AS TO THE ADMISSIBILITY OF

Application No. 15933/89
by Lorrain OSMAN
against the United Kingdom

The European Commission of Human Rights sitting in private on 14 January 1991, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
F. ERMACORA
G. SPERDUTI
G. JÖRUNDSSON
A. WEITZEL
J.C. SOYER
H. DANELIUS
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
A.V. ALMEIDA RIBEIRO
M.P. PELLONPÄÄ

Mr. J. RAYMOND, Deputy Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 19 December 1989 by Lorrain OSMAN against the United Kingdom and registered on 21 December 1989 under file No. 15933/89;

Having regard to :

- reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the applicant's further argument submitted on 25 May 1990;

- the Government's observations of 20 June 1990 and the applicant's reply of 10 July 1990;

- further comments submitted by the Government on 7 September 1990 and the applicant's reply of 28 September 1990;

- the hearing held on 14 January 1991;

Having deliberated,

Decides as follows:

THE FACTS

The applicant was born in 1931 in Penang, Malaysia, but he claims to be the holder of a Liberian diplomatic passport. He is a businessman by profession. He is currently detained in the United Kingdom awaiting his extradition to Hong Kong. In the proceedings before the Commission the applicant is represented by Messrs. Johnson Walsh and Co., Solicitors, Birmingham.

This is the applicant's second application to the Commission. His first, No. 14037/88, in which he complained that his extradition to Hong Kong would be in breach of Articles 3 and 7 of the Convention, was rejected by the Commission on 13 March 1989.

The facts of the present case, as submitted by the parties, may be summarised as follows.

A. The particular facts of the case

1. Extradition proceedings

On 30 November 1985 a warrant was issued by a Hong Kong Magistrate for the applicant's arrest on 16 charges of fraud. The applicant was arrested in London on 6 December 1985, pursuant to a provisional warrant issued by a London Magistrate on 2 December 1985 under section 6 (1) of the Fugitive Offenders Act 1967 (the 1967 Act). His house was searched and a large amount of documentation was seized by the police. Others accused of the same offences were also arrested in London and Hong Kong around that time. The applicant has been in custody continuously since that date. The Government of Hong Kong have sought his extradition from the United Kingdom to Hong Kong on multiple charges of fraud and these proceedings have given rise to the application to the Commission.

The applicant was remanded in custody until 16 December 1985 when the Magistrate fixed 27 January 1986 as the date by which the Secretary of State had to provide him with an authority to proceed with the extradition committal or the applicant would be discharged in accordance with section 7 (4) of the 1967 Act. Before that date arrived, a further Hong Kong warrant was issued on 20 January 1986 increasing the charges to 29. All charges were indicated in the new warrant. On 21 January 1986 the applicant's extradition was requested by the Governor of Hong Kong and on 24 January the Secretary of State in the United Kingdom issued to the Chief Metropolitan Stipendiary Magistrate an authority to proceed under section 5 of the 1967 Act in respect of the 29 offences. On 25 April 1986 a further warrant was issued against the applicant in Hong Kong, increasing the number of charges to 43. A second extradition request was made to the Secretary of State on 28 April, covering all of these charges, and on 13 May 1986 the Secretary of State issued to the Chief Metropolitan Magistrate a further authority to proceed under section 5 of the 1967 Act in respect of the 43 offences. These offences concerned 11 offences of conspiracy to defraud contrary to common law, 11 offences of conspiracy to steal contrary to common law, seven offences of accepting an advantage as an agent, eight offences of theft and six offences of false accounting.

The numerous allegations against the applicant derive from the operations of a deposit-taking company, known as "BUMIPUTRA MALAYSIA FINANCE LIMITED" (BMFL) which was a wholly owned subsidiary of "BANK BUMIPUTRA MALAYSIA BEHRAD" (BBMB), a Government owned bank in Malaysia. It is claimed that over a period of four years, between 1979 and 1983, while the applicant was a non-executive director of both companies, he and others fraudulently authorised advances of sums to a group of companies known as "THE CARRIAN GROUP" without obtaining sufficient security and contrary to accepted banking rules and practice, and also contrary to the established rules within BMFL and BBMB. The amount of money involved in the loans, in three different currencies, was in excess of US$800,000,000. The advances allegedly amounted to offences of conspiracy to defraud and to steal, theft and false accounting. They were accompanied by allegedly corrupt payments to the applicant totalling about £12,000,000.

