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ON CIVIL AND
POLITICAL RIGHTS**



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SUMMARY RECORD OF THE 148th MEETING

Held at Headquarters, New York,
on Wednesday, 25 April 1979, at 3 p.m.

Chairman: Mr. MAVROMMATIS

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The meeting was called to order at 3.25 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT: INITIAL REPORTS OF STATES PARTIES DUE IN 1977 and 1978 (continued)

The United Kingdom of Great Britain and Northern Ireland (continued)
(CCPR/C/1/Add.35, 37 and 39)

1. Mr. TARNOPOLSKY recalled that at the third session of the Committee, he had raised two questions with regard to the United Kingdom report, relating to parliamentary supremacy and the admissibility of evidence (CCPR/C/SR.69, paras. 29, 30 and 32). As he understood the principle of parliamentary supremacy, Parliament could make any law and no court could question its action. Hence, if a citizen thought an act of Parliament was in contravention of an article of the Covenant, he would not be able to raise an effective objection. In replying to his question at the third session, the United Kingdom representative had stated that Parliament did not, in fact, legislate contrary to the United Kingdom's treaty obligations (CCPR/C/SR.70, para. 15). That statement, however, had been made on behalf of the Government; his concern was with the fact that a citizen who might wish to raise a question regarding a law would not be able to get a court to hold a legislative act to be invalid. Therefore, how could a remedy be effective in such a case? He realized that the Covenant did not necessarily have to be incorporated into the constitution of a country, provided the provisions of article 2, paragraph 2, were fulfilled. However, he found it difficult to see how effective remedies could be provided in the absence of a bill of rights, which could be part of an unwritten constitution.

2. He had taken note of the United Kingdom reply to his question regarding admissibility of evidence (CCPR/C/1/Add.35, para. 13). As he understood it, evidence, even if obtained illegally, was admissible if relevant. The exclusionary discretion of the judge, mentioned in the United Kingdom's reply, referred to whether or not a trial in itself was justified. If, for example, stolen goods obtained during an illegal search were submitted as evidence, what effective remedy would the defendant have? How effective were actions in tort or disciplinary measures in the police force? He would appreciate it if the United Kingdom representative would provide information to show whether remedies in such cases were actually effective.

3. Mr. LALLAH said he would appreciate receiving further information with regard to the impact of the United Kingdom derogation under article 4 of the Covenant. He was especially concerned with the rights set forth in article 7, pertaining to cruel, inhuman or degrading treatment. Although he was thinking primarily of the situation in Northern Ireland he would also like some clarification with regard to legal and administrative measures aimed at ensuring a minimum standard of treatment for legal immigrants. For example, were women who wished to join their husbands in the United Kingdom subjected to virginity tests? Had administrative instructions been given to ensure that women did not give birth in the office of the immigration interrogator? In other words, what provisions were there to ensure that immigrants were not subjected to indignities or to practices that endangered their health?

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(Mr. Lallah)

4. Turning to the situation in Northern Ireland, he said he felt it was the duty of the Committee to ascertain whether there was justification for each and every derogation under article 4 of the Covenant. At the third session, the United Kingdom representative had provided a very helpful explanation concerning the derogation and had listed these specific articles of the Covenant from which derogation had been made (CCPR/C/SR.70, paras. 29-33). Thus, it was his understanding that the United Kingdom had derogated from articles 9, 10, 12, 17, 21 and 22 of the Covenant. He would like to know whether there had been any change in that respect. When the United Kingdom representative had made his oral statement regarding the situation in Northern Ireland, (CCPR/C/SR.70, paras. 28-41), the policy of internment had still been in operation; he believed there had since been a change. His concern at the current stage was that, if use was made of the judicial process, it was important to ensure that it would not be a lesser kind of justice than that usually resorted to. He noted that the United Kingdom had not derogated from article 14 of the Covenant, concerning the right to a fair trial. He appreciated the difficulty of following normal processes when dealing with a situation that was essentially abnormal and violent. It was very difficult to get witnesses who would agree to be cross-examined by the defence. Presumably, it was necessary to rely primarily on confessions; however, there was a great danger in using confessions, especially in a repressive situation, since people sometimes said things that were not true in order to avoid immediate, painful and degrading treatment. It was very important that the use of confessions in trials should be hedged with safeguards. He believed the British system of judges' rules was exceptional in providing such safeguards.

