and as securely as in the metropolitan territory. That is

undoubtedly the significance of the fact that it is optional to extend the Convention to non-metropolitan territories. When a State voluntarily extends the Convention to colonial territories, it binds itself to protect rights and freedoms in such territories to the same degree as on metropolitan soil and has no power to make greater derogations there than at home. Yet the direct result of applying the theory to which we are opposed would be to invest it with that power.

The foregoing legal view of the interpretation of the terms "nation" and "other public emergency threatening the life of the nation" leads me, on the basis of the same criteria and the same facts and situations, to conclusions other than those reached by the majority on the existence in Cyprus of such a public emergency within the meaning of Article 15.

I recognise the existence of a threat to the authorities. I recognise the proportions that it has assumed since 1956. I recognise that during this period it has seriously jeopardised public order; but these points of agreement with the other members do not lead me to the conclusion which they inevitably reached as a result of their interpretation of the word "nation".

The above considerations should suffice to show why I am in disagreement with the conclusions given above. It is simply that I cannot accept the meaning they attach to the words "other public emergency threatening the life of the nation" (Article 15 of the Convention). On the interpretation given to "public emergency threatening the life of a nation" must depend conclusions concerning the existence of such a danger in Cyprus.

Furthermore, certain clarifications are needed at this stage with regard to the fourth question to which vital importance is attached in both the evidence taken in Cyprus and the conclusions reached by the Investigation Party. I refer to the activities of EOKA, which, incidentally, were the only factor taken into account in November 1955, since the other three had not arisen at that time, as is admitted. Ever since that time the main factor mentioned has always been EOKA activities. Here it is well to adhere to the distinction between three periods.

These three quite distinct periods were:

- (i) from 1st April to the proclamation of the State of Emergency (26th November 1955);
- (ii) from then until 14th March 1957, when a truce was declared by EOKA; and
- (iii) from the initial date of the truce until January 1958.

In our view, the activities of EOKA should be examined separately as they appeared in November 1955 and in January 1958, if we are to be able to say whether it was proper to introduce the emergency legislation in November 1956, and whether it is proper to retain it now.

So far as the period April-November 1955 is concerned, all Greek witnesses (Church representatives, lawyers, journalists, industrialists, tradesmen, workers, mayors of the towns, etc.) were unanimous in stating that incidents were few and far between. These statements do not appear to be inconsistent with British testimony concerning the period April-November 1955, or with the figures and dates submitted, which suggest that incidents occurred only infrequently.

Let us recall, with special reference to the Detention of Persons Law enacted on 15th July 1955, that one of the witnesses, M. Chryssaphinis, Q.C., stated that between April and July there were 43 explosions, 5 unlawful meetings, 8 non-violent strikes and 2 murders, and that between July and 7th October 1955, the date on which the derogation was notified, there were no incidents to justify the derogation. Be that as it may, another Queen's Counsel, Mr. St. Pavlides, pointed out that, according to government broadcasts and publications, EOKA during the first six months or so after April, had only 180 members in a Greek population of over 420,000 inhabitants. There were no mass demonstrations and business was carried on normally. So much so that even afterwards, that is to say during 1956, business in Cyprus, as another witness pointed out, flourished more than ever before, exports rising to 21 million and imports to 35 million (Sir Paul Pavlides, 22nd January). Similarly, the Annual Report by the Cyprus Administration points to an increase in production, trade and tax returns (cf. the words of Mr Rolin in his pleading on 16th November 1956, Doc. 30.568, p.134), which is scarcely consistent with the statement that the very life

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of the nation in Cyprus was threatened by a public emergency. Moreover, according to Greek and other witnesses, such incidents as occurred were attacks by EOKA against government institutions, which cannot therefore be said to have threatened the Cypriot nation. The feeling of the overwhelming majority of the population is apparent from several testimonies. Mr. Reddaway, one of the main British witnesses, spoke of a "sympathetic identification of the population with the EOKA movement". It does not seem to have been seriously contested that, on the introduction of the emergency legislation or at the present time, the activities of this organisation, which aims at self-determination, were and are directed against the institutions of the foreign government and a small number of its informers.

Having regard to the meaning of Article 15, there cannot be a threat to the life of the Turkish minority which of itself is a threat to the life of the nation warranting the application of that Article. Indeed, the question does not arise, since the activities of EOKA were not directed against the Turkish population, all Turkish victims having been members of the police who were attacked in that capacity and not as members of the Turkish community. This fact has been confirmed by witnesses and has never been challenged.

However, some British witnesses (Mr. Reddaway and Mr. Fitzgeorge Balfour) said that, owing to the general activities of EOKA, the Turks felt themselves to be threatened. That would appear to be a psychological state not necessarily induced by EOKA activities, which were not aimed at the Turkish population. Fear was felt (cf. statement of M. Denktash, 16th January) but, apart from the question of its justification, this cannot be considered as evidence of a threat to the life of the Turkish minority, with which, until quite recently, the Greek population was on excellent and unmistakably friendly terms (cf. statements by Counsel for the Greek Government, para. 127 above).

Nor could the activities of school children be regarded as a threat to the life of the nation. That the young people were enthusiastic about Enosis there can be no doubt; but neither the demonstrations nor deliberate non-attendance of school children could be construed as a threat to the life of the nation, within the meaning of Article 15. Normal education suffered from this attitude of the young, but that was

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mainly due to measures taken by the authorities to suppress the cultural life of the nation, i.e. disciplinary action, the dismissal of teachers, the closing of schools, sometimes for long periods (cf. the statements of Mr. Tudhope and Mr. Lightbody (United Kingdom) and MM. Spyridakis and Emilianides (Greece)).

These and a number of other measures taken against a people demanding freedom and the right to self-determination (which principle is recognised by the United Kingdom Government, according to Mr. Reddaway) were and still are designed not to protect the people or the life of the nation, but to strengthen the power of the government authorities because of the danger to which those authorities are subjected. It cannot be denied - nor indeed has it been - that the activities of EOKA are aimed at institutions of government. It was admitted by several Greek witnesses that the situation was for this reason abnormal, but not such as to warrant the measures taken; and qualified Greek jurists have put on record their conviction that Article 15 of the Convention "requires more than that" - more than a threat to the authorities. This threat to the authorities was certainly a grave one, particularly during the period November 1955 to March 1957, and called for adequate measures to meet what may be described as a situation threatening "public safety" and "order". Such situations are provided for in many Articles of the Convention which guarantee specific individual rights. It is clear from the evidence that the situation has deteriorated since November 1955, and this appears to have been the combined result of an intensification of EOKA's activities and a reinforcement of the emergency powers. At all events, whereas the threat to public order and safety increased, there appears to have been no threat to the life of the Cypriot nation within the meaning of Article 15 of the Convention, for the Cypriot nation remains overwhelmingly faithful to its Greek traditions and has meanwhile enthusiastically taken sides with the resistance movement, as both Greek and British witnesses agree. All official Greek representatives who testified - and these represent four-fifths of the population of the island - maintain that it would have been quite sufficient to retain existing legislation in a slightly modified form, and at the same time reinforce the police and security forces to counter the stronger threat from EOKA.

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But that is many steps removed from acknowledging that the threat to the authorities was tantamount to a threat to the life of the nation within the meaning of Article 15 and therefore justifying the application of this provision of the Convention, entailing the suppression of the most vital democratic freedoms. In my view there is no reason why we should go out of our way to take these great steps.

The evidence and information in this connection seems particularly revealing as regards the period beginning 14th March 1957, the date of EOKA's truce announcement. It is noted that since then acts of violence have become very sporadic and there has been a definite improvement in the general situation. These two facts are apparent from the statements of a number of British witnesses (e.g. MM. Reddaway, Williams and Fitzgeorge Balfour). One witness agreed that there was "an appreciable improvement" and "a remarkable change in the situation" (Weston, 15th January) and nearly all spoke of relative "calm". One of the witnesses stated that any incidents which EOKA could perpetrate would be sporadic and on a very small scale (Griffith Williams). But the mere possibility of a resumption of EOKA activities, though it might justify the conclusion that there was a situation capable of endangering public order and security, does not warrant the deduction that there was an emergency threatening the life of the nation within the meaning of Article 15, when the enquiry on the spot took place in January 1958.

If, however, it is the duty of the authorities to be vigilant, the Commission cannot stretch its competence to the point of taking into account fears for the future as a justification for cancelling human rights and fundamental freedoms, even when such fears are genuinely felt by the authorities of a vigilant government - and any government must be vigilant. Future developments may bear out such fears and the government responsible for maintaining law and order must certainly make preparations accordingly, but what we are concerned with here is not a "current situation", **even** now presenting an exceptional threat to the life of the nation within the meaning of Article 15. There is no denying that the realities of political life make it necessary for the authorities to have some freedom of appreciation but if the Commission does not take very great account of the fundamental difference, clearly borne out by the history of the Article

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in question, between a threat to "order" and "public safety", on the one hand, and a threat to "the life of the nation" within the meaning of Article 15, on the other, it will be granting the Contracting Parties a degree of latitude which the Convention does not authorise.

It is not the function of the European Commission of Human Rights to sacrifice the most fundamental human rights and freedoms to the vigilance and foresight of a government wishing to preserve future law and order. In seeking justification for the suppression of the most fundamental human rights and freedoms, the Commission must confine itself to determining whether exceptional circumstances obtain at the time.

Such, then are the conclusions I have drawn from the work of the Investigation Party, in answer to the question: was there, at the time when the British Government enacted the Emergency Regulations in November 1955, and during our visit to Cyprus in January 1958, a public emergency threatening the life of the nation within the meaning of Article 15 of the Convention? Since that visit a new element has emerged in the shape of acts of violence by the Turkish minority, but on that situation I am not in a position to make any statement for lack of arguments by the Parties to the present Application.

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Section III. On the extent strictly required by
the exigencies of the situation

140. This question raises the same problems of fact and of law as the preceding one.

The Greek Government contests the strict necessity of the measures taken, while the United Kingdom Government contends that they "have been no more than has been strictly required by the exigencies of the situation" (Application, p.12; first British Counter-Memorial, Doc. A 30.235, paras. 87 and 88).

The United Kingdom Government claims further that "with regard to the necessity for the measures, there must be at least a strong presumption in favour of the decisions of the competent authorities" (first British Counter-Memorial, *ibid.* para. 88).

141. One of the Greek Government's Counsel stated at the hearing on 16th November 1956: "I do not feel that the measures we complain of can be said to have been required by the exigencies of the situation" (Doc. A 30.768, p.134). The Agent of the Greek Government, pleading on 17th November 1956, said: "Individual attacks simply do not justify collective measures on such a scale. These are not measures of local security but rather, as is shown by the use made of them, part of a policy whose objects are more far-reaching than those of the emergency laws." These measures constituted a "progressive de-nationalisation of the island". (*ibid.* p.177).

Counsel for the British Government, outlining the general situation in Cyprus and referring to the Grivas diaries, contended on the other hand that the measures taken were strictly required by the exigencies of the situation (*ibid.* pp.158-167).

142. The same question was also raised by the Agents of the Parties in connection with the detention and deportation of Archbishop Makarios and his companions.

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One of the Greek Government's Counsel pleaded that internment in Seychelles could not be considered as necessary for the protection of public safety, and that an enquiry on the spot "would be a useful if not indispensable measure" towards appreciating the relationship between the situation in Cyprus and the measures complained of so far as the application of Article 15 in general was concerned). (Report of the sittings held on 28th and 29th March 1957, Doc. A 33305, pp. 18 and 19).

Counsel for the British Government replied that the notion of necessity was not static: it varied with a number of factors such as the capacity of the EOKA forces or a declaration by the Ethnarch requesting a cessation of violence. As for the request for an enquiry, the Solicitor-General said: "... if the Sub-commission think it wise and advisable to go to Cyprus and enquire into the facts, then in so far as the enquiry is confined to the subject matter of this Application we have no objection to providing any facilities they may require" (ibid. p.28).

OPINION OF THE COMMISSION OF THE EXTENT
STRICTLY REQUIRED BY THE EXIGENCIES OF THE SITUATION

143. The Commission unanimously considers itself competent to decide whether measures taken by a Party under Article 15 of the Convention have been taken "to the extent strictly required by the exigencies of the situation."

In general, the Commission takes the same view as it did with regard to the question of a "public emergency threatening the life of the nation", namely that the Government of Cyprus should be able to exercise a certain measure of discretion in assessing the "extent strictly required by the exigencies of the situation". The question whether that discretion has or has not been exceeded is a question of substance which will be dealt with as each individual measure is examined.

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Thus, the matters into which the Commission will enquire will be arrest without warrant, detention without trial and the deportation of Archbishop Makarios and three others. The opinion of the Commission and the minority opinion on these measures will be found in Chapter VI below, paragraphs 297-301, 318-321 and 337-339.

144. MM. DOMINEDO AND SKARPHEDINSSON stated at the 14th Session of the Commission that if they had participated in the vote taken at the previous meeting they would have supported the opinion of the Commission on this point.

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Section IV. Fulfillment of other obligations under International Law

145. The Greek Government's argument is expressed in the text of the conclusions tabled at the first oral hearing of the Application. The Commission was requested:

"to lay down that Article 15 of the Convention forbids the High Contracting Parties to invoke before the Commission the existence of circumstances authorising them to derogate from certain provisions of the Convention when they have not, prior to the submission of the application against them, informed the Secretary General of the Council of Europe, in accordance with paragraph 3 of Article 15, of the measures taken in derogation of the Convention and of the reasons therefor."

(Report of the sittings held from 14th-18th November 1956, Doc. A 30.768, Appendix I).

The Greek Government contended that:

"every international obligation touching on the rights protected by the Convention is covered by the text, by the provisions of the Convention which protect these rights" (ibid. p.27).

The Greek Government could not avail itself of alleged violations of rights and freedoms other than those mentioned in the Convention. But in the case of violations of the rights and freedoms defined in Section 1, it must be held that such a violation was established not only when it was counter to the very terms used in the definition given in the Convention but also when there was infringement according to international law, of the freedoms protected by the Convention (ibid. pp. 27 and 28). According to Counsel for the Greek Government the Convention had given an added measure of protection to the human rights enshrined in general international law. It had widened general international law not only in relation to the category of persons protected but also in relation to the extent of the obligations imposed; with the result that the Convention required, even in the cases where

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derogation is permitted, that the minimum should be maintained from which it is impossible to derogate in any circumstances, and that obligations arising from international law should be respected (ibid. p.28).