The applicant's defences to these charges are that authority and approval were forthcoming from BBMB, the parent bank, for all

activities of BMFL and that full reporting ensured that the Board of BBMB and shareholders were aware of the activities of BMFL and not only raised no objection but instigated a number of the transactions which are the subject-matter of the charges brought against the applicant in respect of 42 of the alleged offences. The applicant claims that the original warrant issued against him on 30 November 1985 was invalid but he only became aware of this from 13 October 1988 onwards. Other information relevant to the lawfulness of his arrest and detention was allegedly denied him for over three years in lengthy proceedings, including proceedings in Hong Kong, which have been resisted at every stage. The length of proceedings was also increased by the large number of charges involved even though only specimen charges will probably be pursued if he is in fact extradited.

The extradition proceedings against the applicant were heard at Bow Street Magistrates' Court in London over a period between 27 May 1986 and 1 June 1987 (on 27 May to 22 June 1986, 28 October to 5 December 1986, 26 January to 2 February 1987, 27 April to 22 May 1987 and 1 June 1987). The hearing dates were fixed from time to time taking account of the convenience of counsel. The hearing lasted 66 days and involved evidence being taken over 42 days and 24 days of legal submissions. Exhibits in the case numbered approximately 5,000 and ran into some 30,000 pages (150 volumes). There were 29 Malaysian, 58 Hong Kong and 12 United Kingdom witnesses, who provided over 2,800 exhibits. The applicant and his advisers received copies of most of the evidence two months before the hearing commenced. However, other evidence, amounting to 26 volumes, was served on the applicant on 16 December 1986, over six months after the proceedings had commenced. Part of the hearings (16 days) were taken up with the applicant's challenges to the admissibility of certain evidence. The applicant's counsel sought lengthy adjournments, in view of the volume of evidence and the complexity of legal argument, which adjournments were only granted by the Chief Magistrate when satisfied that the applicant had no objection to remaining in custody. For example, delay occurred between 22 June 1986 and 28 October 1986 because of the unavailability of the applicant's counsel, and on two occasions between 5 December 1986 and early March 1987 because the applicant's counsel had underestimated the length of his submissions.

The applicant contested most matters at the hearing and counsel informed the Chief Magistrate that the applicant was not concerned with the time the proceedings were taking as his instructions were to oblige the Hong Kong Government strictly to prove its case and to make no admissions of any kind. As a result the applicant did not permit the statements to be taken "as read". The Magistrate offered to sit six days a week, but that was rejected by the applicant's counsel.

On 1 June 1987 the Chief Magistrate found ample prima facie evidence of the applicant's involvement in 42 of the 43 fraud and corruption offences and, pursuant to section 7 (5) of the 1967 Act, committed the applicant to prison to await the order of the Secretary of State to extradite him to Hong Kong.

2. Habeas corpus proceedings

a) Habeas corpus 1

On 10 June 1987 the applicant applied to the Divisional Court for an order of habeas corpus and also for leave to seek judicial review to quash the authority issued by the Secretary of State to deliver the applicant to the Hong Kong authorities. (Such applications have a suspensive effect on extradition, pursuant to section 8 of the 1967 Act.) It was alleged, inter alia, that the Chief Magistrate was wrong in law in committing the applicant on the basis of the offences with which he was charged. The parties to the proceedings were the applicant, the Government of Hong Kong and the

Governor of Pentonville Prison where the applicant was detained. The parties' representatives liaised on the question of a hearing date. The respondents sought a hearing in November 1987, but the applicant requested January 1988. He subsequently asked for its deferral until 22 February 1988.

After interim procedural hearings on 11 November 1987 and 21 January 1988, a hearing of this action took place between 22 February 1988 and 19 March 1988. The application was rejected by the Divisional Court on 30 March 1988 in a lengthy judgment. Leave to appeal to the House of Lords was rejected by the Divisional Court on 29 April 1988. On 13 May 1988 the applicant sought leave from the House of Lords which refused it on 14 July 1988.

b) Habeas corpus 2

In the meantime, on 8 June 1988, the applicant introduced a second application for habeas corpus to the Divisional Court based on a claim that he was a Liberian diplomat and hence immune from prosecution. On 13 July 1987 the Foreign Office of the United Kingdom had received a claim for diplomatic immunity from prosecution for criminal offences or extradition on the basis that the applicant had held Liberian diplomatic status since 1985. The applicant had not made this claim of immunity earlier on arrest, in the committal proceedings or in the first habeas corpus proceedings. The Foreign Office refused to accept retrospective notification of the diplomatic appointment or to acknowledge the applicant's entitlement to diplomatic privileges and immunities. At one point in October 1988 the Liberian Embassy said that the applicant's immunity had been waived "to allow the law to take its course".