5. In connexion with the situation in Northern Ireland, there had been great debate in the United Kingdom itself and a committee had recently been appointed to inquire into the situation in Northern Ireland, especially with regard to interrogation procedures. It was his understanding that the investigating committee had found in many cases that people under interrogation had suffered injuries that were not self-inflicted. In a large number of cases, 80 per cent, if he was not mistaken, convictions had been obtained as a result of confessions where it was not possible to have a detailed record of the whole process of interrogation. He would like to know whether, when the investigating committee had been appointed, its attention had been directed to the obligations of the United Kingdom under the Covenant. He understood the committee had made recommendations to the effect that there should be some form of supervision of the process of interrogation before trial, either through the use of video tape or administrative control by uniformed police officers. He did not understand why the uniformed police officers who were to monitor interrogations on video tape could only see, not hear, the proceedings. It was possible to subject persons to degrading treatment with words as well as by physical means. The United Kingdom system stressed the principle that when a person was accused, he had a right to cross-examine the witnesses put forward by the prosecution. If confessions were not properly obtained, there was a danger of information based on intelligence being accepted by the courts under the guise of a confession and the intelligence sources not being cross-examined.

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(Mr. Lallah)

6. He understood that detainees could be held for up to seven days. Were there safeguards regarding the length of time they could be held for questioning? Were there administrative instructions in that regard and how were they enforced? If a detainee was not properly treated, how could he obtain a remedy for his suffering?

7. In its supplementary report (CCPR/C/1/Add.35, para. 6), the United Kingdom Government had mentioned the establishment of the Director of Public Prosecutions, to whom all complaints alleging criminal offences by policemen were referred. At the Committee's third session, the United Kingdom representative had mentioned the establishment of the Police Complaints Board which, despite its name, was in every sense independent of the police (CCPR/C/SR.70, para. 35). He would like to know more about those bodies. If a detainee had complaints regarding injuries and so forth, to what extent did the Police Complaints Board investigate the situation? Did it investigate only disciplinary matters and not criminal offences? He understood that the Director of Public Prosecutions only acted on an inquiry once it was completed; therefore he had to rely on the Police Complaints Board, and if the latter only dealt with disciplinary matters, very little would really be done with regard to criminal offences. It would also be interesting to know the proportion of cases taken to the Director of Public Prosecutions on which affirmative action, in the form of actual prosecution, had been taken.

8. Mr. HANGA said it was his understanding that under the United Kingdom system, the incorporation of the rules of the Covenant into internal law was effected by means of laws and judicial practice. Judicial practice was based on precedents set in other cases and was therefore conservative in nature. He would like to know what efforts had been made in the field of judicial practice itself to make it conform effectively to the provisions of the Covenant; in other words, what was done to ensure conformity between precedents and the spirit of the Covenant?

9. Mr. SADI said that, in general, the United Kingdom had a sound record of respect for the principles of the Covenant. His concern was with regard to dependent territories, namely the Isle of Man and the Channel Islands. He realized that their proximity to the United Kingdom made their situation different from that of other dependent territories. Under article 1, paragraph 3, of the Covenant, the United Kingdom had a specific obligation to promote the realization of the right of self-determination of its dependent territories. He noted that the Channel Islands and the Isle of Man were still not independent. He would like to know how the United Kingdom interpreted the requirement to "promote" the realization of the right of self-determination. Did it interpret it in a neutral sense, in other words, did it feel its duty was only to refrain from taking action against the right of self-determination? Or did it consider it had a positive obligation to promote independence? Why had so much time elapsed without those territories choosing independence? How had the people expressed their desire not to be independent? Were there economic or military reasons for the United Kingdom to retain control of those islands?

10. Mr. GRAEFRATH, referring to the statement in paragraph 21 of the United Kingdom report (CCPR/C/1/Add.35) that habeas corpus or equivalent remedies were

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(Mr. Graefrath)

available in Northern Ireland as in other parts of the United Kingdom, asked to what extent such remedies could be effective if, as was the case in Northern Ireland, persons could be arrested by the police without a warrant on the mere suspicion of being terrorists and detained for up to 72 hours.

11. He requested further information regarding the functions and powers of the Director of Public Prosecutions.

12. As to the requirements of article 3 of the Covenant, he noted that the authorities in Jersey and Guernsey had undertaken to adopt all necessary measures to ensure equality between men and women in all spheres. That statement seemed to imply that no such equality existed at the current time, and he asked to what extent the laws of the Channel Islands were at variance with the requirements of article 3 of the Covenant.

13. Mr. MOVCHAN said that, like Mr. Sadi, he had difficulty understanding the situation existing in Jersey, for example. The report stated that the status of the island reflected the wish of the people, but gave no indication as to how the wishes of the people had been ascertained. Had there been a plebiscite or any other formal consultation of the people?

14. At the preceding session, the representative of the United Kingdom had assured the Committee that there was nothing irregular in the declaration of an emergency in the United Kingdom. However, he did not see how the nation as a whole was threatened by the situation in Northern Ireland or how the declaration of emergency could be justified in accordance with international law. In that connexion, he noted that the Prevention of Terrorism Act 1976 had been extended for a further 12 months in March 1978 and he asked what grounds had been used to justify the extension, whether it was still in effect, and if so, what the territorial scope of the Act was.