146. In the opinion of the United Kingdom Government the reference to international law in Article 15, para. 1,

"is designed to prevent reliance on the right to derogate from the Convention as an excuse for evasion of any other obligation of the High Contracting Party under international law. The condition only applies if there is some other legal obligation on the High Contracting Party ... It only applies to the extent of that obligation and in circumstances in which that obligation also applies. The condition cannot be relied upon as limiting the right to derogate when obligations under another treaty are limited to certain classes of persons who are not affected by the derogation."

(See first British Counter-Memorial, Doc. A 30.235, para.89).

147. The Greek Government invoked provisions stemming from the following international treaties and instruments:

- The Hague Convention of 1899, Appendix: Regulations respecting the laws and customs of war on land, Article 50;
- Geneva Convention of 12th August 1949, relative to the treatment of prisoners of war, Articles 3 and 87;
- Geneva Convention of 12th August 1949, relative to protection of civilian persons in time of war, Articles 2, 3 and 32.

Some of the Greek Government's arguments are based on the above-mentioned international treaties and instruments, in particular as regards:

Whipping (pleading by Maître Rolin, Doc. 30.768, pp.23 et seq.; pleading by Sir Harry Hylton Foster, pp. 35 et seq.; reply by Maître Rolin, pp. 45 to 48; reply by Sir Harry, pp. 66 et seq.);

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Collective punishment (pleading by Maître Rolin p. 81; pleading by Mr. Vallat, pp. 103 and 107 to 108; reply by Maître Rolin, pp. 113, 116, 117).

Arrests, detention, etc. (pleading by Maître Rolin, pp. 132 and 134 to 135; pleading by Mr. Vallat, pp. 142 to 144; reply by Maître Rolin, p. 156).

148. It is obviously difficult to give sufficient extracts from the Memorials and Pleadings to provide a complete survey of the arguments, but in brief, Me. Rolin's argument was:

"that each article contains an irreducible nucleus, a permanent nucleus consisting of obligations under international law that admit of no evasion. If, Gentlemen, this nucleus exists, even in the event of war or other danger threatening the life of the nation, when derogation is permitted, how can it be assumed that this nucleus is included in the various articles in exceptional times when it is not already there permanently in normal times of peace?" (ibid, p.48).

On the other hand, the argument of the United Kingdom Government was that "obligations under international law" did not refer to all the rights and freedoms defined in Section 1 of the Convention but related to the scope of the right of derogation in itself; in other words, the Emergency Regulations enacted pursuant to the right of derogation must not run counter to international law. Sir Harry concluded that the Commission could "get little help, if any", from the Conventions and instruments invoked, since these texts, he maintained, did not apply in the present instance (ibid, pp. 35, et seq.).

The Agent of the British Government objected that the Conclusions of the Greek Government asked the Commission "to make a statement regarding the incorporation of international law into the provisions of the Convention" and that this "quasi-legislative function" was not part of the Commission's duty. He therefore asked the Commission:

"To refuse to make any statement of law concerning the obligations of the High Contracting Parties to the Convention as requested in paragraphs 1 and 2 of the amended conclusions submitted by the Agent of the Greek Government on November 15th, 1956." (ibid. pp.140-143).

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OPINION OF THE COMMISSION

149. Measures taken by a Contracting Party which derogates from its obligations under the Convention must not be inconsistent with its other obligations under international law.

Such is the meaning, according to the Commission, of the third condition laid down in para. (1) of Article 15.

The Commission notes that obligations under international law have been invoked by the Greek Government chiefly with regard to corporal and collective punishment, which will be dealt with in separate chapters. (See Chapters III and IV below).

With regard to the law on the detention of persons, in respect of which the United Kingdom Government exercised its right of derogation in the circumstances described above, the Commission is of the opinion that it is not otherwise demonstrated that the measures thus taken are incompatible with other obligations under international law. This opinion received a majority vote of 9 to 1, Mme. Janssen-Pevtschin abstaining.

150. MM. DOMINEDO AND SKARPHEDINSSON stated at the 14th Session of the Commission that if they had participated in the vote taken at the previous meeting they would have supported the opinion of the Commission on this point.

151. DISSENTING OPINION OF M. EUSTATHIADES

Since the majority opinion (see paras. 94-96 above) has been that the Commission should not pronounce on measures rescinded while the case was sub judice and since the minority, to which I belong, has therefore been unable, in addition to this point of disagreement, to examine the said measures (para. 97 above), a comparison of the latter with "other obligations under international law" within the meaning of Article 15 cannot here be made. I refer to whipping and collective punishment.

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It remains to be considered, therefore, to what extent arbitrary arrests and prolonged detentions are consistent with other obligations under international law, such compatibility being unquestionably a condition laid down by Article 15 of the Convention.

With regard to the question of principle, as represented by the British and Greek arguments, respectively, on the extent of the legal engagement of Contracting Parties to the Convention to respect "other obligations under international law", while I cannot support the Greek Government's view and am in agreement with the majority in considering that the term "other obligations under international law" in Article 15 covers the entire right of derogation, I am unable to conform to the majority conclusion that the arrests and detentions of persons in Cyprus do not run counter to such "other obligations".

Since arrests and detentions as carried out in Cyprus are considered as exceeding the extent strictly required by the exigencies of the situation (see paras. 318 et seq. below), they are ipso facto contrary to obligations under international law, which must in all cases be respected.

The aim of the Convention, in stipulating respect for the said obligations, was to guarantee a minimum of protection of the rights and freedoms of man - an irreducible minimum even in cases of derogation under Article 15. The precise import of the irreducible minimum must be sought, in each individual case, on general international law, of which one of the indisputable sources is the "general principles of law" recognised by civilised nations, in line with the Statute of the International Court of Justice, Article 38, and customary international practice.

The stipulation that a derogation - even if otherwise consistent with Article 15 - must be regular means that it must be compatible not only with obligations under other Conventions, which are in any case explicitly reserved under Article 60, but also with obligations under general international law. In the matter of arbitrary arrest and detention, these relate, first, to the treatment of foreigners: and here international case-law is well established, either through the concept of "denial of justice" or through that of "international standards" (see inter alia the relevant chapters in the works of Freeman and Eustathiades on Denial of Justice,

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and cf. Hackworth's Digest, Vol. V). Secondly, they relate to the treatment of a State's own nationals: the rules of general international law, as regards arrest and detention, are here based on the general legislative practice and jurisprudence of civilised states, which unquestionably include the Member States of the Council of Europe. By virtue of that practice, "general principles of law" are norms founded on the rule of law and the minimum requirements of a sound administration of justice, and include the precepts "no deprivation of liberty without a Court decision" and "everyone shall be deemed innocent until proved guilty according to law". These rules are a source of general international law, and the obligations that flow from them must in all cases be respected, as required by Article 15 of the Convention.

The reservation concerning respect for the rules of general international law is twice mentioned in the Convention, once in Article 26 ("generally recognised principles of international law") in connection with the exhaustion of domestic remedies, and again in Article 15, which speaks of "other obligations under international law". Respect for these, alongside the stipulation concerning the "extent strictly required by the exigencies of the situation", is a conditio sine qua non of the possibility of derogations under Article 15; and since it is expressly and separately mentioned, it is independent of the "extent strictly required" and is thus not affected by interests of public safety and order.

In conclusion, in the light of the Convention's explicit condition relative to obligations under international law and of the import of those obligations in connection with arrest and detention, I cannot support the majority opinion on the observance of such obligations in Cyprus.

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Section V. Duty to inform the Secretary General of the Council of Europe (Article 15, para. 3)

152. The complaints of the Greek Government in respect of Article 15, paragraph 3, were outlined in the Application instituting proceedings, where it was claimed that the Notes Verbales transmitted to the Secretary General on 7th October 1955 and 13th April 1956 were unsatisfactory from various points of view:

- (a) They did not "fully" inform the Secretary General "of the measures taken", but simply stated that certain unspecified derogations had been made.
- (b) The notification of 7th October 1955 was "inaccurate", for it asserted that all the persons in detention were permitted "to have their cases reviewed by a Committee under a judicially qualified chairman", whereas the Regulation only gave this Committee advisory powers and contained no reference to the qualifications or even the legal training of the Chairman, merely stating that he, like other members of the Committee, was to be appointed by the Governor.
- (c) Instead of giving reasons for these measures, more especially those which led the competent authority to the conclusion that there was a public emergency threatening the life of the nation, the notes simply called attention to the existence of such a situation without offering any evidence.
- (d) Both notes were of a date subsequent to the measures taken, the first by as much as three months, whereas, according to the Greek Government, notification must be given previously or, at any rate, simultaneously.
- (e) In addition to Article 5 mentioned in the Notes Verbales of the United Kingdom Government, many other provisions had been violated, particularly Articles 6, 8, 9, 10, 11, etc.

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153. In its first Memorial dealing with arrest, detention and deportation, the Greek Government also charged the British Government with not having notified the Secretary General of:

- the Order in Council of 21st November authorising arrest without warrant;
- Order in Council No. 17 of 1956 which increased to 14 days the maximum period between arrest and appearance before a magistrate, although these Orders also constitute derogations mentioned in Article 5 of the Convention.

The Greek Government maintained that "since the Secretary General was not notified of them, these Orders must be regarded as having been and still being illegal" (First Greek Memorial, Doc. 28.657, p.34).

154. In its Counter-Memorial, the British Government replied to the above points as follows:

- (a) Subject to the provisions of paragraphs (1) and (2) of Article 15, the right to derogate is unconditional. It is in no way dependent on the obligation under paragraph (3) to inform the Secretary General of the Council of Europe. That this is so is clear from the whole structure of Article 15 and from the need to take prompt measures in an emergency. Having quoted paragraph 3, the British Government maintains that "the obligation to inform is made dependent on the exercise of the right of derogation and the right of derogation is not made dependent on the obligation to inform" (British Counter-Memorial, para. 86 - Doc. A 30.235).
- (b) It is true that the notice of 7th October 1955 was entered almost 3 months after the Detention of Persons Law came into force, but nothing in Article 15 required it to be entered immediately. Frequently, the very nature of the emergency would preclude a simultaneous notification. Since the notification comes after the measures, some delay is inevitable. The obligation is to give information within a reasonable time having regard to all the circumstances, and in the present instance the delay of nearly three months was not so unreasonable as to amount to a breach of the Convention (ibid. para. 101).

- (c) Since Regulations 3 and 4 of the Emergency Powers Regulations 1955 (No. 731), which concern arrests, did not contravene Article 5 of the Convention the United Kingdom Government did not consider it necessary to give notice of derogation under Article 15 in connection with them (ibid, paras. 95 and 101).
- (d) The Detention of Persons Law of 1955 and Regulation 6 of the Emergency Powers Regulations 1955 (No. 731) which replaced it did not involve any derogation from Article 6 of the Convention. This Article is concerned with the determination of a person's civil rights and of any criminal charge against him. Legislation, duly notified under Article 15, deprives him of the civil right to liberty as soon as a detention order is made against him (ibid. para. 101).
- (e) The Committee set up under the emergency legislation is an advisory one. Its aim is merely to give advice to the Government; there is no implication to the contrary in the United Kingdom notice of derogation of 7th October 1955 (ibid. para. 101).
- (f) With regard to Articles 8, 9, 10 and 11 of the Convention, the British Government submitted that "(a) if there had been derogation, absence of notice would not render the measures themselves illegal, and (b) notice of derogation was not required because the measures were in conformity with Articles 8, 9, 10 and 11" (British Counter-Memorial, para. 107). These Articles provide for "exceptions", and it is these exceptions "prescribed by law" and rendered "necessary in the interests of national security or public safety, for the prevention of disorder ..." which are relevant to the present case (ibid, paras. 108-110).
155. In the course of his pleading of 16th November 1956, Counsel for the Greek Government admitted as "partly true" the thesis of the British Government that the "right of derogation is not dependent on notification to the Secretary General". He also admitted that "notification can be given at a later date." But Counsel nevertheless maintained that the Secretary General must be informed of the derogation at an early date, in the same way as the Committee of Ministers and the Consultative Assembly had decided that the Secretary General should in future inform the other High Contracting Parties as speedily as possible of any notification received.

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To the question "what is the legal time-limit, and what sanction may be applied if it is not complied with?", Counsel for the Greek Government suggested that the Commission "should consider how long the delay has been and decide to what extent the measures of derogation must be looked upon as having been at first unlawful and later to what extent a lawful state of affairs." Of one thing he was certain: "there is a time-limit that can in no circumstances be overstepped, a time-limit beyond which notification should be considered invalid, or at least of no retroactive effect. This time-limit is the date on which an application is made against the measures that have been taken". Counsel drew a parallel from a clause on the registration of treaties in the United Nations Charter that had already figured in the Covenant of the League of Nations (Doc. A 30.768, pp.131-132).

Counsel for the Greek Government also claimed that in both notifications to the Secretary General the reference was to Article 5 only, whereas, so far as detention and deportation were concerned, the derogation also affected Article 6 of the Convention. Consequently the notifications should be deemed irregular because of the delay and unlawful because they were inconsistent with Articles 5 and 6 of the Convention (*ibid.* p.135).

As for the "limitations" mentioned in Articles 8, 9, 10 and 11 of the Convention, he submitted that they differed from Article 15. The manifest intention in these four Articles was to refer to limitations which in a democratic society were imposed on these freedoms in normal circumstances, whereas Article 15 envisaged exceptional circumstances under which it was possible at a given time to go beyond the restrictions normally imposed (*ibid.* pp. 138 and 139).

156. The Agent of the United Kingdom Government claimed in reply that detention was not contrary to Article 6 of the Convention and that, for the reasons given in paragraph 101, sub-paragraph 4, of the British Counter-Memorial, there had been no need to mention this Article in the notices of derogation. He maintained:

- that the point raised by the Greek Government "is a very technical point, because it cannot be denied that notice of derogation could have been given with respect to Article 6" (*ibid.* p.145);

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- that the question of the alleged delay in giving the notice of derogation was also a very technical point. It was for the Commission to judge whether in all the circumstances the delay was unreasonable. No period of delay was fixed in the Convention. It was intended that the notice should be given within a reasonable time, but that depended on circumstances. Governments could not always deal with such situations in a day or two; time had to be taken for reference to various departments and so on (ibid. p.145).
- that even if the Commission considered the delay to be unreasonable, the result could not be to invalidate the notice. There was no indication to that effect in the Convention and it was difficult to see "how the request by the Consultative Assembly and the Committee of Ministers to the Secretary General to circulate notices of derogation within the shortest possible time can show that delay in giving notice can render the notice null and void or deprive the Government of the right of derogation." (ibid. p.146).