The parties to the proceedings were the applicant, the Governor of Pentonville Prison, the Foreign and Commonwealth Office, the Liberian Government and the Hong Kong Government. A hearing was set down for 17 October 1988 but the applicant refused to serve any documentation relating to this application upon the Hong Kong Government. On legal advice, he considered that the issue of his diplomatic immunity was between the Liberian and United Kingdom authorities and a question to which the Hong Kong authorities should not be a party. The Hong Kong Government then had to apply to the Divisional Court on 13 October 1988, as a consequence of which they were served with the documents. On 17 and 21 October 1988 the applicant applied for and obtained adjournments of the proceedings in order to investigate apparent irregularities in the issue of the original arrest warrant of 30 November 1985 in Hong Kong. The Court expressed its concern about these proceedings dragging on, and urged the applicant's counsel to deal with every possible remaining argument against the applicant's extradition at the next hearing to be fixed for the second half of November 1988.

The Government of Liberia, having waived their claim on behalf of the applicant in respect of diplomatic immunity in October 1988, sent a diplomatic note to the Foreign and Commonwealth Office which purported to renew the claim for diplomatic immunity. The note protested the applicant's continued detention and explained that the previous waiver had only been for the purposes of the proceedings before the Divisional Court in habeas corpus 2. Proceedings in Hong Kong were successful, with the original arrest warrant being quashed on 4 May 1989 by the Hong Kong Court of Appeal.

The hearing of the second habeas corpus application took place before the Divisional Court between 28 November 1988 and 1 December 1988. The application was rejected by decision of 21 December 1988. Leave to appeal to the House of Lords was refused by the Divisional Court on 19 January 1989. An application for leave to appeal was lodged with the House of Lords on 24 February 1989. This application was subsequently adjourned at the applicant's request on 9 May 1989

and ultimately refused on 1 February 1990.

c) Habeas corpus 3

On 6 June 1989 the applicant lodged a third application for a writ of habeas corpus with the Divisional Court on the grounds that the quashed warrant of arrest in Hong Kong had invalidated the extradition proceedings. The hearing commenced on 4 October 1989, the parties being the applicant, the Governor of Pentonville Prison, the Secretary of State for the Home Department, the Secretary of State for Foreign Affairs, a Metropolitan Stipendiary Magistrate and the Hong Kong Government. A further claim for diplomatic immunity was withdrawn. As a result of information acquired in September 1989, the applicant made new challenges to the lawfulness of the extradition proceedings and sought an adjournment pending an independent inquiry into the conduct of all those involved. He also requested an adjournment pending the outcome of proceedings he had initiated in Malaysia. The Court adjourned the matter from 5 to 19 October 1989 to enable the parties to file further affidavits. The hearing ended on 26 October 1989. The Divisional Court, refusing this application by the applicant in its judgment of 17 November 1989, criticised the applicant's conduct of his application which had contained baseless allegations of the most serious kind against all parties. It held that the existence of a valid warrant in Hong Kong was not a requirement under United Kingdom law for the issue of the provisional warrant for the applicant's arrest, the latter warrant being an emergency measure. A valid warrant is, however, a requirement for an authority to proceed, but by the time the Secretary of State had sent the Magistrate the authority to proceed on 24 January 1986, a second warrant covering 29 charges had been issued on 20 January 1986 by a Hong Kong court.