15. In connexion with article 6 of the Covenant it had been indicated in the United Kingdom report (CCPR/C/1/Add.39, Annex I, para. 13) that the death penalty existed in Jersey for murder, and he wished to know what types of murder were sanctioned by that penalty.

16. With regard to article 7 of the Covenant, it was his understanding that the European Court of Human Rights had established the existence of a tragic situation with regard to torture and inhuman treatment in Northern Ireland. He noted that according to the report an independent Police Authority had been established in Northern Ireland in 1970 to monitor the manner in which complaints against the police were dealt with by the Chief Constable (CCPR/C/1/Add.35, para. 6). Subsequent to the establishment of the Authority, however, torture and inhuman treatment had occurred, and it was obvious that the measures adopted so far were inadequate. He was astonished by the statement in paragraph 13 of the report that obtaining evidence improperly was not in itself a criminal offence, but simply an administrative breach sanctioned by disciplinary action. Thus, even the use of torture to obtain evidence would apparently not be a criminal offence in the United

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(Mr. Movchan)

Kingdom. If the criminal law of a State party did not provide for the punishment of torture, the State party could not be regarded as being in full compliance with article 7 of the Covenant. Moreover, as stipulated in article 4 of the Covenant, a public emergency could not be used to justify derogations from article 7. He noted the statement in paragraph 17 of the report that complaints alleging criminal conduct by police officers had to be referred to the Director of Public Prosecutions, and he asked whether complaints of police misconduct could also be taken to court.

17. With regard to medical examinations in custody, he asked what criteria were used in the United Kingdom to determine mental illness. There had been criticism in the Committee concerning some countries where dissidents had been declared mentally ill. In that connexion, he knew of several persons declared mentally ill in one country who had subsequently gone to the United Kingdom where they had made a number of public appearances. Shortly thereafter the individuals in question had been found by the United Kingdom Government to be even more ill than they had been declared in the country which they had left. That was a case in which medical opinions in one country and the United Kingdom clearly coincided, and yet no doubts had been cast on the procedures used in the United Kingdom to identify mental illness.

18. Mr. CAIRNCROSS (United Kingdom) pointed out that in the judgement of the European Court of Human Rights to which Mr. Movchan had referred, there had been no finding of torture. Perhaps Mr. Movchan's misunderstanding was due to difficulties of translation.

19. Mr. MOVCHAN said that he had not quoted from the judgement of the European Court of Human Rights but rather had summarized its basic thrust. In commenting on article 7 of the Covenant and the information provided by the United Kingdom in paragraph 13 of its report, he had not been thinking specifically of the decision of the European Court. He had wished merely to request clarification regarding the meaning of the statement that obtaining evidence improperly was not in itself a criminal offence, since "obtaining evidence improperly" was a very broad concept and might encompass torture. The United Kingdom Government itself had raised the matter of obtaining evidence improperly in connexion with article 7 of the Covenant, which related, inter alia, to torture.

20. Mr. RICHARD (United Kingdom) said that, with respect to the situation in Northern Ireland, there was no doubt in the minds of Her Majesty's Government that there existed a public emergency which threatened the life of the nation. The emergency had been publicly proclaimed and recent events alone should be sufficient evidence to establish its existence. It should be recalled that Northern Ireland, which was part of the United Kingdom, was currently the target of an extraordinarily brutal terrorist attack aimed at bringing about forcible change in its relationship with the United Kingdom Government.

21. Turning to points raised by Mr. Lallah concerning United Kingdom immigration practices, he stressed that all persons wishing to come to the United Kingdom for a long stay were liable for a health examination. There was no racial discrimination

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(Mr. Richard, United Kingdom)

whatsoever in that respect. In many cases a general medical examination was administered at the point of entry, while applicants for certain categories of admission to the United Kingdom were required to undergo examination overseas prior to their departure. The Home Secretary had explained how the particular incident to which Mr. Lallah had referred had come about, had made no attempt to excuse what had happened and had issued instructions to prevent it ever happening again. The Home Secretary had also ordered an inquiry into the objects and nature of all medical examinations carried out in connexion with immigration control. In 1977 the United Kingdom immigration service had admitted to the country more than 12 million people under the immigration rules approved by Parliament, and less than 1 per cent of arrivals had been found not to be qualified and refused leave to enter. Of the total number of arrivals, some 144,000 had been Indians and less than 1 per cent of that number had been turned back. Immigration officers were expressly instructed to carry out their duties without regard to the race, colour or religion of people seeking to enter the United Kingdom.