The Agent of the British Government went on to contest the doctrine that notification of a derogation under Article 15 was null and void if given after the date of the application to the Commission.

"There may well be cases in which Governments make honest mistakes. If the intention of Article 15 had been to impose any such rigid or unreasonable procedure, I do submit that that would have been provided expressly in Article 15. Indeed from the debates here it is clear that there may be difficulty in applying and interpreting the provisions of the Convention. It may be that if it is found that there is a derogation from an Article and notice of derogation is not given, the failure to give notice is a breach of Article 15. I would not contend the contrary for a moment. If the delay is unreasonable that in itself is a breach of the Convention. I do not deny that. But what I do suggest, is that a Government is not thereby deprived either of the right to derogate or of the right to give notice when it becomes aware that there is in fact, or at any rate in the view of the Commission, a derogation from the Convention" (ibid. p.146).

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Turning to the argument based on the United Nations Charter, he pointed out "that it is a dangerous practice to try to interpret the provisions of one Convention by analogy ... with another Treaty". The clause in Article 102 of the Charter did not occur in Article 15 of our Convention. Indeed, according to the terms of Article 102, failure to register did not render the treaty invalid. "What it does is to prevent a Party in breach of the obligation to register from relying on that Treaty in any Organ of the United Nations." "For my part", added Mr. Vallat, "I could never admit as a matter of international law that a Treaty or Agreement is rendered invalid because it has not been registered." (ibid. pp. 146-147).

In his reply of 17th November 1956, Me. Rolin gave the following summary of the arguments put forward on both sides:

- The Agent of the British Government had recognised, according to Me. Rolin, that there was an obligation to give notice of a derogation within a reasonable time. "His opinion on what is reasonable is obviously different from mine, but it is only a question of degree, and he recognises that if a State fails altogether for an unreasonably long time to bring derogations to the notice of the Secretary General, it has infringed an obligation under the Convention."

- For his part, Me. Rolin admitted "that there was no legal basis for contesting the validity of this official notification if the Secretary General receives it, however belatedly, before a complaint is submitted to the Commission."

- On the other hand, "the Commission may not take account of the notification of a derogation when it is submitted after the application has been filed". The Greek Government did not conclude that such notification was "null and void". It was quite clear that the filing of the Greek Application had not invalidated the British Government's right to take other measures involving derogation if it considered that the conditions laid down in Article 15 were satisfied, and to inform the Secretary General of such measures. But with regard to the measures already taken, "the British Government cannot justify breaches of the Convention by notifying the Secretary General after the application has been submitted that it has availed itself of the right to derogate."

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- With regard to Article 102 of the United Nations Charter, they had reached the conclusion that "the authors did not persist in the view that an unregistered treaty should be regarded as null and void, but said that it was at least logical ... that no organ of the United Nations could recognise the validity of any treaty which, in violation of the United Nations Charter, had not been registered, so long as this fundamental flaw, this flagrant breach of an express obligation had not been made good" (ibid. pp. 154-155).

157. At the end of the sitting on 16th November 1956, the Greek Government put forward its general conclusions. As regards the duty to inform the Secretary General of the Council of Europe of measures taken in derogation from Article 15, it asked the Commission:

"...2. to lay down that Article 15 of the Convention forbids the High Contracting Parties to invoke before the Commission the existence of circumstances authorising them to derogate from certain provisions of the Convention when they have not, prior to the submission of the application against them, informed the Secretary General of the Council of Europe, in accordance with paragraph 3 of Article 15, of the measures taken in derogation of the Convention and of the reasons therefor;"

The United Kingdom Government, at the hearing on 17th November 1956, requested the Commission:

"1. To refuse to make any statement of law concerning the obligations of the High Contracting Parties to the Convention as requested in paragraphs 1 and 2 of the amended conclusions submitted by the Agent of the Greek Government on November 16th, 1956." (Doc. A 30.768, pp.139 and 142-143 and Appendix thereto, p. 1).

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OPINION OF THE COMMISSION

158. Paragraph 3 of Article 15 imposes on a High Contracting Party a duty to inform the Secretary General of the Council of Europe of any exercise of the right reserved in that Article to derogate from the provisions of the Convention in time of public emergency. The task of the Commission is to determine whether the notification to the Secretary General made by the United Kingdom Government on 7th October 1955, concerning the detention of persons without trial in Cyprus was a sufficient compliance with this duty, firstly, having regard to the date of the notification and, secondly, having regard to the information contained in it concerning the measure taken.

Paragraph 3 formulates the duty to notify the Secretary General in general terms, simply providing that the High Contracting Party "shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor". The words "which it has taken" make it clear that the notification does not have to be made before the measure in question is introduced; but the wording of the paragraph does not otherwise give any definite guidance either as to the time within which the notification must be made or as to the extent of the information concerning the measure that must be furnished to the Secretary General. The question therefore is what precisely is involved in the provision that a High Contracting Party "shall keep the Secretary General fully informed of the measures which it has taken and the reasons therefor". The Commission considers that this provision has to be interpreted in the light of the general purpose of the Convention and of the machinery which it establishes for effecting that purpose.

The Stated purpose of the Convention, as it appears in the Preamble, is to take the first steps, within the countries composing the Council of Europe, for the collective enforcement of certain of the rights set forth in the Universal Declaration of Human Rights drawn up by the United Nations. The machinery which is established by the Convention for effecting that purpose consists, in the first place, of the acceptance in Article 1 of an express obligation by the governments concerned to secure to everyone within

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their jurisdiction the rights and freedoms in question and, secondly, of the establishment of certain procedures, to ensure the observance of this obligation. As to these procedures, it suffices, for the purpose of interpreting paragraph 3 of Article 15, to refer to the provisions of Articles 19, 24 and 25. Article 19 provides for the setting up of a European Commission of Human Rights, and ultimately of a European Court of Human Rights, in order to ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention. Article 24 provides that any High Contracting Party has the right to refer any alleged breaches of the Convention to the Commission through the Secretary General. Article 25 further provides that individuals, non-governmental organisations and groups of individuals claiming to be victims of a violation of the Convention may present petitions to the Commission in those cases where the High Contracting Party against which the complaint is lodged has recognised the competence of the Commission to receive such petitions.

It follows from the above-mentioned provisions of Articles 19, 24 and 25 that, when one High Contracting Party exercises its right under Article 15 to take measures derogating from its obligations under the Convention, the other High Contracting Parties have a legal interest in being informed of those measures since temporarily their own rights under Article 24 of the Convention are pro tanto curtailed. It equally follows from the provisions of Articles 19, 24 and 25, that the position of the Commission (and, ultimately, of the European Court of Human Rights) in applying the Convention is directly affected by the fact that a High Contracting Party has taken measures under Article 15 which derogate from its obligations under the Convention. It further follows, in the case of a State which has recognised the competence of the Commission to receive petitions from individuals and groups under Article 25, that the work of the Commission in determining the admissibility of such petitions may be impeded if it does not receive timely and definite information concerning any measure derogating from its obligations under the Convention which such a State claims to have taken in reliance on Article 15.

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The Commission is accordingly of the opinion that, in order to comply with the requirement in paragraph 3 of Article 15 that it "shall keep the Secretary General fully informed of the measures which it has taken and the reasons therefor", a High Contracting Party must notify the Secretary General of the measures in question without any unavoidable delay and must furnish sufficient information concerning them to enable the other High Contracting Parties and the Commission to appreciate the nature and extent of the derogation from the provisions of the Convention which the measures involve.

In the present case the United Kingdom introduced on the 16th July 1955 a measure authorising under certain conditions the detention of persons without trial in Cyprus in derogation from the provisions of Article 5 of the Convention, and on 7th October, that is, nearly three months later, gave notice of this measure to the Secretary General. The Commission recognises that some delay might have been caused by the fact that the development of the emergency was gradual. It also recognises that the very existence of a public emergency in the Island of Cyprus might be the cause of some administrative delays in the giving of a notification. Nevertheless, the Commission is of the opinion that the period of time which elapsed in the present case before the Secretary General was informed of the measure derogating from Article 15 was longer than can fairly be attributed to inevitable causes and that it was therefore longer than is justifiable under paragraph 3 of that Article.

As to the information contained in the United Kingdom's notification, the Note Verbale of 7th October 1955, recited that a public emergency within the meaning of Article 15, paragraph 1, of the Convention existed in Cyprus and that certain emergency powers had been brought into operation in that colony on 16th July owing to the commission of acts of violence, including murder and sabotage, and in order to prevent attempts at the subversion of the lawfully constituted Government. The Note Verbale then continued:

"The Government of the Colony of Cyprus have taken and, to the extent strictly required by the exigencies of the situation, have exercised or are exercising powers to detain persons which involve derogating in certain respects from the obligations imposed by Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The United Kingdom Permanent Representative has, however, the honour to add that all persons now in detention are permitted, in accordance with the provisions of the relevant Regulations, to have their cases reviewed by a Committee under a judicially qualified chairman."

The Note Verbale was not accompanied by the text of the measures authorising the detention of persons in derogation of Article 5, and the full extent of the information supplied to the Secretary General by the United Kingdom was in fact the above-mentioned information contained in the Note Verbale.

The Commission recognises that the terms of the United Kingdom notification of 7th October 1955 were sufficient to indicate in a general way the nature of the measures taken, the nature of the derogation from the provisions of the Convention which the measure involved and the reasons for its introduction. The Commission also recognises that paragraph 3 of Article 15, as previously observed, does not afford clear guidance as to the information required in a notification. That being so and the notification in question being the first made under paragraph 3, the Commission does not feel that it is called upon to say that in the present case there was not a sufficient compliance with the paragraph. Nevertheless, /the Commission thinks it right to state its opinion that the safeguarding of the rights of other High Contracting Parties under Article 24 of the Convention, and the satisfactory discharge of the Commission's own responsibilities, require rather fuller information concerning the measure taken than that contained in the United Kingdom's Note Verbale. While it is true that paragraph 3 of Article 15 does not specify that the texts of the relevant measures are to be furnished to the Secretary General, the Commission considers it to be really essential for the satisfactory working of the Convention that the texts of measures taken under Article 15 should form part of the information supplied by the High Contracting Party concerned./

With regard to incomplete information as to the measures taken by way of derogation, neither paragraph 3 of Article 15 nor any other provision of the Convention speaks of any sanction. In the present case the Commission by ten votes to one has held that during the period 16th July 1955, to 7th October 1955, the United Kingdom Government was justified in appreciating that there existed a public emergency threatening the life of the nation of Cyprus, and by eight votes to three that the detention of persons without trial was a measure authorised under Article 15, paragraph 1. The Commission is unanimously of the opinion that in the circumstances of the present case there is no

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question of the measure taken by the United Kingdom under Article 15, paragraph 1, being invalidated by reason of the delay of the United Kingdom Government in complying with its obligation to inform the Secretary General of the measure under paragraph 3 of that Article. In stating this opinion, however, the Commission is not to be understood as having expressed the view that in no circumstances whatever may a failure to comply with paragraph 3 of Article 15 attract the sanction of nullity or some other sanction.

159. MM. DOMINEDO and SKARPHEDINSSON stated at the 14th Session of the Commission that, if they had participated in the vote taken at the previous Session, they would have supported the Commission's opinion on this point.

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Chapter III - PUNISHMENT BY WHIPPING

160. Punishment by whipping was introduced under Regulation 75, para. 2, of the Emergency Powers (Public Safety and Order) Regulations No. 731 of 26th November 1955, which ran as follows:

"(2) Where a male person under the apparent age of eighteen years is convicted by any Court for any offence against these Regulations, the Court may, if it thinks fit, sentence such person to be whipped. Such punishment may be in addition to or in lieu of any other punishment to which he may be liable. Whipping shall be with a light rod or cane or birch and the number of strokes shall be specified in the sentence and shall not exceed twelve under any one or more sentences passed in respect of the actual offences of which a person has been convicted at any one trial."

161. By Regulation No. 804, 1955, the first sentence of the above Regulation was amended as follows:

"Where a male person under the apparent age of eighteen years is convicted by any Court for an offence against these Regulations or for any offence which is a specified offence for the purposes of the Special Court Laws, 1955, or of any Law amending or substituted for the same the Court may, if it thinks fit, sentence such person to be whipped."

162. This Regulation was revoked in December 1956. The circumstances and effects of this decision will be described at the end of the present Chapter.

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I. FACTS ESTABLISHED BY THE COMMISSION

A. WRITTEN SUBMISSIONS

163. In its Application (Doc. A 27.559, p.8) and its Memorial of 24th July 1956, (Doc. A 28.657, pp.7-9) the Greek Government listed a number of whipping sentences. Appendices 2-13 of the Memorial contained press reports of many such sentences, while Appendix 14 (bis) quoted the reply of the United Kingdom Colonial Secretary to a question in Parliament, as reported in "The Times" of 10th July 1956:

"Whipping in Cyprus - Since the declaration of the emergency in Cyprus, 118 persons under 18 years of age have been sentenced to whipping. Of these 13 were under 14 years of age and the remainder were between the ages of 14 and 18. The total number of sentences so far carried out is 96. (Secretary of State for the Colonies)."

164. In its Counter-Memorial of 17th October 1956 (Doc. A 30.235), the United Kingdom Government did not contest the substance of these facts, but stated in paragraph 25:

"It may be that members of the Commission consider that corporal punishment is not the best available or is unsatisfactory or ineffective; but, before any breach of the Convention comes into question, they must go so far as to consider it inhuman or degrading within the meaning of Article 3 of the Convention."

As for the manner of administering this punishment, in so far as this was not laid down by law, the United Kingdom Government stated (ibid. para. 36):

"Every possible step is taken to ensure that no injury to the boy occurs. The instrument used is not a whip as the technical term "whipping" would suggest, but a light rod or cane or birch. The boy is medically examined after sentence and before the caning takes place, and a police officer not below the rank of inspector is present."