Applications for leave to appeal to the House of Lords were again refused, by the Divisional Court on 5 December 1989 and by the House of Lords on 1 February 1990.

d) Habeas corpus 4

On 5 February 1990 the applicant filed a fourth application for a writ of habeas corpus on the basis, inter alia, that the accusations against him were not made in good faith or in the interests of justice and that, by reason of the passage of time, it would be unjust and oppressive to return him to Hong Kong. The parties to the proceedings were the applicant, the Governor of Brixton Prison, the Secretary of State for Foreign Affairs (until 14 November 1990) and the Hong Kong Government. An issue raised by the respondents was whether this fourth habeas corpus application was an abuse of process of the court, contrary to section 14 (2) of the Administration of Justice Act 1960. A hearing was set for 11 June 1990 after discussions between the applicant's representatives and the Hong Kong Government about the availability of counsel.

In the interim the applicant sought through Hong Kong courts to obtain documentation from the Attorney General of Hong Kong. The Hong Kong Government submitted that the proper forum for such an application was the Divisional Court in the United Kingdom, which was seized of the application for habeas corpus. Accordingly, on 4 April 1990, on the applicant's application, the proceedings in Hong Kong were adjourned generally. On 10 April 1990 he applied to the Divisional Court in the United Kingdom for a discovery order seeking the same documents that he had sought in Hong Kong. This application was listed as a preliminary matter to the habeas corpus proceedings. Subsequently it was decided to deal with this matter separately on 19 June 1990, the application for habeas corpus being put back to October 1990 to allow sufficient court time. The discovery application was heard in the Divisional Court on 19 June 1990 and refused on 20 June 1990, leave to appeal to the House of Lords also

being refused and the hearing for the habeas corpus application being fixed for 12 November 1990. The House of Lords itself refused leave to appeal against the discovery refusal on 26 July 1990.

In October 1990 it was estimated that the hearing time for the habeas corpus application would have to be increased from two to three weeks. Various motions were sought by both sides including a motion from the applicant on 7 November 1990 for discovery of the same documents which had already been refused in June 1990. A motion brought on behalf of the Secretary of State for Foreign Affairs to have himself struck out from the proceedings was granted, after a two day hearing, on 14 November 1990. A further two day hearing of the applicant's renewed discovery application took place on 14 to 15 November 1990 and the application was refused.

The habeas corpus application was heard from 15 to 23 November 1990 and refused in a judgment of 12 December 1990. The Divisional Court held, inter alia, that the application was an abuse of process, contrary to section 14 (2) of the Administration of Justice Act 1960, as the applicant should have put forward his whole case for habeas corpus at the outset and not have kept back separate grounds of application as a basis for renewed applications to the Court (cf. R v. Governor of Pentonville Prison, ex parte Tarling <1979> 1WLR1 417). The Court also held that the accusations against the applicant had been made in good faith and that it was not unjust or oppressive, by reason of the passage of time, to return the applicant to Hong Kong. In this connection it found that the Government had acted diligently throughout these proceedings with no interval "which could be stigmatised as 'delay' by the Government in the necessarily complex circumstances of the case". Although the applicant had been entitled to pursue his habeas corpus applications, he had to recognise that they would be time consuming, with inevitable, unpalatable consequences for him. The Court also noted that the applicant's agitated inquiry in 1988 about the lawfulness of the original Hong Kong warrant of 30 November 1985 should have been made in 1986. However no significance was attached to the point because the warrant's validity was irrelevant to the lawfulness of the applicant's arrest in the United Kingdom and his committal for extradition, as had already been held by the Divisional Court when refusing habeas corpus

3. The Court commented, obiter, that the present case did not disclose anything which could suggest that the applicant risked a flagrant denial of a fair trial if returned to Hong Kong, such as might raise an issue under Article 6 para. 1 of the Convention, interpreted by the European Court of Human Rights in its Soering judgment (Eur. Court H.R., Soering judgment of 7 July 1989, Series A no. 161, p. 45 para. 113).

On the application of the applicant, time for seeking leave to appeal to the House of Lords was extended to 11 January 1991.

The applicant has been reported in the press as saying that he will do everything he can to prevent his return to Hong Kong to face trial. The Government quoted the report to the Commission at the hearing on 14 January 1991 and it was not contested by the applicant's representatives. He was quoted as saying, "I could carry on like this for ever ... I am prepared to remain a remand prisoner for 50 years if the alternative is going to Hong Kong to face a show trial" ("The Times" newspaper of 4 December 1990).

3. Bail proceedings

The applicant first applied for release on bail on 20 June 1986 to the Chief Magistrate at Bow Street Magistrates' Court. This application was unsuccessful because of a fear that the applicant might abscond. At the time of the applicant's arrest the police discovered a Portuguese passport and identity card in a false name in

his possession.

