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COMMITTEE AGAINST TORTURE

Thirty-third session

SUMMARY RECORD OF THE 627th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 18 November 2004, at 3 p.m.

Chairperson: Mr. MARIÑO MENÉNDEZ

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The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Fourth periodic report of the United Kingdom of Great Britain and Northern Ireland (continued) (CAT/C/67/Add.2; HRI/CORE/1/Add.5/Rev.2; HRI/CORE/1/Add.62/Rev.1)

1. At the invitation of the Chairperson, the members of the delegation of the United Kingdom of Great Britain and Northern Ireland resumed their places at the Committee table.

2. Mr. SPENCER (United Kingdom) said his delegation would reply to the 75 questions that had been asked, concentrating on the areas perceived to be of most interest to the Committee; the remaining areas would be covered by written responses. Information on the few questions the delegation was not in a position to answer, such as the more technical ones, would be sent to the Committee the following week.

3. With regard to the Committee's working methods, he said the United Kingdom had been one of those States that had called upon the Committee to adopt the list of issues approach, which had proved very helpful in formulating responses and in focusing on the issues that were of greatest interest to the Committee. That having been said, his delegation fully understood the concern raised by certain Committee members regarding the status of the written replies. In the interests of greater transparency, the Committee might wish to encourage States parties to share their responses with members of civil society, as the United Kingdom had done. It might also wish to consider whether it would rather delegations read out their written responses verbatim or provide an oral summary in order to allow enough time for dialogue with the Committee.

4. With regard to the issue of individual communications, he emphasized that the most important remedy available to any victim of torture was the domestic judicial system. His Government had nevertheless decided to test the mechanism for submitting individual complaints to the United Nations treaty bodies, starting with the Committee on the Elimination of Discrimination against Women. The reason the United Kingdom was adopting such a cautious approach was that it wished first to assess what real benefit the mechanism provided to United Kingdom citizens. He pointed out that the United Kingdom had nevertheless made some movement in the direction of the provisions of article 22 of the Convention since the consideration of its last report.

5. Dame Audrey GLOVER (United Kingdom), replying to questions relating to the Optional Protocol, said the United Kingdom believed it was important for the Optional Protocol to enter into force without delay and had launched a worldwide lobbying campaign in June 2004 to encourage other countries to join the United Kingdom in ratifying it.

6. The United Kingdom did not propose to establish any national preventive body as recommended in article 3 of the Optional Protocol, as it already had a number of such bodies in place, including Her Majesty's Inspectorate of Prisons. Prior to ratification of the Optional Protocol, the Government had prepared a list of independent bodies responsible for monitoring conditions in places of detention in the United Kingdom. The United Kingdom

was committed to ensuring that the national mechanisms fully met the requirements of the Optional Protocol and would review the list of competent bodies before the Protocol's entry into force. The Northern Ireland Human Rights Commission was not currently designated but its inclusion in the list would be considered.

7. Under article 14 of the Optional Protocol, the subcommittee on prevention should be given certain powers and access. However, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which visited the United Kingdom regularly, already had those powers and it was not necessary to give additional powers to a United Nations monitoring body. Moreover, all the domestic bodies on the aforementioned list had the same powers of access as the subcommittee, as defined in article 20 of the Optional Protocol.

8. Mr. SPENCER (United Kingdom), replying to questions concerning the implementation of the Convention, first recalled that the United Kingdom had a dualist system, i.e., international law did not become part of the domestic legal order unless Parliament passed a law to that effect. It was, however, a misconception to assume that the United Kingdom always needed to pass such a law in order to fulfil its obligations under international law. Before ratifying an international treaty, the Government made sure that domestic law was consistent with the treaty's provisions; in some cases, such as the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the European Convention on Human Rights, no bridging statute had been required. In the case of the European Convention, the United Kingdom had adopted the Human Rights Act 1998 not in order to incorporate the Convention into its domestic legal order but in order to allow its citizens to apply to domestic courts rather than having to go to Strasbourg. Thus the Act was in fact a law that extended the scope of the European Convention.