B. HEARING OF 14TH NOVEMBER 1956

165. At the hearing before the Sub-commission on 14th November 1956, Counsel for the Greek Government made the following points:

- that the facts were not disputed, or at least not seriously disputed;
- that there was no dispute as to the relevant legal text;
- that the sentences had been carried out on youths between the ages of 12 and 18, including youths in their 19th year (cases cited); this meant that the Regulation was "broadly interpreted" to cover eighteen-year-olds as well;
- that such sentences were "fairly frequently carried out" (figures given);
- that the holding of a medical examination before sentence was carried out was in itself recognition that for delicate children the punishment was not without danger;
- that the United Kingdom Government did not make mention of any medical examination after sentence had been carried out;
- that it was hard to credit the statement that "a boy who receives several strokes of the cane sustains no injury", for "when the cane falls upon the same exposed part of the body it strikes a spot already affected by the first blow; this causes a swelling of the epidermis and it is impossible to avoid injury to a youth who is given ten strokes of the cane. It would furthermore, be easy to produce photographs of children whose skin has been found on examination by a doctor to be definitely damaged, not only the epidermis but also the dermis, even to the point of causing slight bleeding" (Doc. A 30.768, pp. 13-15):

166. At the same hearing Counsel for the United Kingdom Government said that the Sub-commission was faced here "with a problem essentially of interpretation of Article 3 of the Rome Convention" (ibid. p.35).

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C. QUESTIONS PUT BY THE SUB-COMMISSION AND REPLIES OF THE PARTIES

167. At its fact-finding hearing on 17th November 1956, the Sub-commission put the following questions to the United Kingdom Government Agent:

- "1. Are any steps taken to have the young persons sentenced to whipping examined either before or after execution of the sentence by a mental specialist or psychiatrist in view of the possible mental repercussions of such persons?
2. Who carries out the medical examination before execution of sentence? A doctor officially employed, a local medical practitioner or a family doctor?
3. Is there any appeal allowed on medical grounds?
4. Were any sentences of whipping suspended on medical grounds?
5. Do the young persons sentenced to whipping undergo the punishment clothed or unclothed, and on what part of the body is this punishment inflicted?
6. What are the rules laid down in the United Kingdom by the Ministry of Education for administration of corporal punishment in schools under its control?" (Doc. A 30.768, pp. 180-181).

168. At the hearing of 18th November 1956, Counsel for the United Kingdom replied as follows (ibid. p. 186):

"I could give, subject to amplification, here and now, answers to certain questions falling under the second heading relating to whipping.

To the first question under that sub-heading our answer is that the Regulations do not expressly provide for examination by a mental specialist or psychiatrist, but the medical officer who examines the person sentenced before the carrying-out of the sentence would not exclude psychological factors in making his examination.

As to the second of the questions under the second main heading, our answer is that the medical examination carried out before the execution of the sentence is made by a Government medical officer who certifies on the warrant that he has examined the person in question and that that person is or is not fit for whipping.

And, Sir, under the fifth question under the second heading, our answer is that a person is whipped on the bare buttocks but is otherwise fully clad."

He promised to furnish full answers to the other questions as soon as possible (ibid. p. 186).

169. During the same day's proceedings Counsel for the Greek Government produced photographs which "partly answered one of the questions" mentioned in paragraph 161 above and which "showed that the blows are delibered on the lower part of the body or the back or on the arm, at the whim of the person inflicting the punishment". He also produced a statement by Christakis Georgiou Bouarou, born at Larnaca on 17th November 1940, who had undergone a sentence of whipping.

With regard to the third question put to the United Kingdom Government, Counsel for the Greek Government reminded the Sub-commission:

"that recourse to domestic remedies can only be insisted upon prior to recourse to international remedies when municipal law seems to provide an effective remedy. The Sub-commission will doubtless be interested to learn that the Emergency Powers Order of 9th March, 1939 - the text of which on this point is reproduced in the Emergency Powers Order of 1952 - contains a paragraph No. 8 which states that a Regulation and any Order made or directions given under such Regulation shall take effect even though one of its sections is contrary to some part of a Law.

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Any provision of a Law which is incompatible with such Regulation or such instructions, whether or not it has been amended in relation to Section 6 of the present Order, shall not take effect in so far as it is contrary to such Regulation, Order or directions, so long as these remain in force. I have, Gentlemen, a photostat copy of the English text of this document, made from a printed volume. I presume that my learned opponent will not object to the production of official British texts which are strictly relevant to the reply to the question" (ibid. p. 188).

170. After dismissing a number of objections raised by United Kingdom Counsel concerning the production of these documents, the Sub-commission decided to grant to each Party the right to submit, within the shortest possible time, its observations in writing on any declaration made or any document produced by the other Party concerning a matter which was the subject of any of the questions put to one or other of the Parties. (ibid. p. 197 and Part I, para. 26 of the present Report).

171. After this ruling had been given Counsel for the United Kingdom Government asked the Greek Agent to specify the identity of the persons in the photographs.

Counsel for the Greek Government replied that he possessed evidence as to the identity of one of the children in the photographs but not the others and that he would do his best to provide the required information (ibid. p. 198).

172. In a letter dated 14th December 1956 (Doc. A 31.189) the United Kingdom Government Agent replied as follows to the questions put to him by the Sub-commission on 17th November 1956, on the subject of whipping:

- "1. The regulations do not expressly provide for examination by a mental specialist or psychiatrist, but the medical officer who examines the sentenced before the carrying out of the sentence, would not exclude psychological factors in making his examination."

2. The medical examination carried out before the execution of the sentence is made by the Government medical officer who certifies on the warrant that he has examined the person in question and that that person is or is not fit for whipping. In practice the Medical Officer does, whenever he thinks fit, recommend fewer strokes than those specified in the sentence and in 24 cases the number of strokes has been reduced accordingly. (See also the answer to Question II (iv)). In practice, a Medical Officer has been present during the carrying out of sentences.
3. No appeal is allowed on medical grounds.
4. There have been 24 cases where, on medical grounds, the number of strokes in a sentence of whipping has been reduced, and 4 cases where, on medical grounds, the sentence has not been carried out at all. If there are medical grounds for not carrying out the sentence, it is not the practice to suspend it but it is remitted altogether.
5. The punishment is inflicted on the bare buttocks but the person being whipped is otherwise fully clad.
6. (a) England and Wales
(b) Northern Ireland
(c) Scotland

(In view of the length of the replies, please refer to Doc. A 31.551)."

173. On 17th December 1956, the Agent of the Greek Government sent the following letter to the Secretariat of the Commission:

"I have the honour to request you to inform the Agent of the United Kingdom Government of the following:

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The Greek Government, in view of the exceptional repressive measures recently taken by the Cyprus Government, feels obliged not to divulge at present the names of the persons who have been subjected to whipping and whose photographs were deposited with the Sub-commission at its sitting on 17th November 1956.

As to the case of young Bouarou already described, this being a notorious case, my Government was unable to bring up this matter without specifying the person concerned and the circumstances in which the punishment was administered.

I would request that you inform the Sub-commission of the above, pointing out that the British authorities might take reprisals against these youths for having given evidence." (Doc. A 31.115).

II. THE LEGAL ARGUMENTS OF THE PARTIES

A. WRITTEN SUBMISSION

174. On pages 8 to 12 of its Memorial of 24th July 1956, (Doc. A 28.657) the Greek Government submitted that the sentence of whipping was inhuman and degrading and thus contrary to Article 3 of the Convention. The Memorial pointed out that a great many States had abolished this form of punishment for these reasons. It recalled that corporal punishment had been abolished in the United Kingdom by Article 2 of the Criminal Justice Act of 1948 and that the only exception provided for, namely under Article 54, related to discipline in prisons and was subject to the authorisation of the Home Secretary (cf. Doc. A 30.768, pp. 22-23).

The Greek Memorial went on to state (p. 10) that corporal punishment was condemned by two International Red Cross Conventions signed at Geneva on 12th August 1949, namely the Convention relative to the Treatment of Prisoners of War (Article 87) and that relative to the Protection of Civilian Persons in time of War (Article 32).

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175. In its Counter-Memorial of 17th October 1956, (Doc. A 30.235, para. 24 onwards), the United Kingdom Government put forward a contrary view: Article 3 of the Convention contained no specific reference to corporal punishment (para. 28). Since the Convention did not define the terms "inhuman" and "degrading", it was necessary to examine their meaning. The word "inhuman" denoted any practice "so contrary to the settled practice of decent men all over the world that it must be regarded as falling beneath the standard of man as a rational creature." In the United Kingdom Government's view the words "inhuman" and "degrading" must be construed in the light of their context. They were used in an article directed against torture, itself a difficult word to define, but which implied a deliberately cruel and inhuman act.

The Counter-Memorial furthermore claimed that not every form of punishment was prohibited by Article 3 and that corporal punishment was not in itself contrary to the terms of the Article. It added that all doubt on this point was removed by Article 2 of the Convention which recognised the right of the Contracting Parties to impose the death penalty. In view of this it could hardly be maintained that less extreme forms of corporal punishment than the penalty of violent death were in themselves contrary to Article 3.

The Counter-Memorial went on to say that many States recognised the right of parents, guardians and schoolteachers to administer corporal punishment (para. 29) and that some States had retained it in their criminal law (para. 3)). Moreover, even before the Emergency Regulations of 1955 the Courts of Cyprus could sentence certain offenders, including men of full age, to corporal punishment (para. 31) (1).

The Counter-Memorial then submitted that the two Geneva Conventions of 1949, which applied to particular classes of persons in particular circumstances, in no way supported the case of the Greek Government (paras. 32-34). On the contrary they served to show that despite the express prohibition in the Geneva Conventions, no similar prohibition was included in the Rome Convention of November 1950. (2).

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- (1) For the reply of Counsel for the Greek Government to this argument see Doc. A 30.768, pp. 23-24.
 - (2) For the reply of Counsel for the Greek Government to this argument see Doc. A 30.768, pp. 25-26.

The Counter-Memorial then pointed out that the English translation of the Greek Memorial gave an inaccurate rendering of Article 3 of the two Geneva Conventions (para. 34).

The Counter-Memorial concluded (para. 36) with the assertion that corporal punishment as administered in Cyprus did not constitute "inhuman or degrading punishment or treatment" and that every precaution was taken to avoid bodily injury to the offenders. It pointed out that the instrument used was not a whip but a light rod, cane or birch and that a medical examination took place before sentence was carried out.

B. HEARING OF 14th AND 15th NOVEMBER 1956

(1) Pleading by the Counsel for the Greek Government (14.11.56, Doc. A 30.768, pp. 16-34).

176. At the hearing before the Sub-commission on 14th November 1956, Counsel for the Greek Government stated that there was a vast difference between corporal punishment meted out by parents to their children within the home and the legal sentence of whipping imposed by a court after a medical examination, in the presence of witnesses, etc. ... (p. 21). He maintained that this form of punishment was both inhuman and degrading. He could not accept the definition of the word "inhuman" given in the United Kingdom Counter-Memorial and pointed out that Larousse defined "inhuman" as that which is not human, i.e. "barbarous, cruel, savage, merciless", while the word "human" meant "kind, helpful"; an inhuman act on the contrary was one inspired by callousness and indifference to suffering. According to Littré "to degrade" was to "deprive someone of his grade" and the term "degrading" meant something "that degrades, that causes a person to sink, that demeans" (p. 18). When a young man found himself in the humiliating situation of being partly undressed, helpless in the presence of a policeman or a soldier, cane in hand, and probably with his hands tied so that he could not shield himself from the blows, this kind of inferiority and subjection to the brute force of authority must create in him a feeling of deep resentment. The medical examination carried out before the punishment was inflicted was proof of this for its object was not to examine the skin but to test the heart of the offender (p. 19).

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177. Counsel for the Greek Government then criticised the argument based on Article 2 of the Convention in the United Kingdom Counter-Memorial (para. 175 above). If this reasoning were sound, Article 3 was pointless on the ground that "no degree of suffering and degradation is as serious as loss of life itself". In reality inhuman or degrading treatment, unlike the death penalty, was "a gratuitous injury bringing no benefit whatever to society" and it was for this reason that "our conscience today forbids and repudiates such treatment" (p. 20).

178. Counsel for the Greek Government pointed out that until 1928 Cyprus, as regards penal law, had retained the Turkish system which did not recognise corporal punishment. In 1928 it was proposed that the penal code be revised; a draft subsequently put forward by the Cyprus Government was rejected by the island's legislative Council, mainly because it provided for corporal punishment. The subsequent imposition of corporal punishment by an Order-in-Council thus represented for the Cypriots a penalty that was contrary "not only to the Greek tradition but also to the Ottoman tradition of legislation under which the island of Cyprus had lived hitherto" (page 23). "The degrading character of a punishment should be judged less from the angle of the person who gives it than from the angle of him who receives it" (page 21).

179. Counsel for the Greek Government went on to say that corporal punishment was today "universally condemned" and quoted the well-known Belgian criminal lawyer, Adolph Prins (pages 24 to 25, cf. also Doc. A 28.657, page 10), a resolution adopted at the first United Nations Congress in Geneva on the 30th August 1955, on the prevention of crime and the treatment of offenders (page 25) and the classic work by Freeman "Denial of Justice" (page 26).

180. With regard to the two Geneva Conventions of 12th August 1949, Counsel for the Greek Government said that he was referring to them not only "in support of his interpretation of the Convention" but also as a "source of international obligations" that the Contracting Parties were bound to observe in accordance with Article 15 of the Rome Convention (pages 26-29, cf. also pages 46-51 and para. 125 above).

The United Kingdom Government had contended in its Counter-Memorial that these international obligations did not apply to the case in point, since the Cypriot youths who had been whipped did not fall within any of the categories covered by the Conventions and that in any case Article 3 did not prohibit corporal punishment as such (Doc. A 30.235, paras. 32-34).

On the first point (inapplicability) Counsel for the Greek Government replied that the Geneva Conventions protected prisoners and civilians not only in time of war but also "in the case of armed conflict not of an international character" (Article 3). An armed conflict of this kind was taking place in Cyprus and Article 3 of the Geneva Conventions was therefore applicable (Doc. A 30.768, pages 29-30, cf. also pages 46-47).