The next application for bail was made on 26 July 1989 in the course of the third habeas corpus proceedings brought by the applicant. In the course of this application, counsel for the applicant explained that a second bail application had not been brought sooner because it was not considered to have any prospects of success. After hearing the parties the Divisional Court rejected the application.

A further application for bail was made before the Divisional Court on 4 October 1989. This application was also unsuccessful. In rejecting the application, Lord Justice Parker stated as follows :

"The evidence before us indicates that there is a great risk that he would abscond. There is no right to bail available to him under the Bail Act, and no reason to differ from the position of the previous court until we have heard a great deal more. It is unusual in the process of trial to grant bail at this sort of stage. Leo (the applicant) has said more than once that he has devoted his entire resources to fighting extradition: there is nothing to stop him doing so, nor am I saying that he should stop, but should it look to him as though he would after all be extradited from the way the proceedings were going, he would face a very great temptation to abscond. Bail is therefore refused."

4. Proceedings in Hong Kong and Malaysia

At the same time as the proceedings described above the applicant was involved in proceedings in Hong Kong and Malaysia as part of his efforts to stop his extradition to Hong Kong.

The applicant claimed that the evidence of 43 prosecution witnesses was taken in Malaysia in January 1986, three months prior to the final warrant for his arrest issued on 25 April 1986. He stated that their written statements are likely to be admitted in any trial in Hong Kong if the court is satisfied that they will be unwilling to travel there. In addition he pointed out that a main prosecution witness (Ibrahim Jaafar), who was the general manager of BMFL throughout its operations, had confessed to various fraud offences and had been granted immunity from prosecution by the Hong Kong Government in return for his testimony against the applicant.

B. The relevant domestic law

The law relating to the extradition of Commonwealth citizens accused of criminal offences in another Commonwealth country is contained in the Fugitive Offenders Act 1967 (the 1967 Act). Sections 6 and 7 of that Act provide an informal, emergency procedure for taking someone into custody by the issue of a provisional arrest warrant issued by a Magistrate after sworn evidence has been put before him of a sort that would have been sufficient to justify arrest if the offence had been committed in the United Kingdom. Formal extradition proceedings, however, cannot proceed thereafter unless an authority to proceed is issued by the Home Secretary. Without such an authority, the alleged offender must be released. The 1967 Act respects the rule of specialty and only authorises extradition if the act or omission constituting the offence charged would also constitute an offence under the criminal law of the United Kingdom (sections 3(1)(c) and 7(5)). An added safeguard for the alleged offender under section 7(5) is the requirement that the requesting State make out a prima facie case against the individual, and provide evidence which would be sufficient to warrant his trial for the offence in question if it had been committed within the jurisdiction of the court. Section 7 of the 1967 Act also imposes reasonable time requirements to avoid delays in processing the extradition request and in surrendering

the fugitive. Section 8 protects the fugitive from extradition before an opportunity has been given to appeal against extradition to the High Court on an application for judicial review or habeas corpus, which applications have suspensive effect. Bail may be granted in the first instance by the Magistrates' Court dealing with the extradition committal proceedings or subsequently by the High Court dealing with the appeals.

The fugitive is not entitled to make unlimited habeas corpus applications. The common law obliges an applicant to put forward on the first application the whole of the case that is fairly available to him. He is prevented from applying to the court on the same grounds in a second application, unless he adduces fresh evidence. Applications made in contravention of these rules will normally be rejected as an abuse of the process of the court within the meaning of section 14 (2) of the Administration of Justice Act 1960.

COMPLAINTS

The applicant complained in his original application that his protracted detention in the United Kingdom pending extradition and the refusal of bail was in breach of Article 5 para. 3 of the Convention. He also complained that if he is returned to Hong Kong his trial there will be unfair, aggravated inter alia, by contested evidence taken in his absence in Malaysia, the immunity from prosecution offered to a co-accused who will testify against him and the likely non-appearance of certain key witnesses, in breach of Article 6 para. 3 (d) of the Convention. In subsequent submissions the applicant complained that his arrest and detention were not prescribed by law and that the subsequent proceedings have not been conducted with due diligence in breach of Article 5 para. 1 (f) of the Convention. Reference has also been made by the applicant to Article 5 paras. 2 and 4 of the Convention in respect of an alleged failure to provide him with full information about the criminal proceedings against him in Hong Kong and an alleged inability, as a result, to test the lawfulness of his detention in the United Kingdom effectively. Further references were made by the applicant to Article 5 para. 1 (a) and (c) and Article 8 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 19 December 1989 and registered on 21 December 1989. On 6 February 1990 the President of the Commission granted the applicant's request that the application be given precedence under Rule 27 of the Rules of Procedure.