22. With regard to the questions asked by Mr. Tarnopolsky, it was true that there was no bill of rights in the United Kingdom and that Parliament was sovereign. That had been the system for centuries. There was no way, short of introducing radical changes in the Constitution, in which a bill of rights could be enacted in such a way as to make those rights directly actionable. Moreover, there was no way of judging the constitutionality of an act of Parliament. In the last resort, the operation of the United Kingdom Constitution depended on the fact that, to a great extent, it was unwritten and on the deep appreciation of their rights by the citizenry as a whole. It was difficult to imagine that the public in the United Kingdom would capriciously or willingly give up the human rights which they currently enjoyed without the issue being raised in the courts and the press. A number of constitutional safeguards did exist in the United Kingdom but they were not encapsulated in a written document.

23. Mr. CAIRNCROSS (United Kingdom), replying to the question asked by Mr. Movchan, said that the statement regarding the obtaining of evidence improperly in paragraph 13 of the report did not mean that the use of torture or assault to obtain evidence was not a criminal offence. That statement had been intended to reflect the realization that there were numerous ways of obtaining evidence improperly and to specify that the mere obtaining of evidence improperly was a breach of police orders rather than a criminal offence. That was not to say that assaults, torture, ill-treatment or bodily harm of any kind used for the purpose of obtaining evidence would not be a criminal offence.

24. Turning to the Bennett report on police interrogation procedures in Northern Ireland, to which Mr. Lallah had referred, he recalled that the Bennett Committee had been established in mid-1978 following the issue of a report by Amnesty International alleging ill-treatment of individuals in police custody. That organization had declined an invitation from the Secretary of State for Northern Ireland to make available to the Director of Public Prosecutions the materials on which it had based its report. The Bennett Committee had been instructed to examine police procedures and practices relating to the interrogation of persons suspected

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(Mr. Cairncross, United Kingdom)

of "schedules offences", as well as the operation of procedures for dealing with complaints relating to police interrogation. The report, which had been published only recently, found that there was a co-ordinated and extensive campaign to discredit the Royal Ulster Constabulary, that no other police force in the United Kingdom had to deal with so much violent crime, and that its normal methods of crime detection were hampered by special difficulties. In that connexion, he stressed that neither the Chief Constable nor the United Kingdom Government condoned the ill-treatment of suspects. The Bennett Committee had found some cases in which injuries sustained in police custody had not been self-inflicted, and had stated that, although the measures already taken to control the movements of prisoners under interrogation and supervise interviews in the Royal Ulster Constabulary already went further than in any other police force in the United Kingdom, there was still room for improvement. The Bennett Committee had made a number of detailed recommendations for improving the control and supervision of the interrogation process. Perhaps the most important of those recommendations had been that closed-circuit television systems should be installed so that interrogations could be monitored, that prisoners should be given access to a solicitor after 48 hours and every 48 hours thereafter, and that a code of conduct for interviewing officers should form a separate section of the Royal Ulster Constabulary code of instruction. The Secretary of State for Northern Ireland, commenting recently on the report in a statement in Parliament, had indicated that the Government accepted the broad conclusions of the Bennett Committee and endorsed its approach. With regard to cases of injuries that were not self-inflicted, the Secretary of State had indicated that arrangements would be made to forward the materials considered by the Bennett Committee to the Director of Public Prosecutions. As an immediate step, he had announced that the recommendations regarding the installation of closed-circuit television systems and access to solicitors would be put into effect and consultations would be held with the Chief Constable and other officials regarding other measures to be adopted. A further statement by the Secretary of State for Northern Ireland was planned in two or three months' time.

25. As to the question of injuries found not to have been self-inflicted, the Bennett Committee had found that in most cases the prisoners' complaints and the doctors' reports had not been tested under cross-examination and it had interviewed none of the police officers concerned; it had also acknowledged it was sometimes necessary, and lawfully permissible, for police officers to restrain prisoners in order to defend themselves. The medical evidence had confirmed that prisoners had sometimes invented allegations and exaggerated trivialities for their own purposes.

26. Replying to the question concerning the length of time that interrogations could take place, he said that recommendations on that and similar matters were contained in the Bennett report. With regard to the articles cited by Mr. Lallah as being the ones to which the derogations had related, he confirmed that those articles were the ones in question, and drew attention to paragraph 32 of summary record CCPR/C/SR.70, which referred to articles 17 and 19 of the Covenant.

27. The function of the Police Complaints Board was not to investigate complaints at the first instance, but rather to monitor the investigation of complaints.

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(Mr. Cairncross, United Kingdom)

Whenever there was suspicion or evidence that a policeman was guilty of a criminal offence, the Director of Public Prosecutions became responsible for dealing with the matter.