On the second point (absence of a specific reference to corporal punishment in Article 3 of the Geneva Conventions) Counsel for the Greek Government pointed out that the Article did, however, prohibit "cruel treatment" constituting "violence to life and person" and "humiliating and degrading treatment" constituting "outrages upon personal dignity". In Article 32 of the Geneva Convention on the Protection of Civilian Persons in time of War the Contracting Parties undertook to refrain from any measure likely to cause physical suffering to or the extermination of protected persons in their hands. The prohibition applied not only to murder, torture and medical or scientific experiments; it also referred specifically to corporal punishment. Article 87 of the Geneva Convention relating to prisoners of war also expressly prohibited corporal punishment. In the opinion of Counsel for the Greek Government Article 3 of the first Convention "referred implicitly" to Article 32 whilst Article 3 and Article 87 of the second Convention were complementary (ibid. pages 31 to 33; cf. also pages 48-49).

181. Counsel for the Greek Government adduced a further argument from a resolution of the Trusteeship Council requesting Belgium, the Administering Authority of Ruanda-Urundi "to take the necessary measures for the complete abolition of corporal punishment as soon as possible" (ibid. page 33, cf. also page 51 and Doc. A 28.657, page 13).

182. Counsel for the Greek Government concluded that corporal punishment, which was universally repudiated and had been abolished by the Governments of all member States of the Council of Europe, constituted both inhuman and degrading treatment and as such was prohibited under Article 3 of the Rome Convention (Doc. A 30.768, pages 33-34; cf. also pages 51-53).

(2) Pleading of Counsel for the United Kingdom Government (15.11.1956, Doc. A 30.768, pages 35-44).

183. Counsel for the United Kingdom Government opened his pleading with a reference to the two Geneva Conventions of 12th August 1949.

184. (a) He took first of all the Convention on the Protection of Civilian Persons in time of War and maintained that its Article 3 could have no application to the circumstances obtaining in Cyprus. Article 2 enumerated the cases to which the Convention applied and its first paragraph was in these terms:

"In addition to the provisions implemented in these texts, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties even if the state of war is not recognised by one of them."

Article 3 dealt in terms of an "armed conflict not of an international character" occurring in the territory of one of the High Contracting Parties. Counsel for the United Kingdom Government submitted that the armed conflict referred to in this Article was of the kind of declared war and armed conflict referred to in Article 2, save that it was not of international character. Article 3 contemplated in the first sentence the existence of a Party to the conflict, that is, a Party with a capital "P" and in the last three paragraphs it contemplated that an impartial humanitarian body such as the International Committee of the Red Cross might offer its services to the Parties to the conflict and provided that the latter should further endeavour to give effect, by means of special agreement,

to all or part of the Convention; it contemplated the existence of a Party which could negotiate a special agreement. Counsel for the United Kingdom Government went on to say that provisions of this kind could have no application to individual acts of violence or to the activities of the terrorist organisation. What was contemplated, he submitted, was what would properly, ordinarily, be called an armed conflict not of an international character, such as was experienced in Spain (Doc. A 30.768, pp.35-36, cf. also p. 66).

(b) With regard to the Greek Government's reliance on Article 3 as laying down a minimum standard required of the Contracting Parties, comprising the prohibition in toto of corporal punishment, Counsel for the United Kingdom Government submitted that Article 3 was "not affected of particularity" but that there was "an omission of any express reference to corporal punishment" in the list of acts prohibited (para. 1, in fine). It was under Article 32 that reference to corporal punishment was first encountered, but this Article, with its advance to a standard above the minimum, "clearly made reference to Article 4" and could not possibly, therefore, apply to the case of a conflict not of an international character (Article 3). On the contrary, this explicit reference showed that "the omission of corporal punishment from Article 3 was in itself eloquent" (ibid. pp.36-37).

185. Counsel for the United Kingdom Government applied the same argument in the case of Articles 3 and 87 of the Convention on Prisoners of War. His conclusion was that these articles did not prohibit corporal punishment in the circumstances prevailing in Cyprus (ibid. p. 37).

186. Moreover, he contested the submission of Counsel for the Greek Government that the Convention covered obligations under general international law, not only in case of derogation under Article 15, but in all the fields to which it applied. In fact, the Rome Convention should be construed, like every other treaty, having regard to its underlying intention and to the terms in which it was drafted in its own particular context, all the more so in this case since the Rome Convention was an innovation in international law, embodying the new concept of conferring upon the subject, by treaty, rights against his own State which could be enforced upon the application of a foreign government (ibid. pp. 37-38, cf. also pp. 67-68).

187. As for the Greek Government's argument based on a Trusteeship Council report (para. 181 above), Counsel for the United Kingdom Government maintained that it could give no help in finding the right interpretation of Article 3 of the Rome Convention. The essential question here was whether or not Article 3 prohibited corporal punishment (pp. 38-39; cf. also pp. 68-69).

188. On this point he referred to the preparatory work for Article 3 of the Rome Convention (cf. Doc. DH (56) 5) to show that mention of corporal punishment had been omitted intentionally from the Convention; and he supported his argument with extracts from debates in the Consultative Assembly (8th September 1949, Vol. IV, pp. 1294 et seq.). He claimed that if Article 3 had been intended to apply to corporal punishment, that would have made it impossible for the United Kingdom to become a Party to the Convention or to extend the Convention to a number of territories without reservation and in this respect no reservation was made by the United Kingdom (pp. 41-44, cf. also p. 68) (1). This point was of even greater significance in the case of the Irish Republic because they would have been in the same difficulties. The Irish Republic did make an express reservation, so that the question of reservations must have been in their minds, but it concerned Article 6, para. 3 (c) (the provision of free legal assistance) and not Article 3 (pp. 41 and 44).

189. Lastly, Counsel for the United Kingdom Government pointed out that in the matter of corporal punishment the United Kingdom by no means stood alone; he listed the countries where corporal punishment was permitted in one form or another (pp. 43-44) (2) and referred to the legislation in force in Cyprus even before the Convention was signed (p. 42, cf. also pp. 64-65) (3).

190. Counsel for the United Kingdom Government concluded that Article 3 of the Rome Convention did not prohibit corporal punishment (p. 44, cf. also pp. 68-69).

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- (1) For the reply of Counsel for the Greek Government to this argument, cf. Doc. A 30.768, pp. 51-57.
 - (2) For the reply of Counsel for the Greek Government on this point, cf. *ibid.*, p. 61.
 - (3) For the reply of Counsel for the Greek Government see *ibid.* pp. 56-62.

(3) Reply of Counsel for the Greek Government
(15th November 1956, Doc. A 30.768, pp. 45-62)

191. In his reply Counsel for the Greek Government began with his views on the interpretation of the words "armed conflict of an international character occurring in the territory of one of the High Contracting Parties" in the Geneva Conventions of 12th August 1949 (Article 3). He maintained that Article 3 of these Conventions was applicable in the present case (pp. 45 to 46) and that Article 3 of the Rome Convention "must be regarded as applying at all times, both in the case of war and in the case of a public emergency threatening the life of the nation, and even more so when no such situation obtains, when there is no case of armed conflict." The question then to be considered was "whether the Convention on Human Rights must be regarded as contradicting the Geneva Convention or at least as constituting a serious retrograde step and as having deliberately deprived the Commission of its power to enforce the rights therein enumerated and prohibit inhuman or degrading punishment or treatment" (pp. 45-46). In his opinion the minimum obligations laid down in Article 3 of the two Geneva Conventions did in fact cover the prohibition of such treatment. It was true that there was no specific mention of corporal punishment in Article 3 but the analysis of Article 32 of the Convention on the Protection of Civilian Persons and of Article 87 of the Convention on Prisoners of War showed that no argument could be adduced from its omission (pp. 47-48). Still on the subject of the Geneva Conventions he developed his argument that international obligations came within the definition of the rights protected by the Convention on Human Rights (pp. 48-50, cf. also Chapter II, Section IV of this part of the Report).

192. As for the scope or meaning to be attached to the words "inhuman" and "degrading", in Article 3 of the Rome Convention, and particularly the word "degrading", Counsel for the Greek Government maintained that this depended to a large extent on the level of civilisation or, to be more exact, on the mentality of the person subjected to such treatment. There were practices ... "which are considered perfectly civilised in some countries but which we regard as a sign of ill-breeding". There were likewise acts which

"in our countries are considered degrading, such as whipping and flogging by public authority whereas this is not so in the case of primitive tribes, who, in their everyday lives, are liable to infinitely more cruel, infinitely more humiliating punishments at the hands of their native rulers." This explained why the Trusteeship Council used "the discreet form of a request" to secure the abolition of the use of the lash in Ruanda-Urundi (pp. 50-51).

Counsel for the Greek Government then went on to repeat the argument that the words "inhuman" and "degrading" applied only to "acts which, although they might not be described by all people as torture, fall substantially in the same category". (cf. the British Counter-Memorial of 17th October 1956, Doc. A 30.235, para. 27). An act could be thoroughly inhuman or degrading without ipso facto involving torture (Doc. A 30.768, pp. 51-52).

He then referred to the preparatory work for Article 3 of the European Convention on Human Rights and the speeches and proposals made by MM. Cocks, Teitgen, Christensen, Crawley and Sir Oscar Dowson and put the Sub-commission on its guard against the argument that "anything mentioned during the discussion which did not appear in the text of the Convention must be regarded as having been intentionally authorised" (ibid. pp. 52-57).

193. With regard to legislation in Cyprus under which, in about 1931, corporal punishment - unknown up to that time - was introduced for common-law offences committed by adults, Counsel for the Greek Government submitted that not only was every Contracting Party, including the United Kingdom, bound under the European Convention of Human Rights to modify its legislation where necessary; by virtue of its Article 1 the Convention moreover became part of the law of the land of each signatory country; and he added:

"I know of no provision either in general international law or in this particular Convention which justifies a State in pleading that it is quite in order to regard laws in force prior to the ratification of a convention as firmly established and that derogations from and inconsistencies with the Rome Convention in the legislation in force in a country may subsist without contravening international law." (pp. 57-59).

Lastly, as a subsidiary point, he submitted that even if the Sub-commission accepted the United Kingdom Government's argument, founded on the absence of any reservation on the subject (para. 188 above), this argument could at most warrant a degree of tolerance towards laws existing prior to the Convention; that existing legislation in the matter should subsequently become harsher was inadmissible. Similarly, under the United Nations Charter and the Universal Declaration of Human Rights it was inferred that it was not permissible for a State to adopt regressive legislation. This, however, was what had happened in Cyprus in 1955 with the introduction of whipping "on a wider scale and in cases for which it was not previously imposed". (pp. 59-63).

(4) Reply by Counsel for the United Kingdom Government
(15.11.1956, Doc. A 30.768, pp. 63-69).

194. Counsel for the United Kingdom Government replied that in the first place there was nothing in Cyprus approaching the armed conflict dealt with in Article 3 of the two Geneva Conventions of 12th August 1949 (p. 63). He added that this Article proceeded on the basis of an inclusive definition giving particular instances of prohibited acts. A comparison of the list of these prohibited acts [cf. particularly para. 1 (a)] and that in Article 32 of the Convention on Civilian Persons would show, contrary to the submission of Counsel for the Greek Government (pp. 47-48), that the medical and scientific experiments prohibited under Article 32 were outside the category of violence to life and person described in Article 3. Furthermore, the Commission was concerned with the construction not of the Geneva Conventions of 1949 but of the Rome Convention of 1950, the essential object of which was to give effect in Europe to the Declaration of Human Rights and not that of the Geneva Convention (p. 64).

195. Counsel for the United Kingdom Government then described the state of the law in Cyprus with regard to corporal punishment at the date when the Convention was extended to the island (pp. 64-65). He pointed out that if the interpretation of Article 3 given by Counsel for the Greek Government was correct, it must have been manifest that the United Kingdom Government in that state of the law was in breach of the Convention in effecting that extension (p. 65).

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196. After again contesting the argument that the Convention in itself entailed general obligations under international law (pp. 65-66), he expressed the opinion that it was hard to reconcile the "relativist" conception of "degrading" treatment submitted by his Greek colleague (cf. para. 177 above) with a passage in the Greek Memorial of 24th July 1956, which rejected any distinction between metropolitan and non-self-governing territories (Doc. A 28.657, p.12). It would be extraordinarily difficult to make an international convention of this kind work in practice if the Contracting Parties were to be guided in their duties by such a variable and subjective standard that would vary according to the psychological approach of the individual undergoing corporal punishment (pp. 67-68).

197. Referring to what Mr. Crawley said in the Consultative Assembly (1949), he repeated that:...

"it must have been plain to all those concerned with the drafting of this Convention that, when they omitted any further definition or included any definition, if what they were enacting did involve a prohibition of corporal punishment that was certainly going to create a great difficulty for the United Kingdom, unless they made an express reservation when they signed it, did not occur to anybody until these particular proceedings with which you are concerned." (p. 68).

198. Counsel for the United Kingdom Government concluded his case by saying he wished to put a practical question, namely: did Article 3 prohibit imprisonment? And, if not, in this argument, why not? As everyone knew, "deprivation of liberty to a young person imposes, in certain instances at all events, a grave psychological torment". On the other hand, what was a Government to do when faced with a situation like that in Cyprus? The youths in question had been guilty of "throwing bombs, of throwing an incendiary article, of attacking the police"; their acts could not go unpunished. How then were they to be punished? By a fine, in which case, it was the parents who were penalised? Or should they be deprived of their liberty for a substantial period? But was the latter solution really less inhuman than a form of corporal punishment which was over very quickly and entailed no loss of liberty? (pp. 68-69).

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(5) Conclusions of the Parties
(16 and 17.11.1956, pp. 139 and 142-143 of
Doc. A 30.768 and p.1 of the Appendix thereto)

199. At the end of the sitting of 15th November 1956, the Greek Government submitted its general conclusions. With regard to punishment by whipping it requested the Commission:

..."3. To declare that Regulation 75 (2) of the Emergency Powers Regulations No. 731 of 26th November 1955, introducing the penalty of whipping and its application by the Courts of Cyprus constitute a breach of Article 3 which prohibits inhuman or degrading punishment;"

The United Kingdom Government, at the hearing of 17th November 1956, requested the Commission:

..."2. To refuse to make any of the declarations requested in paragraphs 3, 4, 5 and 6 of those conclusions;"

III. ABOLITION OF PUNISHMENT BY WHIPPING
DURING THE PROCEEDINGS

200. The following facts must be recorded:

1. In its attempt to secure a friendly settlement, the Sub-commission decided at its meeting of 18th December 1956 to propose inter alia the abolition of punishment by whipping as provided for in Regulation 75 (2) of the Emergency Powers (Public Safety and Order) Regulations, 1955, G.N. 731, amended under G.N. 804 of 1955 (Doc. A 30.239, para. 6, p.4; cf. Part I, Chapter IV, of the present Report).