After a preliminary examination of the case by the Rapporteur, the Commission considered the admissibility of the application on 12 March 1990. It decided to give notice of the application to the respondent Government, pursuant to Rule 42 para. 2 (b) of the Rules of Procedure (former version), and to invite the parties to submit their written observations on the admissibility and merits of the case insofar as it raised an issue under Article 5 para. 1 (f) of the Convention. The Government submitted their observations, after an extension of the time limit, on 20 June 1990, to which the applicant replied on 10 July 1990. Prior to that he submitted further argument in support of his application on 25 May 1990. Further comment was submitted by the Government on 7 September 1990, to which the applicant replied on 28 September 1990.

On 5 October 1990 the Commission decided, in accordance with Rule 50 (b) of the Rules of Procedure, to obtain the parties' oral submissions on certain of the issues raised by the case. Written briefs were submitted by the parties prior to the hearing, which was held on 14 January 1991. The Government were represented by Mr. M. Wood, Agent, Foreign and Commonwealth Office, Mr. M. Baker, QC, and Ms. C. Montgomery, counsel, and Miss P.A. Edwards and Mr. G.

Underwood, advisers from the Home Office. The applicant was represented by Mr. J.P. Gardner, Solicitor, Mr. J. Connolly, barrister at law, and Miss S. Huang, adviser.

THE LAW

1. The principal issue in the present application arises from the applicant's complaint that his prolonged detention in the United Kingdom pending his extradition to Hong Kong is contrary to Article 5 (Art. 5) of the Convention and, in particular, Article 5 para. 1 (f) (Art. 5-1-f), as the extradition and habeas corpus proceedings to which he has been a party, have allegedly not been conducted with the necessary diligence.

The relevant part of Article 5 para. 1 (f) (Art. 5-1-f) of the Convention provides as follows :

> "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law :
>
> ...
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

The applicant submitted, inter alia, that the proceedings in the United Kingdom have been tainted with illegality from the outset in view of the invalidity of the original Hong Kong warrant issued on 30 November 1985 and quashed by the Hong Kong Court of Appeal on 4 May 1989. He claimed, thereby, that his ensuing detention in the United Kingdom has been unlawful. The Government contended that the applicant's detention in the United Kingdom was not dependent upon the lawfulness of the first Hong Kong warrant, but upon the lawfulness of the provisional warrant issued by the London Magistrate on 2 December 1985 and the lawfulness of the subsequent extradition and habeas corpus proceedings under English law. They point out that a further valid Hong Kong warrant was issued before the Secretary of State issued his authority to the London Magistrate to proceed with the extradition committal.

The Commission accepts the Government's contentions. It notes the validity of the emergency, provisional warrant issued by the London Magistrate on 2 December 1985 and the validity of the Hong Kong warrant of 20 January 1986, which allowed the Secretary of State to authorise the Magistrate to proceed with the extradition committal proceedings against the applicant. It, therefore, finds no evidence to suggest that the applicant's detention in the United Kingdom since 6 December 1985 has not been in accordance with a procedure prescribed by law within the meaning of Article 5 para. 1 second sentence (Art. 5-1), or generally lawful within the meaning of Article 5 para. 1 (f) (Art. 5-1-f) of the Convention, the applicant being a person against whom action has and continues to be taken with a view to his extradition.

The applicant also submitted that the proceedings in his case have taken an inordinate length of time. He is the longest remand prisoner in the United Kingdom as a result. He referred to the Commission's decision in the case of Lynas v. Switzerland (No. 7317/75, Dec. 6.10.76, D.R. 6 p. 141) in which it held as follows :

> "Article 5 (1) (f) (Art. 5-1-f) clearly permits the Commission to decide on the lawfulness ('lawful detention/détention régulière') of a person against whom

action is being taken with a view to extradition (une procédure d'extradition est en cours).
The wording of both the French and English texts makes it clear that only the existence of extradition proceedings justifies deprivation of liberty in such a case. It follows that if for example the proceedings are not conducted with the requisite diligence or if the detention results from some misuse of authority it ceases to be justifiable under Article 5 (1) (f) (Art. 5-1-f). Within these limits the Commission might therefore have cause to consider the length of time spent in detention pending extradition from the point of view of the above cited provision."