9. In the case of the Convention against Torture, as with other international instruments to which it was a party, the United Kingdom had first satisfied itself that its domestic law was consistent with the Convention. In the light of that process it had been felt necessary to adopt section 134 of the Criminal Justice Act 1988 in order to create an offence of sufficiently wide scope to satisfy articles 4 and 5 of the Convention. In respect of the other articles, the United Kingdom had simply accepted the obligations placed upon it by the Convention.

10. Mr. HEATON (United Kingdom), turning once more to the Committee's view that section 134 of the Criminal Justice Act 1988 was inconsistent with article 2 of the Convention - an issue already raised during consideration of the United Kingdom's third periodic report in 1998 - said article 134 defined torture as severe pain or suffering intentionally inflicted upon another person in the course of the performance or purported performance of official duties. That definition went further than that provided under article 1 of the Convention, which excluded suffering arising from lawful sanctions. Section 134 thus provided a defence for those accused of torture if they could prove that they had inflicted pain while acting with lawful authority, justification or excuse. A surgeon who caused pain in the course of his or her legitimate duties, for example, could not be held criminally liable.

11. Section 134 was said to allow the accused to avoid prosecution by pleading obedience to superior orders. However, under United Kingdom law the terms "lawful authority, justification or excuse" meant much more than "permission given by someone in authority". The authority had to be in accordance with the law and no court in the United Kingdom would consider abuse of power on the orders of a superior to be lawful. Moreover, under domestic law an international treaty could be examined in British courts to assist in the interpretation of any Act whose purpose was to give effect to that treaty and a court faced with an issue requiring interpretation of section 134 would turn to the Convention, which made it clear that a defence of "superior orders" could not justify torture. With regard to the Country Rapporteur's concerns over the 17 cases mentioned by his delegation the previous day in connection with the war in Iraq, he said none of those cases had been dismissed on the grounds that the accused had been carrying out superior orders.

12. Another misconception was that section 134, paragraph 5, subparagraph (b) (iii), allowed those who committed torture in a foreign country to escape liability by referring to lawful justification under foreign law. In fact it would not be sufficient to plead superior orders; the person would also need to demonstrate that the legal system of the country where the events had taken place permitted torture, and that would not be possible since even countries where torture was well known to occur, it was not sanctioned by law.

13. With regard to article 15 of the Convention, domestic law contained safeguards against the use in civil or criminal proceedings of evidence obtained as a result of any acts of torture by British officials, whether in the United Kingdom or elsewhere. That principle had been confirmed in the recent Court of Appeal ruling in the case of A. et al. v. Secretary of State.

14. In addition, statute and common law provided for the exclusion or strict control of hearsay evidence in criminal proceedings and for the exclusion of evidence where its use would be unfair. The courts took account of the United Kingdom's international obligations, including its obligations under the Convention, in exercising those powers. Indeed, there was no recorded example in the modern era of any British court taking account of evidence that had been established to have been the product of torture.

15. Even so, there had been speculation about the cases put before the Special Immigration Appeals Commission (SIAC) and whether SIAC had relied on material from other countries that might have been obtained using torture. SIAC had emphatically rejected such accusations and the Court of Appeal had confirmed that they were groundless. His delegation wished to make clear that it was not the Home Secretary's intention to rely on, or to present to SIAC, evidence known or believed to have been obtained under torture.

16. It was, however, important to understand the context in which the issue arose, namely the application of the Anti-Terrorism, Crime and Security Act 2001. Following the events of 11 September 2001 and the threats that had emerged since then, the Home Secretary was required to assess a wealth of information from a variety of sources. Intelligence sources were often opaque and there might be no accurate way of establishing the circumstances in which some information had been obtained. In that context, SIAC was one of a number of mechanisms providing for scrutiny of the Home Secretary's decisions. The United Kingdom delegation was grateful to the Committee for raising a difficult issue, one that had not previously been taken up

in any national or international court. The Committee was probably aware that a petition for permission to appeal was currently before the House of Lords and his delegation could therefore make no comment on the matter. Copies of the judgement could be provided to the Committee if it so wished.