2. On the same day the Sub-commission was informed of a public statement issued on behalf of the Governor of Cyprus at Nicosia at 6 p.m. on 18th December. This announced that:

"(a) The Emergency Regulations under which males under the age of 18 years may be sentenced to be whipped for certain specified offences will be revoked." (Doc. A 30.835, p.2).

3. In paragraph 21 of its further Statement of 7th March 1957, the Sub-commission asked:

"to be informed by the Government of the United Kingdom whether it might proceed upon the basis that the laws allowing corporal punishment of males under the age of 18 years and the collective punishment Regulations are and will continue to remain revoked." (Doc. A 32.683, p.11).

4. At the Sub-commission hearing on 28th March 1957 the Agent of the United Kingdom Government replied:

"... the United Kingdom Government do not think that it would be appropriate to give undertakings about the introduction of measures in the future; but I can confirm that their present policy is not to re-introduce the laws and regulations mentioned in paragraph 21 of the Statement." (Doc. A 33.305, p.3).

201. On 18th January 1957, Counsel for the Greek Government commented before the group composed of MM. Süsterhenn, Sørensen and Crosbie (cf. para. 71 et seq. above) on paragraph 2 of the Greek statement of the same day (cf. para. 73 above), as follows:

"From the legal point of view, we think that the matter submitted to the Commission of Human Rights would give Greece the right to request, as a security against the continuation or the repetition of what has happened, that it be held in law that the measures revoked contravene the European Convention on Human Rights." (Doc. A 31.918, Appendix III, p.5).

202. At the Sub-commission's hearing on 4th September 1957, the Agent of the United Kingdom Government stated:

"It has been suggested that the Commission should pronounce in some way on the measures which have been terminated. In my submission, that is not the right course for the Commission to follow.

..... Under the Convention the Commission is not a court of law. That is fundamental in the European Convention of Human Rights, and procedure is provided which is intended to arrive at an ultimate remedy for any infringement of the Convention that may be in effect. The remedy is in the hands of the Committee of Ministers. If there has been any failure to comply with the Convention and it has been rectified, then, in my submission, there is nothing more for the Committee of Ministers to do and it is therefore quite unnecessary - and indeed would be wrong - for the Commission to make a finding in the abstract as to whether what has already been rectified is or is not a breach of the Convention.

After all, what is the position if, in relation to a particular measure, one has a friendly settlement? I suggest that under the Convention that is the end of the matter. The wrong that has been committed under the Convention has been put right to the best of our ability, and the Convention is not designed to provide for any ex post facto condemnation." (Doc. A 35.844, pp.3-4).

IV. OPINION OF THE COMMISSION

203. The Commission adopted, by seven votes to four, the following opinion:

Among the measures considered by the Sub-commission in the course of its efforts to obtain a friendly settlement were Emergency Regulation No. 731 (amended by Regulation No. 804) authorising corporal punishment of males under the age of 18 years. The legal arguments of the Parties in regard to the compatibility of this measure with the provisions of the Convention were presented to the Sub-commission in their written pleadings and orally at its session of 14th-18th November 1956. The Sub-commission was proceeding on 18th December to formulate propositions to the Parties for a friendly settlement which included the withdrawal of this measure, when the Agent of the United Kingdom informed it that the Governor of Cyprus had decided to revoke this measure with a view to the relaxation of tension in the island. In the course of the Sub-commission's subsequent negotiations with the Parties for a friendly settlement, the Government of the United Kingdom informed the Sub-commission that its present policy was not to re-introduce the laws and regulations allowing the punishment of males under the age of 18 years. Despite the breakdown of the negotiations for a friendly settlement, these measures have remained revoked.

In these circumstances and for the reasons given in Chapter I, paras. 94-96, the Commission does not find it necessary to present to the Committee of Ministers its legal conclusions concerning the compatibility or otherwise of the Corporal Punishment Regulations with the Convention. The Commission thinks it might, however, observe that the legitimacy of corporal punishment of young persons under the provisions of the Convention raises legal issues of some seriousness and that the trend of opinion today among the peoples of the Council of Europe is not sympathetic to corporal punishment as a penal sanction for young persons. The Commission, therefore, ventures to mark its satisfaction at the fact that this measure was revoked by the Government of the United Kingdom. The Commission's decision to express no legal opinion is taken on the assumption that this measure will remain revoked.

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V. DISSENTING OPINION

204. Four members of the Commission, MM. EUSTATHIADES, SUSTERHENN, PETREN and Mme. JANSSEN-PEVTSCHIN, were of the opinion that the Commission should have taken a decision on the issue whether the regulation on corporal punishment constituted a breach of the Convention. Their opinion is recorded at the end of Chapter I above. (Report, Chapter I of Part II, para. 97).

205. MM. DOMINEDO and SKARPHEDINSSON stated at the 14th session of the Commission that if they had participated in the vote taken at the preceding Session they would have supported the minority opinion on this point.

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Chapter IV. COLLECTIVE PUNISHMENT

206. Collective punishment was introduced by Regulation No. 732, 1955, issued on 26th November 1955 under the Emergency Powers Order in Council.

Regulation 3 runs thus:

"3. If an offence has been committed or loss of, or damage to, property has occurred within any area of the Colony (hereinafter referred to as "the said area") and the Commissioner has reason to believe that the inhabitants of the said area have -

- (a) committed the offence or caused the loss or damage; or
- (b) connived at or in any way abetted the commission of the offence or the loss or damage; or
- (c) failed to take reasonable steps to prevent the commission of the offence; or
- (d) failed to render all the assistance in their power to discover the offender or offenders, or to effect his or their arrest; or
- (e) connived at the escape of, or harboured, any offender or person suspected of having taken part on the commission of the offence or implicated in the loss or damage; or
- (f) combined to suppress material evidence of the commission of the offence or of the occurrence of the loss or damage; or
- (g) by reason of the commission of a series of offences in the said area, been generally responsible for the commission of such offences,

it shall be lawful for the Commissioner, with the approval of the Governor, to take all or any of the following actions:

- (i) to order that a fine be levied collectively on the assessable inhabitants of the said area, or any part thereof;

- (ii) to order that all or any of the shops in the said area shall be closed until such order be revoked or shall open only during such times and under such conditions as may be specified in the order;
- (iii) to order the seizure of any movable or immovable property of any inhabitants of the said area;
- (iv) to order that all or any dwelling-houses in the said area be closed and kept closed and unavailable for human habitation for such period or periods as may be specified."

207. Regulation 3 above was amended by Regulation No. 819 of 21st December 1955, which appeared as Supplement No. 3 to the "Cyprus Gazette", No. 3903 of 29th December 1955, to read as follows:

"2. Regulation 3 of the principal Regulations is hereby amended as follows:

- (a) by the deletion therefrom of the first four lines and the substitution therefor of the following:

"If an offence has been committed, or loss of, or damage to, property has wilfully and unlawfully been caused, within any area of the Colony (hereinafter referred to as "the said area") and the Commissioner has reason to believe that all or any of the inhabitants of the said area have - ";

- (b) by the addition thereto of the following proviso (the full stop at the end thereof being substituted by a colon):

"provided that where the Commissioner has reason to believe that paragraphs (a) to (g) of this Regulation are applicable only to any particular section, class, group or community of the inhabitants of the said area, it shall be lawful for the Commissioner, with the approval of the Governor, to take all or any of the actions specified in paragraphs (i) to (iv) of this Regulation in respect of only such section, class, group or community of the inhabitants of the said area."

208. This emergency legislation was repealed in December 1956. The circumstances and effects of this action will be dealt with at the end of this Chapter.

I. THE FACTS ESTABLISHED BY THE COMMISSION

209. In its Application (pp. 8 and 9 of Doc. A 27.559) the Greek Government complained of four types of collective punishment introduced by Regulation No. 732:

- (a) Collective fines,
- (b) Closing of shops,
- (c) Closing of dwelling-houses,
- (d) Seizure of movable or immovable property.

In its Application and its Memorial (Doc. A 28.657, pp. 17 to 21), the Greek Government likewise denounced (1) abuse of the curfew and (2) occupation or destruction of buildings or plantations, treating them as equivalent to collective punishment. These two questions will be dealt with under separate heads (see Chapters V and VIII below).

210. In the Application the following were given as examples of collective fines (Doc. A 27.559, p.8; see also Doc. A 28.657, pp. 13-15):

Lefconiko, 5th December 1955	£ 2,000
Ipsonas, 10th December 1955	£ 200
Yaloussa, February 1956	£ 2,000
Pahna, February 1956	£ 600
Lapithos, 18th March 1956	£ 7,000
Kalopsida, 13th April 1956	£ 1,000
Pedoulas, 21st April 1956	£ 2,000

A few other instances were cited in the Greek Memorial of 24th July 1956 (Doc. A 28.657, p.15 and Appendices 15 to 27):

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- A fine of £6,000 imposed in May 1956 on the villages of Panc and Kato Zedhia;
- A fine of £40,000 imposed on 1st June 1956 on the town of Famagusta;
- A fine of £35,000 imposed in June 1956 on the town of Limassol.

211. As regards the closing of shops and dwelling-houses, both the Application and the Memorial of the Greek Government refer to 18 shops and 10 dwelling-houses closed on 16th March 1956 by order of District Commissioner Clemens (Doc. A 27.559, p.9 and Doc. A 28.657, pp. 15-17).

The Greek Government produced a cutting from the "Cyprus Mail" of 23rd March 1956 (Appendix 28 to Doc. A 28.657) listing the shops and houses closed and describing how this penalty was carried out.

Quoting an article in "The Times" of 17th March 1956 (Appendix 27 bis to Doc. A 28.657) in support of its allegations, the Greek Government states that "it was decided to evacuate these premises when it was noted that, out of 400 envelopes distributed to the population with a view to collecting information against people, only 150 had been returned without information" (Doc. A 28.657, p. 16). The Greek Government admits that, according to the "Times of Cyprus" of 9th June 1956 (Appendix 32 to Doc. A 28.657), the shops were returned to their owners 8 days before the expiry of the three months period, adding "it appears that the dwelling-houses were returned after three months" (Doc. A 28.657, p. 16).

The Greek Government also states in its Memorial (Doc. A 28.657, pp. 16-17):

"At the end of May 1956 even more serious penalties were inflicted on the population of Nicosia; in addition to the closing of thirty-five shops and eighteen dwelling-houses, the Commissioner, Mr. Clemens, ordered the closing of the cemetery and precincts of the Phaneromeni church and the Academy for Girls. The occupants were given 48 hours in which to move (Appendices 29 to 32).

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The Commissioner of Nicosia said that this measure was being taken because the population had left wounded Britons unattended, although this allegation was hotly denied by the representatives of the medical profession at Nicosia (Appendix 32 bis)."

212. As for the seizure of movable and immovable property, provided for as a form of collective punishment under the principal Regulations No. 732, the Greek Government gave no examples, either in its Application or its Memorial, of such action being taken.

At a hearing before the Sub-commission on 15th November 1956, one of the Counsel to the Greek Government stated:

"... the only power that does not seem to have been used, or at any rate not as a collective punishment, is the seizure of movable or immovable property of inhabitants of an area, though in cases where fines were not paid there has been seizure and sale of such property". (Doc. A 30.768, p.71).

213. It should be noted that the texts of the Regulations quoted in paragraphs 180 and 181 are not disputed.

Nor does the British Government dispute the fact that collective fines have been imposed, and shops and houses closed, in pursuance of these texts.

214. There is, however, disagreement on the following point:

(a) The Greek Government mentions "as an aggravating circumstance" that in many cases the fines imposed were beyond the means of the municipalities concerned. It refers to reports in the "Cyprus Mail" of 6th, 7th and 8th December 1955 (Appendices 15-17 to Doc. A 28.657) that the fine of £2,000 imposed at Lefkoniko on 567 assessable persons, including 23 Turks, "was exactly four times the total amount of the annual school rates, i.e. the money contributed by the population towards the upkeep of the secondary school" (Doc. A 28.657, pp. 13-14). Relying on Appendices 18 to 20 to its Memorial of 24th July 1956, it states that 8 days were required to collect £6,800, out of the £7,000 demanded at Lapithos, one person alone

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having been assessed for £180 (Doc. A 28.657, p.14); that, according to the "Cyprus Mail" of 14th and 15th April 1956 (Appendices 21 and 22 to Doc. A 28.657), in Kalopsida, a village of 700 inhabitants which was fined £1,000, "the cash available, including even the school savings deposits, amounted to only £380, the Co-operative could only advance another 180, and the remainder had to be taken from two dairymen residing in another municipality"; that to appreciate the relative value of the collective fines it must be borne in mind that, according to the Cyprus Government's Report for 1955 published in London in 1956, the average weekly wage of an agricultural worker is £4; that the fine of £40,000 imposed on Famagusta exceeded the annual total income tax paid by those assessable; that, according to the above-mentioned official report of the Cyprus Government (p. 118), the total annual fees and tolls collected by the municipalities of Famagusta and Limassol, with populations of 16,250 and 22,800 respectively, amounted to £38,825 and £29,492, i.e. less than the fines imposed on the two localities (Doc. A 28.657, pp. 14-15).

At the hearing before the Sub-commission on 15th November 1956, Counsel for the Greek Government made the following statement on the subject:

"... when we are cheerfully told in the British Counter-Memorial that after all it can be seen from the figures that the fines do not exceed one week's wages, I leave it to the Sub-commission to think what it means for a manual labourer to have his whole week's wages confiscated. Besides, Gentlemen, we can adduce proof that this is a real hardship; I take this time a French paper, "Le Monde", of 8th and 9th July 1956. "Le Monde" refers to a fine which we mentioned on page 16 of our Memorial, a fine of £40,000, imposed on Famagusta, and states that Friday 6th July was fixed by the British authorities as the latest date for payment of the collective fine of 40,000,000 francs, equivalent to £40,000, imposed on the inhabitants of Famagusta. By that Friday evening 3,861 Cypriots had paid £37,943. The cable from Cyprus published in "Le Monde" says: "The 489 inhabitants who have not paid their fines will be distrained upon for the sums due". That shows, Gentlemen, that these 489 inhabitants have very low incomes, as the £40,000 was almost fully paid, but that nonetheless this sum was an excessive burden and that they had to pay by distraint." (Doc. A 30.768, p. 82).