The applicant contended that the responsibility for the organisation of the procedures and their progression at a reasonable pace lay with the Government. He stated that he had not assisted the authorities in this, but nor had he obstructed them.

The Government recognised that the applicant's case had taken an exceptionally long time, unprecedented in the United Kingdom. However, they contended that it was the applicant who had been responsible for the continuous proceedings since committal which have led to such exceptional delays. It was he who initiated the four habeas corpus proceedings which have all been conspicuously unsuccessful. At no stage have the competent authorities shown a lack of diligence. On the contrary, they have continuously expressed their concern at the delays involved. Whilst the applicant was entitled to take up every possible legal argument available to him, he cannot then complain of the consequential passage of time while these were dealt with by the domestic courts. They pointed out that the applicant made no request to the domestic courts for expedited hearings, as he could have done.

The Commission notes that the length of the applicant's detention and his extradition and habeas corpus proceedings have been exceptionally long. However, these proceedings do not fall within the ambit of Article 6 para. 1 (Art. 6-1) of the Convention as proceedings determining a criminal charge, which determination must be made within a reasonable time.

Article 5 para. 1 (f) (Art. 5-1-f) of the Convention does not contain specific time requirements. Whether the length of extradition and ancillary proceedings could affect the lawfulness of detention under this provision must therefore depend upon an examination of the circumstances of the particular case. This examination in the applicant's case must take account of the fact that several States were involved in the proceedings and that delays were created by this factor over which the United Kingdom had no control. In the present case two other Governments were directly involved, the Hong Kong and Liberian Government, and one peripherally, the Malaysian Government. Furthermore the fact that the Hong Kong Government had to provide evidence of a prima facie case against the applicant no doubt added to its complexity, whilst at the same time providing an extra safeguard for the applicant. The Commission has also taken account of the voluminous documentation put before the English courts at each step in the procedure and the detail of the parties' submissions which necessitated many days of oral argument. The Commission is particularly struck by certain of the applicant's arguments raised in the habeas corpus proceedings which could have been made at the outset, such as his claim for Liberian diplomatic immunity. It is further struck by the fact that the applicant at no stage requested the expeditious determination of any of these proceedings, as he could have done. On the contrary, the applicant seems to have done everything he could to draw out the proceedings in his avowed determination to avoid extradition to Hong Kong. Although the applicant's case has taken an extraordinarily long time and his

detention has been exceptionally long, the Commission considers that, if the applicant insists on pursuing any avenue of litigation he can find, he cannot complain to the Commission of the passage of time resulting from such proceedings, especially if they are held to be an abuse of the process of the domestic courts, as the Divisional Court held in the applicant's last, fourth habeas corpus application. In this context the applicant's press declarations are revealing : He has stated that he could carry on with these proceedings for ever, even if it means staying in prison for 50 years, rather than go back to Hong Kong for trial.

The Commission finds, in the exceptional circumstances of the present case, that the proceedings, whether taken as a whole, or taken separately at each stage (the committal and each of the four habeas corpus applications), do not disclose any lack of due diligence on the part of the domestic authorities which could have rendered the applicant's continued detention pending extradition in breach of Article 5 para. 1 (Art. 5-1) of the Convention.

It follows that this part of the application must be rejected as being manifestly ill-founded, within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant next complained that his continued detention and the refusal of bail was in breach of Article 5 para. 3 (Art. 5-3) of the Convention. This provides, inter alia, that everyone arrested under Article 5 para. 1 (c) (Art. 5-1-c) of the Convention on reasonable suspicion of having committed a criminal offence for the purpose of being charged, or preventing the commission of further offences or escape, shall be entitled to a trial within a reasonable time or release on bail. The Government contended that the applicant's detention was not based on Article 5 para. 1 (c) (Art. 5-1-c) of the Convention, but on the aforementioned Article 5 para. 1 (f) (Art. 5-1-f). Article 5 para. 3 (Art. 5-3), therefore, had no application to the applicant's detention pending extradition.