28. Replying to a point raised by Mr. Graefrath, he said that under the former system in force in Northern Ireland there had been no single independent prosecuting officer, and one of the measures taken - bringing the practice in Northern Ireland more closely into line with that prevailing in England - had been to make an independent officer responsible for decisions that a prosecutor had to take. As to the question of habeas corpus and the power to arrest without warrant for up to 72 hours, it was quite true that it would be an answer to a writ of habeas corpus that the defendant had exercised a statutory power. The main objective of a writ of habeas corpus was to inhibit the purported use of powers which did not exist. It might still be possible to challenge the powers used in a particular case, claiming that there were no possible grounds for a constable to have the beliefs under which he had acted.

29. Replying to a question raised by Mr. Movchan, he said that, whereas Guernsey had abolished the death penalty for murder, Jersey retained it for murder and the Isle of Man retained it for murder, treason and genocide. However, the Home Secretary had the duty to consider cases in which the death sentence had been passed, with a view to considering a reprieve or commutation of the sentence in accordance with his prerogative. He understood that reprieves had been granted in all cases occurring in the Islands since the abolition of capital punishment in the United Kingdom, and that it would be extremely unlikely that the death sentence would be carried out in the Islands in the future.

30. The questions raised concerning any movement towards independence in the Islands had created the impression that the United Kingdom was in some way inhibiting such a movement. That was not the case at all: the Islands were very small communities and had always enjoyed a very considerable degree of independence from the United Kingdom. The United Kingdom Government was certainly not opposed in principle to a movement towards even greater autonomy, provided its own responsibilities were not put at risk. Furthermore, in the Isle of Man, where that issue had been canvassed to a greater extent than in the Channel Islands, there was a gradual movement - entirely unopposed by the United Kingdom - towards curtailing the powers of the Crown-appointed Lieutenant Governor, and devolving those powers on Tynwald, the Manx legislative assembly, thereby bringing the constitutional position of the Isle of Man more closely into line with that of the Channel Islands.

31. There was no request from the inhabitants of the Islands for complete independence. Some years earlier a royal commission had considered the constitutional relationship between the Islands and the United Kingdom, and in the course of its work had visited the Islands and had taken evidence; that same commission had also recommended devolution of greater powers to Scotland and Wales.

32. Turning to the questions raised by Mr. Movchan concerning arrangements for dealing with psychological illnesses, he explained that there were two types of

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(Mr. Cairncross, United Kingdom)

mental hospitals in the United Kingdom: on the one hand, there were four special hospitals in which people requiring treatment were detained under conditions of special security on account of their violent or criminal propensities, and, on the other, there were the ordinary hospitals within the National Health Service. Apart from the arrangements for voluntary admission to those hospitals, there was a range of procedures for securing admission. Depending on individual circumstances, a patient might be admitted on a three-day emergency order, upon the recommendation of one medical man; on a 28-day order upon the recommendation of two medical men, or on a longer-term order requiring the recommendation of two medical men and the fulfilment of certain other criteria in the case of patients suffering from severe mental illness, severe abnormality or psychopathic disorders.

33. Thus, there was a very specific regulation of admission to hospitals, with provision for a review of the condition of patients by independent mental health tribunals. Furthermore, criminal courts had various powers in relation to accused persons deemed to be suffering from mental illness: they could issue a hospital admission order under the same conditions as those which he had just mentioned; or, for the protection of the public, they could issue a restriction order, the general effect of which was to transfer to the Secretary of State the power to discharge the patient. Such cases usually involved persons accused of very serious offences, such as murder, who suffered from mental illness.

34. Mr. WATTS (United Kingdom), replying to the question raised by Mr. Graefrath concerning the powers of the Director of Public Prosecutions, said that decisions concerning prosecutions were normally the responsibility of the local police authorities, who assessed the adequacy of the evidence for bringing a prosecution and were usually responsible for the conduct thereof. In the vast majority of cases, therefore, the Director of Public Prosecutions was not involved at all.

35. However, a case might arise where it was not entirely appropriate to leave decisions concerning the conduct of the prosecution solely to the local police. Where offences were particularly serious or complex, or fell within the territorial jurisdiction of a number of different local police authorities, with consequent co-ordination difficulties, a local police authority might refer the matter to the Director of Public Prosecution, or the Government itself might recognize that the circumstances justified referring the matter to him.

36. The Director of Public Prosecutions had a particular responsibility in cases involving extradition. In such cases, he was responsible for deciding whether the evidence justified a prosecution, and, if so, he would be responsible for its conduct.

37. In exercising his functions, the Director of Public Prosecutions was an independent officer, free from political direction. However, his conduct came within the over-all responsibility of the Attorney-General, appointed by the Government of the day; among other things, the Attorney-General was responsible for answering questions in Parliament concerning the activities of the Director of Public Prosecutions.