17. Mr. McGUCKIN (United Kingdom) said the allegations that the Northern Ireland Human Rights Commission had been denied access to certain prison facilities were the result of a misunderstanding. The Commission had conducted a thorough inspection of the Mourne House women's prison during the first half of 2004 and had commented that the access granted had been excellent. When Mourne House closed in June 2004 and the prisoners were transferred to new facilities, the Prison Service had asked the Commission's inspectors, who had requested access, to put off any further visit to spring 2005, in the light of the disruption occasioned by the transfer and the fact that other inspections were due, including visits by the Council of Europe Commissioner for Human Rights and by the Chief Inspector of Criminal Justice in Northern Ireland. The Commission had interpreted that as a denial of access, which was not the case.

18. The Northern Ireland Human Rights Commission had also conducted an investigation into juvenile justice centres in 2002 and into the Rathgael detention centre in 2004 in order to evaluate the progress made in implementing its recommendations. Since the first of those investigations, a Chief Inspector of Criminal Justice and a Commissioner for Children had been appointed, both with extensive powers. The Chief Inspector of Criminal Justice had visited the Rathgael centre with a representative of the Commission in late 2004.

19. As the examples showed, the work of the Human Rights Commission was complementary to that of other investigatory bodies. It was important to ensure that each body's powers complemented, rather than duplicating, those of the other bodies and that they were able to function without unnecessarily burdening the public authorities they were expected to oversee.

20. With regard to the state of emergency in Northern Ireland, the British Government was committed under the Belfast Agreement to the ultimate removal of the temporary provisions of the Terrorism Act 2000, but only when the security situation allowed. Meanwhile, the special legislation on Northern Ireland had to be renewed annually following a debate in both Houses of Parliament and wherever possible provisions were allowed to lapse. However, although levels of violence in Northern Ireland had decreased, some terrorist groups were still active and made it necessary to retain the current counter-terrorist provisions.

21. A Committee member had enquired about the progress of efforts to stop the use of baton rounds. No baton rounds had been fired by the army since September 2002, but the police still had the option to use them. Some progress had been made, however, including the holding of a conference in London in early 2004 on the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which had been attended by non-governmental organizations (NGOs). In addition, an alternative to baton rounds had been found and, subject to final testing and independent medical examination, should be available for use by summer 2005.

22. Mr. HOWARD (United Kingdom), replying to questions about the jurisdictional framework in which the United Kingdom Armed Forces operated abroad, said the troops and military advisers, as well as other public servants deployed with them on operations, were

subject at all times to English criminal law. That applied to conflict and peacekeeping operations, whether authorized by a national or an international body. The United Kingdom Armed Forces were also required to obey local laws, although in many cases, such as in Iraq and Afghanistan, there were agreements providing immunity from civil or criminal prosecution. On the question of the applicability of the Convention to United Kingdom Armed Forces operations in Iraq and Afghanistan, he said the United Kingdom believed that those parts of the Convention which applied only to territory under the jurisdiction of the State party could not apply to the actions of its troops in those two countries.

23. As to the obligations of private contractors, he said two types of situation might arise. The first was where private contractors were operating in a country independently of the United Kingdom Armed Forces: in such circumstances they were subject to the domestic law of the country in which they were working. They might also be liable to prosecution under the United Kingdom Criminal Justice Act if they committed acts of torture at the instigation of a public official, since the Act applied regardless of the perpetrator's nationality or the country where the offence was committed. The second situation was where private contractors were engaged by the United Kingdom Armed Forces on operations abroad; in that case they were subject to the same legal regime as the United Kingdom Armed Forces operating in that country. In that regard, the United Kingdom Government did not believe the European Convention on Human Rights was applicable to its operations in Iraq and was awaiting a High Court ruling on the issue. He wished to stress again, however, that the British Armed Forces did not operate in a legal vacuum and that any allegation of wrongdoing on the part of the Armed Forces was investigated and, if necessary, prosecuted.

24. With regard to measures to ensure that the Armed Forces complied with the Convention, he said individual soldiers were not given specific training in the Convention but they were trained to perform their various functions in accordance with all the relevant legal requirements.