The Commission agrees with the Government's contention. Nevertheless, given the primordial importance of the right to liberty ensured by Article 5 para. 1 (Art. 5-1) of the Convention, the Commission may examine whether the refusal of bail to an individual, even if his detention falls within Article 5 para. 1 (f) (Art. 5-1-f) of the Convention, could be said to be unreasonable or arbitrary, thus affecting the general notion of lawfulness, which is a common thread throughout the provisions of Article 5 para. 1 (Art. 5-1) of the Convention.

An examination of the facts of the present case reveals no such arbitrariness. It is clear that the applicant is a wealthy person who has declared that he will never return to Hong Kong for trial if he can avoid it. On arrest he was in possession of a Portuguese passport and false identity card. In these exceptional circumstances the authorities' fear that the applicant might abscond cannot be considered unreasonable. The Commission finds that this aspect of the case discloses no appearance of a violation of Article 5 para. 1 (f) (Art. 5-1-f) of the Convention and must be rejected as being manifestly ill-founded, within the meaning of Article 27 para. 2 (Art. 27-2).

3. The applicant also complained that if he is returned to Hong Kong he will receive an unfair trial, particularly in respect of possible untested evidence which he alleges would be used against him contrary to Article 6 para. 3 (d) (Art. 6-3-d) of the Convention. The Government reject the applicant's contentions and maintain that they would have no liability under the Convention for the acts of the Hong Kong Government.

The relevant parts of Article 6 (Art. 6) of the Convention

provide as follows :

> "1. In the determination ... of any criminal charge against him, everyone is entitled to a fair and public hearing ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights :
>
> ...
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him ..."

The Commission notes that in principle the United Kingdom Government would not incur any liability under the Convention for the acts of the Hong Kong Government. As the European Court of Human Rights held in its Soering judgment, Article 1 (Art. 1) of the Convention cannot be read as justifying a general principle to the effect that a Contracting State may not surrender an individual unless satisfied that the conditions awaiting him in the country of destination are in full accord with each of the safeguards of the Convention. However, exceptionally, if a Contracting State decided to extradite a fugitive to a country where substantial grounds have been shown for believing that the individual faces a real risk of being subjected to treatment contrary to Article 3 (Art. 3) of the Convention, that decision itself may raise an issue under Article 3 (Art. 3). The Court also left open the possibility that, exceptionally, an issue might arise under Article 6 (Art. 6) of the Convention "by an extradition decision in circumstances where the fugitive has suffered or risks suffering a flagrant denial of a fair trial in the requesting country" (Eur. Court H.R., Soering judgment of 7 July 1989, Series A no. 161, paras. 81-91 and paras. 112-113).

In the present case, even assuming that the responsibility of the United Kingdom could be incurred in respect of the applicant's claim under Article 6 (Art. 6), the Commission finds that the facts of the application do not disclose a risk that the applicant will suffer a flagrant denial of a fair trial in Hong Kong. Accordingly, this aspect of the case must also be rejected as being manifestly ill-founded, within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. Finally, the Commission has considered the applicant's references to Article 5 paras. 2 (Art. 5-2) and 4 (Art. 5-4) and Article 8 (Art. 8) of the Convention. The applicant has alleged that he has not received sufficient, prompt information about the charges against him in Hong Kong, as required by Article 5 para. 2 (Art. 5-2) of the Convention, thus inhibiting the effective exercise of his rights under Article 5 para. 4 (Art. 5-4) to test the lawfulness of his detention in the United Kingdom. He raised Article 8 (Art. 8) of the Convention in respect of the search of his home conducted by the police on his arrest in December 1985.

However, the Commission finds no evidence in the case-file to substantiate the applicant's claims that he has not been adequately informed of the charges against him in Hong Kong or that he has thereby been unable effectively to pursue his challenges to the lawfulness of his detention through the habeas corpus proceedings. Moreover the application discloses no indication that the search of the applicant's home was not a justified interference with his right to respect for the home for the prevention of crime. It follows that these aspects of the case must similarly be rejected as being manifestly ill-founded, within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Deputy Secretary to the Commission — President of the Commission

(J. RAYMOND) — (C.A. NØRGAARD)