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38. Mr. TOMUSCHAT, referring to paragraph 54 of the United Kingdom report (CCPR/C/1/Add.35), said that he was not satisfied with the reply given therein to his question concerning the obligation to join a given association. First of all, although he had frequently stressed that the Committee should co-operate with the specialized agencies, he considered that it was not in duty bound to follow ILO rulings to the letter. In any event, the ruling referred to in that paragraph of the report should have been made available to the Committee. Even if he agreed in principle with the basic proposition that the closed-shop system as such could be reconciled with freedom of association, he thought that the debate had been carried one step further. The sanctioning of the closed-shop system made the individual dependent on his trade union.

39. Clearly, abuses could occur: if, for example, a union had chosen to use violence as a means of procuring a strike, and a worker expressed disapproval of such methods and resigned from the union, the question arose as to whether he would be deprived of his job. While he did not wish to exaggerate the significance of such a situation, it would certainly run counter to articles 2 and 26 of the Covenant. Similarly, he inquired whether a worker who opposed the actions of a shop steward during a labour dispute would be dismissed from his job.

40. What was the United Kingdom Government doing to prevent such abuses? Normally, it was clear that the private individual was himself responsible for dealing with other individuals. However, it was his understanding that the Government had directly sanctioned the closed-shop system, thereby assuming responsibility for protecting the workers' rights and freedoms. He therefore wished to ask what mechanisms there were to protect their rights and freedoms in such cases.

41. Mr. KOULISHEV, referring to the United Kingdom report on the Channel Islands and the Isle of Man (CCPR/C/1/Add.39), noted that steps were being taken to improve the status of women. He therefore wished to inquire as to the current status with regard to women in the Islands, including the right to vote and to run for election.

42. With reference to paragraph 9 of the report by the States of Jersey (CCPR/C/1/Add.39, annex 1), concerning article 4 of the Covenant, he wished to know whether the emergency powers had been extended to the Island as a result of a unilateral decision by the United Kingdom authorities or as a result of the express wishes of the population of Jersey.

43. Turning to the report by the Isle of Man Government (CCPR/C/1/Add.39, annex 3), he requested further information on the manner of election of the Legislative Council, referred to in paragraph 2 of the report.

44. Furthermore, he noted from paragraph 40 of the report, concerning article 25 of the Covenant, that eligibility for election and membership of the House of Keys was subject to certain statutory exceptions, and wished to know what they were.

45. Mr. HANGA, referring to paragraph 51 of the United Kingdom report (CCPR/C/1/Add.35), relating to article 19 of the Covenant, requested further details concerning the procedures under which an individual or organization might

(Mr. Hanga)

complain of unfair treatment for misrepresentation in a broadcast programme. He wished to know whether the procedures were judicial or administrative, and what legal or administration penalties were provided for.

46. Furthermore, referring to the penultimate sentence of paragraph 53 of the report, relating to article 20 of the Covenant, he wished to know whether a refusal on the part of the Attorney-General to give his consent for a prosecution on incitement to racial hatred had to be substantiated by fact and by law.

47. Turning to the United Kingdom report relating to the Channel Islands and the Isle of Man (CCPR/C/1/Add.39), he inquired in connexion with paragraph 20 of the report by the states of Jersey, relating to article 9 of the Covenant, whether the procedure of habeas corpus was in force and, if so, whether the court dealing with it examined the legality of the deprivation of liberty in all respects.

48. With regard to paragraph 21 of the report by the states of Jersey, concerning article 10 of the Covenant, he noted that the texts of the legislation in question had not been provided. He therefore wished to ask whether, as laid down in the Covenant, accused persons were segregated from convicted persons, and whether accused juvenile persons were separated from adults and brought for adjudication as speedily as possible. He also wished to know whether the penitentiary system in force conformed to article 10, paragraph 3, of the Covenant.

49. On the question of the conditions for expulsion of an alien, covered by article 13 of the Covenant, he wished to ask in connexion with paragraph 28 (c) of the report by the states of Jersey whether, if the deportation of one member of a family was justified whereas the deportation of another member of that family was unjustified, the latter could also be deported. He also wished to know whether the person deported was permitted to give evidence against his deportation.

50. In connexion with article 14 of the Covenant, he noted from paragraph 29 of the report a reference to "the rules of natural justice", and inquired whether that term signified the common law, or whether it was a concept embodied in the Covenant. He also wished to know whether any trials were conducted in camera.

51. With regard to paragraph 35 of the report, he asked whether the provisions concerning compensation referred to therein were in conformity with the letter and spirit of article 14 of the Covenant.

52. In connexion with that same article, he wished to know at what stage an accused person could request counsel and what recourse was open to a person arrested who had been denied counsel.

53. He noted from paragraph 42 of the report, concerning article 17 of the Covenant, that the limited right of entry granted to persons acting in an official capacity was governed by the relevant enactment. He wished to know whether, in accordance with that enactment, entry was permitted without warrant.