25. The United Kingdom's detention facilities in Iraq and Afghanistan were fully open to international inspection and the International Committee of the Red Cross (ICRC) in particular had unfettered access. As to the transfer of detainees to the Iraqi and Afghani authorities, he could only restate the United Kingdom's view that article 3 of the Convention was not applicable to those suspects since they were subject to the jurisdiction of one or other of those countries. There was therefore no question of extradition or expulsion. That did not mean, however, that the United Kingdom was not concerned about the treatment of those prisoners. It had negotiated a memorandum of understanding with the Iraqi Ministries of Justice and the Interior which provided that detainees handed over to the Iraqi authorities would be treated humanely and not subjected to torture. Similarly, it had negotiated a military agreement with the Afghan Interim Administration which included guarantees that the police would carry out their duties with full regard for human rights. Detainees and prisoners of war transferred to the United States remained the responsibility of the United Kingdom, in accordance with the Geneva Conventions and the memorandum of understanding signed with the United States.

26. With regard to British involvement in interrogations conducted by the American forces in Iraq, he said that all interviews by United Kingdom intelligence personnel, with one exception, had been conducted in a manner consistent with the Geneva Conventions. United Kingdom personnel were instructed to report if they believed detainees were being subjected to cruel or

inhuman treatment. The exception referred to was currently the subject of an inquiry by the United Kingdom Intelligence and Security Committee (ISC), which was still taking evidence in the matter. With regard to media allegations that a British officer within the command structure of the Coalition Provisional Authority had been partly responsible for, or had had knowledge of, the incidents at Abu Ghraib, he wished to emphasize that the officer in question had never been in a position of command at Abu Ghraib and that no British personnel had been based at Abu Ghraib until January 2004, well after the incidents that were currently subject to investigation and judicial procedure in the United States.

27. On the issue of compensation arrangements in Iraq, he said that when compensation claims were received a determination was made as to liability. Where the liability of the Ministry of Defence was proved, compensation was paid. With the exception of death and serious injury cases, which were handled in the United Kingdom, an official based in Basra handled all claims from Iraqis, in order to speed up the process and facilitate local communication.

28. As to the allegations from Amnesty International about incidents of ill-treatment by British troops in Iraq, mentioned by members of the Committee, he said the cases were being fully investigated. It was not possible to provide details while the investigation was under way. However, there was no prima facie evidence to suggest that the United Kingdom Armed Forces had been involved in systematic human rights abuse and his Government therefore had no plans for an independent inquiry. The Government had published a detailed response to the allegations of ill-treatment made by Amnesty International against British troops in Iraq, a copy of which would be sent to the Committee if it so wished.

29. Lastly, on the subject of suicide, self-harm and bullying within the United Kingdom Armed Forces, he said the incidence of suicide was lower in the Armed Forces than in the British population overall. The Army had begun updating guidance and procedures aimed at preventing such behaviour, in collaboration with the Royal Navy and the Royal Air Force. A confidential hotline had been established in 1997 to provide a listening and support service to Armed Forces personnel and their families. As to the incidents at Deepcut Barracks, full investigations had already taken place, including an investigation by the Surrey Police.

30. Mr. WALSH (United Kingdom), addressing the issues of processing of asylum applications and the list of “safe” countries, said that, in accordance with its international obligations, the United Kingdom would not remove or extradite anyone to a country where there were grounds to suspect they would be exposed to a real risk of torture or inhuman or degrading treatment or punishment, or where removal would lead to a flagrant breach of other rights under the European Convention on Human Rights.

31. The United Kingdom considered asylum applications on their individual merits, even where the applicants were from the 14 States currently designated as safe. A detailed interview was undertaken in all cases and a decision taken on the basis of the information obtained. In any case where an application was determined to be clearly unfounded, the applicant could contest that decision through a judicial process which had suspensive effect. Unaccompanied children aged under 18 were not removed if it was not possible to trace their family in their country of origin or where no adequate reception arrangements existed.

32. Ms. TAN (United Kingdom), turning to the question of anti-terrorism legislation and the Anti-Terrorism, Crime and Security Act 2001 in particular, said that both the International Covenant on Civil and Political Rights and the European Convention on Human Rights authorized States parties to derogate from certain provisions when there was a public emergency threatening the life of the nation, to the extent strictly required by the exigencies of the situation. The Government reviewed the need for derogation annually before asking Parliament to renew emergency legislation. The attacks of 11 September 2001 had given a new dimension to terrorism, leaving a threat hanging over the United Kingdom and the rest of the world that was likely to be of long duration, involving as it did groups of people engaged in long-term planning, with access to new information and communication technology and sophisticated methods. That threat remained, as had been confirmed by recent events.