(b) The British Government replied in its Counter-Memorial of 17th October 1956 "that the Commission would be treading on very dangerous ground and would virtually be acting as a court of appeal if it were to begin to investigate whether fines inflicted by national authorities were unduly heavy, or, as the Greek Memorial puts it, beyond the means of the individual offender". Having pointed out that the collective fine is assessed by the Commissioner, who is able to assess the capacity to pay of his district, and must be approved by the Governor, thus ensuring that the sum levied is fair, the British Government states:

that the fine "is apportioned as between the inhabitants of the area on the basis of the school rate assessment, the professional tax lists and similar data". (Doc. A 30.235, paras. 56-58).

With regard to the fine of £2,000 imposed on Lefconiko, which was borne by 565 (not 567) assessable inhabitants, the British Counter-Memorial notes

"that the school rates form only a part of the taxation for the benefit of local authorities and are not levied at a high rate".

It also points out that division of the total amount of the fine by the number of tax-payers gives a contribution per head of under £4 - less than the average weekly wage of agricultural workers, to which the Greek Memorial referred. The British Government does not deny that some fines exceeded the income-tax payable but observes that a person earning £4 a week pays no income-tax and a married man with two children earning £500 per annum pays only £6.5s.0d. income tax. "Therefore, any substantial fine is almost certain to exceed the amount of income tax paid by persons in the lower income groups. Any person who had to pay a sum of £500-£900 towards the fine would be a man of very considerable wealth." (Doc. A 30.235, para. 59).

In the course of the hearing before the Sub-commission on 16th November 1956, Counsel to the United Kingdom Government held that there would be some danger in going into matters of detail or in determining whether or not the amounts of collective fines were excessive in given circumstances. These, he says, are questions of fact which

would require a statistical enquiry to find out what were the means of the inhabitants in each case, and an inquiry into the facts to find out the degree of responsibility involved. Referring to an error of about 20% in the total income tax reported by the Greek Memorial to have been paid by a given community, Counsel for the United Kingdom Government submitted that in all matters of this kind, a serious and complete examination of fact would have to be made before a conclusion could be reached (Doc. A 30.768, p.95).

215. Having heard the oral explanations of the Representatives of the Parties, the Sub-commission instructed its Secretariat to put the following two questions to the British Government by letter of 23rd November 1956:

- "(a) Were the collective fines and curfew in the cases referred to in the Annexes to the Mémoire of the Greek Government imposed by an Order made by the authorities and published officially?
- (b) Did each Order contain a statement of the reasons for which it was made and was such statement set out either in the text itself or in an official document published separately?

The Sub-commission invites Her Majesty's Government if any such documents exist, to furnish it as soon as possible with copies of such documents". (Doc. A 30.713).

216. In its note of 14th December 1956 (Doc. A 31.313) the British Government replied as follows:

"All collective fines are imposed by Orders made under the Emergency Powers (Collective Punishment) Regulations 1955, and are published in the official Gazette of Cyprus. An example of such an Order is attached as Appendix C.

It is not usual for Orders of this kind to state the reasons why they are made. However, Regulation 5 of the Emergency Powers (Collective Punishment) Regulations states:

- "(1) No order shall be made under Regulation 3 of these Regulations unless an enquiry into the acts and circumstances giving rise to such order has been held by the Commissioner.
- (2) In holding enquiries under these Regulations the Commissioner shall satisfy himself that the inhabitants of the said area are given adequate opportunity of understanding the subject-matter of the enquiry and making representations thereon, and, subject thereto, such enquiry shall be conducted in such manner as the Commissioner thinks fit.
- (3) A written report of any enquiry shall be submitted to the Governor as soon as possible after the completion thereof, and shall contain a certificate that the requirements of this regulation have been complied with."

These provisions ensure that the persons affected by the Order are well aware of the reasons for the imposition of the punishment."

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The Order mentioned in the above reply reads as follows:

"No. 767

THE EMERGENCY POWERS (COLLECTIVE PUNISHMENT)

REGULATIONS 1955

Order made under Regulation 3

I, the Commissioner of Famagusta, in exercise of the powers vested in me by Regulation 3 of the Emergency Powers (Collective Punishment) Regulations, 1955, and with the approval of the Governor, do hereby order that a fine of £2,000 (two thousand pounds) be levied collectively on the assessable inhabitants of the area of the Municipality of Lefkoniko.

Made this 4th day of December 1955,

B. J. WESTON,

Commissioner of Famagusta."

II. THE LEGAL ARGUMENTS OF THE PARTIES

A. WRITTEN SUBMISSIONS

217. In its Memorial of 24th July 1956, the Greek Government stated: "The Convention for the Protection of Human Rights and Fundamental Freedoms does not, it is true, expressly prohibit collective punishment, yet there is no doubt that it does condemn it." (Doc. A 28.657, p.21).

According to the Greek Government, Order No. 732, which was widely applied, "is contrary to Article 3 of the Convention in the sense that it permits inhuman treatment". In its view, there could be no more inhuman treatment of the population of a territory by a Government than to cause a military or civil official to declare it collectively responsible for offences committed by one person or a small group, and to inflict mental and material hardships on that population, in order to punish it for the offences committed by those persons or to force it to co-operate with the authorities. Here, the Greek Government recalled a statement made by Sir Hartley Shawcross at Nuremberg: "We all agree that our conscience recoils from collective punishment, which does not distinguish between the guilty and the innocent." (ibid. pp. 21-22).

The Greek Memorial then invoked Articles 5, 6 and 7 of the Convention and asked "What purpose can be served by these provisions as to the right of defence if an individual can be sentenced without being personally accused?"

It also argued that the United Kingdom Government could not take advantage of Article 15 of the Convention in this matter, for this Article authorises derogation from the Convention only if the measures taken "are not inconsistent with its other obligations under international law". It pointed out in the same connection that Article 1 of the Protocol, which recognises the right to possessions - a right which the Greek Government holds to be infringed by the imposition of collective fines - refers in its turn to "the general principles of international law". In the opinion of the Greek Government it had definitely been settled in international penal law that collective punishment should be prohibited. Article 50 of the Hague Settlement was already stipulating in 1899 that "no collective punishment, whether of a financial or other nature, could be inflicted on a population to punish it for individual offences for which it could not be regarded as collectively responsible." This prohibition was adopted "quite categorically", by the 1949 Red Cross Conference at Geneva, being embodied in Article 87 of the Convention relative to the Treatment of Prisoners of War and Article 33 of the Convention relative to the Protection of Civilian Persons in time of War. (ibid. pp.22-23).

After mentioning a recent work on penal law published in London in 1953 by Glenville Williams, the Greek Memorial referred to Appendices 24, 51, 52 and 53 as evidence of the reactions in Cyprus to the imposition of collective punishment (ibid. pp. 24-25).

218. It was stated in the British Counter-Memorial of 17th October 1956, under "General Legal Comments", that collective punishment was not expressly prohibited by Article 3 or any other provision of the Convention, that the Convention was not intended to be exhaustive, as is shown by the Preamble, and that the limited character of its provisions is emphasised by the Preamble to the Protocol. Thus, even if it were conceded - and the British Government contests it - that collective punishment is prohibited under international law, it would not follow that such punishment fell within the enforcement provisions of the Convention. (Doc. A 30.235, paras. 41-44). The British Counter-Memorial claimed that collective punishment is recognised in national practice and supports this by citing the French Law of Municipalities of 5th April 1884, as amended by the Law of 16th April 1914. It was understood that similar legislation exists in Belgium and Luxembourg, and reference was also made to the practice in the Federal Republic of Germany of levying "enforcement fines" (Zwangsgeld) on a community for failure to carry out a communal obligation imposed on its by the judgment of an administrative court. (ibid. paras. 46-47).

In the field of international law, the propriety of collective punishment in certain circumstances was recognised by Article 50 of the Hague Regulations. (Ibid. para. 48. See also para. 44).

In the submission of the United Kingdom Government, Article 3 of the Convention could not be applied to the case in point since it was directed against certain types of treatment, i.e. brutal treatment inflicted on the individual. If treatment inflicted on one individual was not contrary to the Article, it did not become an infringement if inflicted on a number of individuals collectively (ibid. para. 49).

As regards Articles 5, 6 and 7 invoked by the Greek Government, the United Kingdom Counter-Memorial pointed out that Article 5 might be left out of account since it dealt solely with liberty of the person, a matter outside the scope of the Emergency Powers Regulations (No. 732), that Article 6 of the Convention was also inapplicable, and that in any case the provisions of Regulation 5 of the Emergency Powers Regulations ensured that this Article is substantially satisfied. As for Article 7, it was irrelevant because the Emergency Powers Regulations were not retroactive (*ibid.* paras. 50-52).

As regards the Protocol to the Convention, the Counter-Memorial pointed out that that instrument had not been extended to Cyprus under Article 4 thereof (*ibid.*, para. 53).

After these general remarks the British Counter-Memorial turned to collective fines and pointed out that Regulation 3 of the Emergency Powers Regulations (No. 732) was designed to apply only to cases in which there is collective responsibility, and enabled the collective punishment to be imposed only on a section or group of inhabitants if responsibility was limited. It was maintained that the principles on which such fines were imposed in Cyprus were fair and equitable and would satisfy the test contained in Article 50 of the Hague Regulations. It was noted that the proceeds of the fines may be used to compensate persons who had suffered from an unlawful act committed in the area (*ibid.* para. 55).

Turning to the closing of shops and dwelling houses, the British Counter-Memorial referred back to the arguments set out in paragraphs 41 to 53 to show that this form of collective punishment under the Emergency Powers Regulations was not contrary to the Convention (*ibid.* para. 61). It said that the two cases referred to in the Greek Memorial (Doc. A 28.657, pp. 15-17) did not show "that the Regulation, as a legislative measure, infringed the Convention nor that they established a general administrative practice which might be regarded as such an infringement" (*ibid.* para. 62).

There followed an account of the circumstances in which the closing of premises was ordered (*ibid.* paras. 63-67).

B. HEARINGS OF 15th and 16th NOVEMBER 1956

- (1) Pleading of Counsel to the Greek Government
before the Sub-commission (15th November 1956,
Doc. A 30.768, pp. 77-90).

219. At the beginning of his pleading (Doc. A 30.768, p.77), Counsel for the Greek Government made it clear that he was not alleging a violation of the Protocol (1) but only of the Convention itself. He also said that he was prepared to drop the argument developed in the Memorial on the basis of Article 5 of the Convention, which merely deals with deprivation of liberty (ibid. p.78).

220. On the other hand, Counsel to the Greek Government maintained that the measures called "collective punishment" were in conflict with Articles 3, 6 and 7 of the Convention.

221. With regard to Article 3, Counsel claimed "that any collective punishment must be considered inhuman inasmuch as it is bound to fall on people who are innocent of any crime or any breach of the law; and secondly that collective punishment must be considered inhuman because of its particular accompanying circumstances and its manner of execution." (ibid. p.78).

On the first point, Counsel to the Greek Government justified his wide interpretation of the word "inhuman" by reference to the Geneva Convention of 1949 relating to Prisoners of War, Article 87 of which prohibits in a single sentence "collective punishment for individual acts, corporal punishment, imprisonment in premises without daylight and in general any form of torture or cruelty". Admittedly the Convention for the Protection of Civilian Persons contained two separate articles: Article 32 prohibiting torture, corporal punishment, etc., and Article 33 prohibiting collective punishment. However, this difference can be explained by the fact that international Conventions are drafted by different persons, and the same principle should be deduced from the two Conventions in question. At any rate, one Convention expressed the view "that collective punishment was a barbarous practice amounting to a form of torture or cruelty". Counsel then quoted the views of Dr. Paul Urner, a commentator on this Convention,

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- (1) The British Government had, in fact, extended the scope of the Convention (Art. 63), but not of the Protocol (Art.4), to the island of Cyprus.

who wrote:

"Collective punishment means joint liability of several persons for illegal acts committed by persons unknown. They are not 'penalties' as understood in penal law, as there is no presumption of guilt in regard to the persons punished ...

Collective punishment is hardly an appropriate means of maintaining order. The main reason for condemning them is, however, that they conflict with the idea of justice and detract from the dignity of the individual. An appearance of illegal activity, membership of a particular group or community is no justification for punishment". (ibid. pp. 79-80).

On the second point (methods of imposing collective penalties), Counsel to the Greek Government submitted that the methods employed were such as to fall within the prohibition of Article 3, even interpreting the word "inhuman" in its narrowest sense. In this connection, he insisted that there was "not a vestige of proof" in the documents produced "that, in fact, when collective penalties were imposed, they were imposed only to those assessable for tax." On the contrary, by their very nature, collective fines fell indiscriminately on the whole population of a given area and it was not considered whether or not hardship was involved (ibid. pp.78-82).

222. With regard to Articles 6 and 7, Counsel to the Greek Government submitted that their purpose was to protect people against arbitrary action on the part of public authorities, by ensuring that they were given what is known in international law as "a fair trial". He dwelt at length on this point (ibid. pp.84-88), expressing astonishment at the United Kingdom Government's argument, the upshot of which was that there would have been an obligation to comply with Article 6 if there were legal proceedings but when legal proceedings are dispensed with, there was no need to give those fined the guarantees afforded by the Convention. He thought it obvious, moreover, that the principle of non-retroactivity of penal legislation, stated in Article 7, "of necessity implies the existence of an applicable law, because there was no punishment without law" (ibid. p.84).

Counsel also compared Regulation 5 with Article 6 of the Convention in order to show that the guarantees afforded by the Convention had not been respected (ibid. pp. 85-86).

He recalled the statement by Sir Hartley Shawcross at Nuremberg and the indictment against Goering, Hess and von Ribbentrop, and cited the judgment rendered at Nuremberg in connection with Barbarossa Order, which was declared to be criminal and contrary to the principles of international law because collective sentences were imposed (ibid, pp. 87-88).