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54. He wished to know whether the Loi (1797) sur les Rassemblements tumultueux and the Loi (1897) sur les Elections publiques, referred to respectively in paragraphs 47 and 53 relating to articles 21 and 25 of the Covenant, were still in force and, if so, how they could be applied in the light of the profound changes that had taken place in the twentieth century.

55. Referring to article 26 of the Covenant, he asked what material safeguards had been adopted to ensure its just application in the daily lives of citizens.

56. Turning to the report by the Isle of Man Government (CCPR/C/1/Add.39, annex 3), he wished to know in connexion with paragraph 34, concerning article 19 of the Covenant, whether criminal libel was still in force.

57. Mr. LALLAH, referring to article 1, paragraph 2, of the Covenant, asked whether the territorial waters and resource margins of the Channel Islands and the Isle of Man had been defined, and whether it was the United Kingdom or the Islands themselves that maintained sovereignty over them. Relating, as it did, to an area rich in oil, that question was an important one.

58. Mr. GRAEFRAETH said that the question he had asked at the third session of the Committee concerning the social background of the judiciary, to which a reply was given in paragraph 39 of document CCPR/C/1/Add.35, had been designed to ascertain whether all strata of the population could become members of the judiciary. Although he was convinced that there was no law prohibiting such access, he wished to know whether a large part of the population was not excluded in practice by such factors as the educational process and the large amount of money required to gain the ability to become a judge. That was an important question in its relationship to the independence of the judiciary, in which social background might play a part.

59. He also wished to know whether women were able to become judges, particularly in the higher courts.

60. Referring to the statement in paragraph 53 of document CCPR/C/1/Add.35 to the effect that section 70 of the Race Relations Act did not prohibit racist organizations as such, he asked whether the United Kingdom Government did not consider the very existence of a racist organization to be incompatible with the provisions of articles 22 and 26 of the Covenant.

61. Referring to paragraphs 54 and 55 of the same document, he asked whether trade unions were permitted to operate inside the factory in which their members worked, or whether the factory owners had the right to prohibit such activities.

62. Nothing was said about corporal punishment in the report on the Channel Islands and the Isle of Man (CCPR/C/1/Add.39). He wished to know whether the United Kingdom Government did not consider such punishment to be degrading treatment that should be prohibited under article 7 of the Covenant.

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63. Mr. TARNOPOLSKY, referring to article 3 of the Covenant and to paragraph 26 of the summary record of the Committee's 70th meeting (CCPR/C/SR.70), in which it was stated that the authors of a paper referred to in that paragraph had made a recommendation that the Government should contemplate a change in the rules relating to the transmission of nationality, said that he could find no information on the subject in the report before the Committee (CCPR/C/1/Add.35). He would be interested to hear what the current situation was. In his view, equality between men and women should lead to equal transmission of nationality.

64. The questions that had been asked with regard to the proclamation of a state of emergency required a reply as to the reasons for and extent of derogation from articles of the Covenant, bearing in mind the conditions laid down in article 4.

65. As concerned the situation in Northern Ireland, he understood that the Bennett Committee had recommended that there should be a right to consult counsel within 48 hours, and every 48 hours thereafter. The words "should be" appeared to indicate that the right did not yet exist. He understood that a person could at present be detained for seven days without contact with counsel. That was a serious derogation to which no reference had been made.

66. Referring to paragraph 46 of the summary record of the Committee's 70th meeting, he said that the fact that there was no law to prohibit the use of electronic equipment for the surveillance of the private lives of citizens posed a considerable problem as to the right to privacy under article 17 of the Covenant. He wished to know whether the recommendation that surveillance by means of such equipment should be declared illegal had been followed up.

67. He had considerable difficulty concerning the nationality rule for permanent appointments in the British Civil Service (CCPR/C/1/Add.35, annex). As he understood it, a British subject and citizen of the United Kingdom whose parents were not both British subjects from birth could be appointed only by special permission, while one whose parents were both British subjects from birth was eligible without such permission. Such a prescription could not but contravene article 25, subparagraph (c) of the Covenant.

68. Mr. RICHARD (United Kingdom), replying to questions concerning the Channel Islands and the Isle of Man, said that each of the Islands individually had its own institutions of government, with elections and political parties. Regardless of what the United Kingdom's attitude towards further independence might be, no great political movement with that as the desired objective had been detected in the Islands themselves. If there were to be such a movement, the United Kingdom Government would consider it seriously. The Islands and the United Kingdom itself were open societies, in the atmosphere and context of which it was perfectly feasible and reasonable for the United Kingdom to judge the wishes of the people of the Channel Islands and the Isle of Man by the way in which they expressed themselves before, during and after their elections.