33. Before introducing the anti-terrorism legislation, the Home Secretary had made available to Parliament the information that had led him to conclude that a state of public emergency existed. Senior parliamentarians from all parties had been confidentially briefed on the nature of the threat. Nevertheless, the powers vested in the authorities under the 2001 anti-terrorism legislation were renewed annually and would lapse at the end of 2006. The fact that only 17 people had been detained under that legislation should not lead to the conclusion that there was no state of emergency: rather, it showed that the powers vested in the authorities were used only when strictly necessary, in line with the Home Secretary's undertaking to use his powers sparingly.

34. Replying to the question on independent reviews of the application of the anti-terrorism legislation, she said there were two procedures. The first related to the operation of sections 21 to 23 of the Act and had been entrusted to Lord Carlile of Berriew. The reviewer was required to examine the operation of those articles not later than one month before renewal of the powers conferred under the Act and submit his report to the Home Secretary, who would transmit it to Parliament. The second independent review covered the whole of the Act and was carried out by a committee of Privy Counsellors chaired by Lord Newton, a former Conservative Cabinet Minister; that committee's report had been published in December 2003. Under section 123 of the Act, the committee had the power to specify that any provision of the Act should cease to have effect six months after submission of its report to Parliament unless a motion revoking that decision was passed in each House of Parliament. That provision ensured that the anti-terrorism legislation was subject to periodic parliamentary review and renewal, following which a decision was taken on the powers to be conferred. In addition to the independent review procedure, Parliament also referred to the reports of its own Joint Committee on Human Rights.

35. On the question of whether it was right to leave a detainee in legal limbo, she said such a situation had never arisen. Persons detained under the anti-terrorism legislation had a right of appeal to SIAC, which was chaired by a High Court judge. The Act also provided for the review by SIAC of a detention order six months after issuance or, in the event of appeal, six months after the date of the final decision. The order should then be reviewed every three months thereafter. SIAC cancelled an order if it considered that there were no longer reasonable grounds for the Home Secretary to suspect the person in question.

36. With regard to the question whether material obtained as a result of torture had been used as evidence before SIAC, she said the possibility of evidence having been obtained by such methods had been fully considered by SIAC, whose conclusion had been negative. The Court of Appeal had upheld that position.

37. As for organizations proscribed under the 2001 anti-terrorism legislation, section 11 of the Act provided that a person belonging or professing to belong to a proscribed organization would be committing an offence. It would be a defence for the person to prove that the organization had not been proscribed when they became a member and that they had not taken part in the activities of the organization once it had been proscribed.

38. Mr. DAW (United Kingdom), turning to the question of prison conditions, said the United Kingdom's Prison Service comprised three separate organizations covering England and Wales, Scotland and Northern Ireland. The rules it applied were in line with the transparent standards established by a range of international instruments, and guaranteed humane treatment for prisoners. Health care in prisons was equivalent to that provided by the National Health Service. All prison services in the United Kingdom kept a record of events in prisons, which allowed the Prison Service to ensure public accountability and safeguard prisoners' interests. Privately run establishments were required to meet the same standards of management as those in the public sector. The prison services were concerned to identify and protect vulnerable prisoners, particularly those at risk of suicide or self-harm, those who had mental health problems or learning difficulties, and potential victims of violence.

39. Dame Audrey GLOVER (United Kingdom), describing the role of the Prime Minister's Special Envoy to Iraq on Human Rights, Ms. Ann Clwyd, said Ms. Clwyd's principal task was to support the Iraqi authorities in addressing the human rights abuses committed against the Iraqi people under the former regime, and in establishing mechanisms for the promotion and protection of human rights. Ms. Clwyd had also taken an active interest in detention issues and had visited the United Kingdom detention facility at Shaibah and the Abu Ghraib facility, run by the United States Armed Forces. At no time had she witnessed abuse or ill-treatment of detainees at either centre, but she had informed the United States authorities of one case of alleged ill-treatment that had been brought to her attention.