Turning to Article 50 of the 1899 Hague Regulations, invoked by the United Kingdom **Government**, Counsel to the Greek Government remarked that it is not enough that the population should be thought collectively responsible by the occupying power; there must be objective reasons for this attitude (ibid. p.88). This provision of Article 50 of the Hague Regulations was discussed in his life-time by Albéric Rolin (father of M. Henri Rolin), who wrote in his treatise on "Le Droit moderne de la guerre" (1918-1919) that collective punishment conflicts with the principle of the individual character of punishment. If, under French or Belgian law, communes can, in certain circumstances, be held responsible for damage and destruction, it is only in respect of civil responsibility. Moreover, "the Geneva Convention has dropped all reference to collective punishment from the laws of war today". (ibid. pp. 88-90). Counsel concluded:

"Can it reasonably be accepted that, if Conventions which contain no such legal guarantees as are provided in Article 6 and Article 7 of the Rome Convention at least make provision for immunity from collective punishment for persons protected against arbitrary acts of the occupying power, this fundamental protection is **absent** from the detailed provisions laid down in the Rome Convention for the protection of individuals against the arbitrary acts of their own government?" (ibid. p.90).

(2) Pleading of the Agent of the United Kingdom Government
(16th November 1956, Doc. A 30.768, pp. 100-110).

223. Before turning to particular points, the Agent of the British Government observed that the 1949 Conventions relative to Prisoners of War and Civilian Persons were concerned with the law of war and armed conflict which is treated as of a similar character. The latter subject was an innovation in the 1949 Geneva Conventions. These Conventions, designed to deal with special circumstances, did not show what is the general rule of international law in other circumstances, nor did they show that collective punishment is contrary to Article 3 of the European Convention on Human Rights (ibid. p. 101).

224. The Agent of the British Government then replied as follows to three arguments put forward by Counsel to the Greek Government:

(a) Sir Hartley Shawcross did not argue that collective punishment was contrary to international law or was generally prohibited, but claimed that a State may be held criminally responsible under international law, and despite this criminal liability of the State, the Tribunal could go further and also hold individuals responsible. The Agent of the British Government read out a few remarks made by Sir Hartley Shawcross, which appear in Volume III of the official record published in 1947. According to him, "so far from showing that collective punishment is contrary to international law his remarks are an indication in the opposite sense." The indictment of Goering, Hess and von Ribbentrop had no bearing upon the matter under consideration. It related to the imposition of collective punishments for individual acts contrary to Article 50 of the Hague Settlement of 1899. (ibid. pp. 102-103).

(b) While expressing regret at not having had an opportunity of consulting the record of the Nuremberg proceedings, the Agent of the British Government felt confident that the Barbarossa case "was again quite a different case". The sole test of collective responsibility in that case was whether the culprit of a particular act could be found quickly or not. Moreover, this was also a case tried under the law of war and the Statute of the Nuremberg Tribunal (ibid. p. 103).

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(c) Article 50 of the Hague Settlement of 1899 prohibits collective punishment for individual acts where there is no collective responsibility but does no more than that, and the quotation from the work by Albéric Rolin supports this interpretation. Here the Agent of the British Government digressed for a moment to comment on the French Law of Municipalities of 5th April 1884, which, he suggests, introduces a penal element into the proceedings in such a case (ibid. p.104).

Thus, he submitted, none of the three points raised by Counsel to the Greek Government showed that collective punishment might be regarded as torture or inhuman or degrading treatment or punishment within the meaning of Article 3 of the Rome Convention.

Insofar as the Greek case relied on Article 33 of the Civilians Convention, the reply of the Agent of the British Government was that this Article only referred to persons protected by the Convention, i.e. those who found themselves in case of an armed conflict or occupation, in the hands of a party to the conflict or occupying Power of which they are not nationals (Article 4). He admitted that the prohibition of Article 33 of the Civilians Convention is absolute, for it refers to collective penalties without any qualifications as to responsibility. But Article 33 is separate from the Article dealing with torture (Article 32). This suggests that collective punishment is something of quite a different category from torture, to which Article 32 relates. (ibid. pp. 104-105).

As for Article 87 of the Prisoners of War Convention, it applies only to the persons protected by the Convention, i.e. prisoners of war. Here the prohibition of collective punishment is qualified in respect of individual acts, and there is no prohibition where collective responsibility occurs (ibid. p. 105).

The Agent of the British Government summed up by saying that the arguments of Counsel to the Greek Government did not show any general prohibition of collective punishment in all cases to which the particular Conventions apply, or under international law. The express mention of collective punishment in the Geneva Conventions showed that the silence on this subject in the Rome Convention was significant.

In this connection the Agent of the British Government cited the opinion of Judge Lauterpacht who did not condemn the principle of collective punishment as such, when discussing the liability of States (ibid. p.106). A punishment which is human in itself does not become "inhuman" and contrary to Article 3 merely because it falls, or might fall, on an innocent person. This is illustrated by the fact that a master may be held responsible for the acts of his servant and a corporation may be sentenced for acts committed by its directors (ibid. p.107).

225. With regard to Article 6 of the Convention, the Agent of the British Government by amending paragraph 51 of the United Kingdom Counter-Memorial, recognised that the provisions of Regulation 5 of the Emergency Powers Regulations 1955 (No. 732) did not satisfy all the particular requirements of Article 6 of the Convention. He claimed, however, that Regulation 5 did at any rate satisfy Article 6 in spirit and that Article 6 was not intended to apply to collective punishment, which was a matter outside the Rome Convention (ibid. p.108). He went on to say that in Cyprus the parties or persons concerned were given notice of the enquiry and had an opportunity to make their representations, that the enquiry was held in public and that the results were made public. Moreover, the result of the amendments to Regulation No. 732 was to empower the Commissioner to select, so far as he is able, the responsible section of the community and exclude from the punishment any section of the community not responsible for the acts in question (ibid. p. 109).

226. As for Article 7 of the Convention, its sole purpose was to prohibit retroactive legislation and no special significance can be attached to the use of the phrase "criminal offence" in the English text. The Agent of the British Government had the impression "that in this connection the Greek Government are trying to use Article 7 for a purpose which is wholly outside its intentions". (ibid. pp. 109-110).

(3) Reply of Counsel to the Greek Government
(16th November 1956, Doc. A 30.768, pp. 110-119)

227. In his reply, Counsel to the Greek Government pointed out that the Agent of the British Government preferred to rely on the Geneva Convention for the Protection of Civilian Persons, in which the prohibition of collective punishment (Article 33) appears in a different Article from the prohibition of inhuman and degrading punishment (Article 32), whereas in the Prisoners of War Convention these two forms of punishment appeared not only in the same Article - Article 87 - but in the same paragraph (ibid. pp. 113-114).

228. Secondly, he asserted that Article 6 of the Rome Convention laid down the "inviolable principle" that "every person must be presumed innocent until found guilty". But "if a person is to be presumed innocent, how can he be treated as though he were guilty of acts with which he is not even charged?" It followed that "the assumptions of guilt or complicity" on which Regulation No. 732 was based were contrary to Article 6 (ibid. p. 115).

229. Counsel to the Greek Government went on to refer to Sir Hartley Shawcross's previously mentioned statement, and argued that the responsibility - admitted in Sir Hartley's statement - of a defeated State or its population for the payment of war reparations had in no sense a penal character (ibid. p. 115). Moreover, the Nuremberg Tribunal gave its sanction to Article 50 of the Hague Convention of 1899. Counsel to the Greek Government then dwelt at length on the terms of Order in Council No. 732 in order to prove that it was in contradiction with Article 50 of the Hague Convention. (ibid. p. 117). The purpose of amending Regulation No. 732 was merely to exempt those inhabitants who did not belong to the Greek community (ibid. pp. 117-118). Furthermore, the Hague Regulations of 1899 were now superceded by the Geneva Conventions of 1949, which upheld "the principle that no one may be punished for acts other than those for which he has been tried and found guilty". This being so, it could be maintained that the Convention on Human Rights "intended the population to receive less favourable treatment from its own government in time of peace than from a foreign government in time of war". (ibid. pp. 119-120).

(4) Reply of the Agent of the United Kingdom Government
(16th November 1956, Doc. A 30.768, pp. 123-126).

230. In his reply, the Agent of the United Kingdom Government denied that the Turkish, British and other sections of the community were excluded when Order in Council (Regulation) No. 732 was applied. The purpose of the amendment was to exclude those sections of the community which could not properly be regarded as responsible. Collective punishment was imposed only for the complicity of the community in riots and public outrages, in hiding terrorists and failing to co-operate in bringing criminals to justice (ibid. p.124).

231. The Agent of the British Government again insisted that the Hague and Geneva Conventions "if anything, tend to show that collective punishment as such is not forbidden by international law in general". Moreover, these Conventions "cannot govern the interpretation of the Rome Convention." The Geneva Convention for the Protection of Civilians was a great innovation, since the persons protected were foreign nationals. The Rome Convention of 1950 was an even greater innovation, for the fact that the rights of nationals were made enforceable against their own State was something quite new in international law. However, it did not give an exhaustive definition of Human Rights; it was only a first step towards the goal of making Human Rights in the broad sense enforceable rights. The opinions of Glenville-Williams, Roshdall and Glass, referred to by the Greek Government in its Memorial and again by Counsel in his pleading, that collective punishment should be abolished, did not show that it was contrary to international law or to the Rome Convention (ibid. pp. 125-126).

(5) Conclusions of the Parties
(16th and 17th November 1956, pp. 139 and 143 of Doc. A 30.768, and page 1 of Appendix thereto)

232. At the end of the sitting of 16th November 1956, the Greek Government formulated its general conclusions. With regard to collective punishment it asked the Commission to:

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..."4. declare that Regulation 3 of Special Order No. 833 of 26th November 1955, as amended by Regulation No. 819 of 1955, dealing with collective punishment, and its application by the Courts of Cyprus, constitute a breach of Articles 3, 6 and 7 of the Convention;"

For its part, the United Kingdom Government, at the hearing of 17th November 1956, asked the Commission:

..."2. to refuse to make any of the declarations requested in paragraphs 3, 4, 5 and 6 of those conclusions."

III. ABOLITION OF COLLECTIVE PUNISHMENT DURING THE PROCEEDINGS

233. As in the case of punishment by whipping, certain facts must be reported:

- (1) In its efforts to secure a friendly settlement, the Sub-commission decided at its meeting of 18th December 1956 to propose "abolition of collective punishment imposed under the Emergency Powers (Collective Punishment) Regulations, No. 55, G.N. 732, amended by the Emergency Powers (Collective Punishment) (Amendment) Regulations, 1955, G.N. 819" (Doc. A 31.239, para. 6; see also Chapter IV of Part I of the present Report).

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- (2) On the same day, the Sub-commission was notified of a public statement made at Nicosia on behalf of the Governor of Cyprus at 6 p.m. on 18th December 1956. This announced that:

"(b) The Emergency Powers (Collective Punishment) Regulations, under which fines may be levied collectively on the inhabitants of particular areas, and shops and dwelling-houses in such areas may be closed, will be revoked as from tomorrow." (Doc. A 30.835, p.2).

- (3) In paragraph 21 of its Statement of 7th March 1957 the Sub-commission had asked to be informed by the Government of the United Kingdom whether "it may proceed upon the basis that the laws allowing corporal punishment of males under the age of 18 years and the collective punishment Regulations are and will continue to remain revoked". (Doc. A 32.683, p.11).

- (4) To this the Agent of the British Government replied at the hearing before the Sub-commission on 28th March 1957 that:

"... the United Kingdom Government do not think that it would be appropriate to give undertakings about the introduction of measures in the future; but I can confirm that their present policy is not to reintroduce the laws and regulations mentioned in paragraph 21 of the Statement" (Doc. A 33.305, p.3).

234. As in the case of punishment by whipping, the Commission had to settle the question whether, despite the repeal of the collective punishment legislation, it should express an opinion on the compatibility of this legislation with the Convention. The respective views of the parties on this question are set forth in paragraphs 201-202 above.

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IV. OPINION OF THE COMMISSION

235. The Commission adopted, by seven votes to four, the following opinion:

Among the measures considered by the Sub-commission in the course of its efforts to obtain a friendly settlement was Emergency Regulation No. 732 (amended by Regulation No. 819) authorising the collective punishment of the inhabitants of a particular area in certain defined circumstances. The legal arguments of the Parties in regard to the compatibility of these measures with the provisions of the Convention were presented to the Sub-commission in their written pleadings and orally at its session of 14th-18th November 1956. The Sub-commission was proceeding on 18th December to formulate propositions to the Parties for a friendly settlement which included the withdrawal of these measures when the Agent of the United Kingdom informed it that the Governor of Cyprus had decided to revoke these measures with a view to the relaxation of tension in the island. In the course of the Sub-commission's subsequent negotiations with the Parties for a friendly settlement, the Government of the United Kingdom informed the Sub-commission that its present policy was not to re-introduce the laws and regulations allowing collective punishment. Despite the breakdown of the negotiations for a friendly settlement, these measures have remained revoked.

In these circumstances, and for the reasons given in Chapter I, paras. 94-96, the Commission does not find it necessary to present to the Committee of Ministers its legal conclusions concerning the compatibility or otherwise of the Corporal Punishment and Collective Punishment Regulations with the Convention. The Commission thinks it might, however, observe that the legitimacy of collective punishment under the provisions of the Convention raises legal issues of some seriousness and that the trend of opinion today among the peoples of the Council of Europe is not sympathetic to collective punishment. The Commission, therefore, ventures to mark its satisfaction at the fact that this measure was revoked by the Government of the United Kingdom. The Commission refrains from expressing a legal opinion on the assumption that this measure will remain revoked.

V. DISSENTING OPINION

236. Four members of the Commission, MM. EUSTATHIADES, SUSTERHENN, PETREN and Mme. JANSSEN-PEVTSCHIN, were of the opinion that the Commission should have taken a decision on the issue whether the legislation concerning collective punishment constitutes a breach of the Convention. **Their** opinion is recorded at the end of Chapter I above (paras. 97-99 above).

237. MM. DOMINEDO and SKARPHEDINSSON stated at the 14th Session of the Commission that if they had participated in the vote taken at the previous Session, they would have supported the minority's opinion on this point.

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