69. He had two points to make on the question of the closed shop, raised by Mr. Tomuschat. Firstly, the United Kingdom paid considerable attention to

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(Mr. Richard, United Kingdom)

International Labour Convention No. 87. Secondly, the closed shop issue was one that was being raised and ventilated in a case involving the United Kingdom before the European Commission on Human Rights. His Government did not consider the closed shop to be an infringement of the Covenant, but if the European Commission came to a different conclusion, that would have to be taken into consideration. Concerning the attitudes of the different political parties in that respect, he said that the Conservative Manifesto was pledged to the abolition of the closed shop, whereas the Labour Party Manifesto was not. The British people would decide the issue in the elections that were to take place the following week as a democratic fight in a free and open society.

70. Mr. CAIRNCROSS (United Kingdom), referring to the question of broadcasting raised by Mr. Hanga, said that the British Broadcasting Corporation, which was one of only two bodies licensed to transmit public programmes, had a complaints commission of its own to consider and review complaints from individuals who claimed to have been unfairly treated in a programme. The Independent Broadcasting Authority had rather wider terms of reference, which extended to the manner in which programmes had been prepared. Questions of privacy, for example, might arise in relation to the preparation of a programme. In 1978, the United Kingdom Government had published a paper in which it had accepted a recommendation, in what was known as the Annan report, that a single independent broadcasting complaints commission should be established for the entire public broadcasting system. Since there was about to be a general election, he was not in a position to say whether or not the Government to be elected would establish such a commission.

71. As concerned Mr. Hanga's question on deportation, he had explained (CCPR/SR.70, para. 44) that the main reason for deporting the family along with the individual concerned was to keep the family together, although there were many cases in which a wife would be deported on her own account.

72. He wished to draw attention to an error in paragraph 44 of the summary record of the Committee's 70th meeting, the beginning of the fourth sentence of which should read: "Similarly, such a person ...".

73. Replying to Mr. Hanga's question with regard to compensation for miscarriages of justice, he said that there were no provisions in United Kingdom legislation entitling a person who had been convicted of a criminal offence and later exonerated to receive compensation, but such a person might have the right to bring a civil action for damages against the person responsible if the proceedings had been instituted maliciously or without reasonable cause. There was a procedure in England and Wales in which an ex gratia payment could be made from public funds to a person who had suffered hardship in a case in which the Home Secretary had granted a free pardon or in which the Court of Appeal had quashed the conviction. The amount of payment in such cases was determined by an independent assessor. There were broadly similar provisions in Scotland and Northern Ireland. Although the scheme was an extra-statutory one, the Home Secretary did not in practice refuse

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(Mr. Cairncross, United Kingdom)

to make payment. His Government therefore considered that the practice accorded with the spirit of the Covenant, and it would see whether it could not be made to accord more closely with the letter also.

74. Replying to Mr. Graefrath's question on the judiciary, he said that the judiciary in England and Wales consisted only to a small extent of professional judges. Most minor criminal cases, which formed the majority of criminal cases, were heard by lay magistrates chosen for their fair-mindedness and ability, and representing all strata of society. It was true that a judge had to go through a number of processes before being appointed, and he was likely to be the kind of person whose background led him to such a career. There were some women high-court judges.

75. As concerned racist organizations, the United Kingdom viewed an organization not so much in the light of what it was as of what it did. If such an organization offended the law, particularly the law on racial hatred or racial discrimination, it would come within the terms of such law. For Government or Parliament to proscribe an organization because of its racist character would appear to confer on the authorities of the country a power that could be abused and that might be incompatible with the right to freedom of association guaranteed by the Covenant. The IRA was proscribed by special powers under temporary anti-terrorist legislation. Proscription of any organization in ordinary times would be a very serious step for his country to contemplate.

76. On the question of trade unions, the reply was that they did operate inside factories.

77. Replying to Mr. Tarnopolsky's question concerning the transmission of nationality by matrilineal succession, he said that no legislation for the purpose had yet been introduced in the United Kingdom to give effect to the proposals in the paper to which he had referred at the Committee's 70th meeting. A small change had, however, been made by administrative action affecting the Home Secretary's discretion. The Home Secretary had made the following statement:

"I have decided to make some alterations to the general policy in dealing with applications by women who were born in the United Kingdom and whose children born overseas are still minors. The practice hitherto has been to refuse registration if it appeared that the child was likely to live overseas or if, when the child was living in this country, the father had taken no steps to seek our nationality for himself. In future, registration will not be refused on these grounds, and a woman born in the United Kingdom will normally be able to have her child registered subject to there being no well-founded objection by the father."

78. As concerned derogations from articles of the Covenant, to which Mr. Tarnopolsky had referred, he had earlier given at least an outline account of the various articles from which there had been derogations in respect of the situation in Northern Ireland. As to the question of electronic surveillance, the recommendations of the Committee on Privacy were still under consideration.

The meeting rose at 6.10 p.m.