40. The United Kingdom had made representations to the United States at the highest levels on numerous occasions, most recently in October 2004, to draw attention to allegations of violations of the United States' international obligations in Iraq. It had also made representations to the Iraqi interim administration about the importance of investigating all allegations of ill-treatment. She herself, as Senior Adviser to Iraq's Ministry of Human Rights since January 2004, had worked with the Iraqi authorities to secure their commitment to signing the Convention, which they had done in March 2004. She had also supported the Ministry in obtaining a permanent presence at the Abu Ghraib facility, where a team of Iraqi doctors and lawyers had unrestricted access to the detainees. The team had also visited the United States facility at Umm Qasr and the United Kingdom facility at Shaibah.

41. The British Government regarded the detention conditions at Guantánamo Bay as unacceptable. It had raised the cases of British detainees with the United States authorities on a number of occasions and called for them to be given a fair trial in accordance with international standards or returned to the United Kingdom. As a result of those efforts, five British detainees

had been returned to the United Kingdom. Her Government took the allegations of ill-treatment made by Mr. Moazzam Begg, a Guantánamo Bay detainee, very seriously and had asked the United States authorities to investigate the allegations. Mr. Begg had subsequently confirmed that, apart from one incident upon his arrival at Guantánamo Bay, he had not been ill-treated.

42. British security service officials had interviewed a number of detainees in Guantánamo Bay on issues relating to national security. All United Kingdom personnel were instructed to report immediately any activities by the United Kingdom Armed Forces or its allies that might come to their attention and that could be seen as torture or other ill-treatment. The Intelligence and Security Committee was currently taking evidence from detainees and intended to present a report on the issue.

43. A member of the Committee had asked whether it would not be a good idea to submit the report on the overseas territories separately from the report on the United Kingdom. Although the overseas territories were not constitutionally part of the United Kingdom, they were not independent and the United Kingdom retained responsibility for their external affairs. There were extensive consultations in preparing the report and the current delegation included a representative from one of the overseas territories. However, because of their geography and their size it was not always possible for them to be represented: that did not in any way reflect a lack of interest on their part.

44. Reference had been made to cases where United Kingdom nationals had been alleged to have suffered torture in other States. The consular authorities took their role in protecting United Kingdom nationals abroad very seriously and ensured that they had legal representation whenever necessary. Consular staff routinely visited United Kingdom nationals detained abroad to verify that their detention conditions were appropriate. The United Kingdom did not, however, have a list of cases of torture or ill-treatment suffered by its nationals or any list of countries where such acts had been proved to have occurred. It went without saying that, where the Government suspected that a British subject had suffered torture or ill-treatment, it would take action to ensure that the situation was remedied.

45. She thanked Mr. Rasmussen for his suggestion in relation to article 21 of the Convention, which would be duly noted. As to the question whether military action in Iraq had violated the Charter of the United Nations, the United Kingdom regarded the issue as being outside the remit of the Committee. She wished nevertheless to state that her Government considered the use of force and the occupation to be fully in accordance with international law. She referred the Committee to the Attorney-General's statement in Parliament on 17 March 2003 and the Foreign and Commonwealth Office memorandum of the same date.

46. Whether it was illegal under the Geneva Conventions to transfer prisoners to Guantánamo Bay was a matter to be raised with the Government of the United States.

47. Several members of the Committee had raised the issue of Government assurances in cases of removal from the United Kingdom. The United Kingdom was concerned to abide by its international obligations and its policy was not to return any person to another State where there were substantial grounds for believing that they would be in danger of being subjected to torture, or to return anyone to a country where there was a real risk that the death penalty would be applied. However, if the United Kingdom Government considered that securing assurances from

another State would enable it to remove a person in a manner consistent with its international obligations, it believed it was worth trying to do so. It was clearly a difficult area but, properly handled, such assurances could make it possible for justice to take its course while fully complying with human rights obligations. Clearly, the nature of any assurances and the level at which they were provided - usually ambassadorial or ministerial level - must be sufficient to satisfy both the Government and the courts. Lastly, with regard to the recent article in The Guardian newspaper mentioned by a Committee member, she said her delegation was not in a position to comment on individual cases.

48. Mr. SPENCER (United Kingdom) said three questions remained to be dealt with. Answers to the first two, on the Female Genital Mutilation Act 2003 and on corporal punishment of children in non-State schools, respectively, were included in the written material provided to the Committee. On the third question, regarding the differential prosecution rates for Afro-Caribbean defendants, his delegation would send a note to the Committee in the near future.

49. The CHAIRPERSON thanked the delegation for its very detailed presentation and invited Committee members to comment.

50. Ms. GAER (Country Rapporteur) thanked the delegation for its detailed replies and said she would like clarification on some of the points. In the first place, the delegation had categorically stated that, in respect of the 15 people detained under the anti-terrorism legislation, the Special Immigration Appeals Commission (SIAC) had verified that no evidence had been obtained by torture. To help her to understand the situation on the theoretical level, she wished to put forward the hypothetical case of a person detained at Guantánamo Bay who had been returned to the United Kingdom and detained under the anti-terrorism legislation; supposing an ICRC medical team had carried out an inspection at Guantánamo Bay before the transfer and reported that torture and ill-treatment had occurred, would the United Kingdom take a different position? Would the case be reviewed and the evidence obtained under such circumstances disallowed?

51. With regard to the McKerr case, the delegation had clearly stated that the 1998 Act was not retroactive. How could the United Kingdom meet its obligation under the Convention to conduct impartial investigations, if it did not take account of acts committed before the entry into force of the 1998 Act? The Committee had received numerous complaints from various sources to the effect that investigations into old cases of lethal use of force were dragging on without reaching a conclusion, a situation that was upsetting to the families and might constitute a violation of their rights. She wondered whether, in the United Kingdom's view, the McKerr family and the families of other victims had received the reparation they were entitled to.

52. The clarifications regarding access by the Northern Ireland Human Rights Commission to various prison facilities had been helpful. The Commission had reported detention conditions at Hydebank Wood that were hard to accept, but the delegation had made the point that the inspectors made frequent visits and that inspections could not be unnecessarily burdensome. That was an understandable position, but when it came to protection from ill-treatment, too much was better than too little. The Commission was within its rights to request an inspection of a facility where complaints had been received not only of overcrowding but also of unacceptable

behaviour on the part of the prison staff; and where the women's prison was in the grounds of a men's prison and 80 per cent of the warders and medical staff were men. Under the circumstances, and in view of the continuing state of emergency in Northern Ireland, it did not seem excessive to introduce additional safeguards. Northern Ireland was just the kind of territory where the Optional Protocol could be used to very positive effect and she failed to see why the Northern Ireland Human Rights Commission should be prevented from carrying out its task.

53. On the subject of prison violence, she had been interested to note that Scotland had had a mechanism for monitoring violence among prisoners for 10 years, and that the Scottish police were about to set up a complaints body. That was particularly relevant as according to some reports the conditions prevailing in Scottish prisons, particularly the sanitary conditions, seemed antiquated. In view of the fact that a prisons ombudsman was shortly to be appointed for Northern Ireland, it would be interesting to know whether similar institutions existed elsewhere in the United Kingdom.

54. The information about Iraq had been most interesting, and she appreciated the State party's efforts in that regard. Even if the issue did not fall directly within the Committee's remit, the information would be very helpful. She would welcome some clarification on a number of other points. The Carlile and Newton reports, for example, appeared to be of an advisory nature: she wondered whether there was any intention to make their recommendations enforceable. The delegation had stated that when members of the British intelligence services were involved in interviewing prisoners in Iraq, they were required to report any ill-treatment they noted. She wondered whether there had been any such reports apart from the one concerning the case referred to by the delegation. With reference to that case, she had asked whether the official who had been at Abu Ghraib at the time, and any other British personnel there, had been informed of the United Kingdom's obligations under the Convention. It was possible they had not, since the United Kingdom considered that the Convention did not apply to British troops stationed in Iraq.

55. Mr. SPENCER (United Kingdom) said his delegation would try to reply to the questions raised, although it would probably be difficult to respond to a situation as hypothetical as the one outlined by Ms. Gaer.

56. Ms. TAN (United Kingdom), referring to the hypothetical situation put forward by Ms. Gaer, said the Special Immigration Appeals Commission had jurisdiction over foreigners who could not be expelled. The question was whether SIAC would knowingly rely on information obtained under torture. The situation had never arisen, as shown by the Court of Appeal ruling. Without wishing to speculate on hypothetical cases, she could nevertheless state that her Government had no intention whatsoever of using evidence it had reason to believe had been obtained by torture.

57. For the Carlile and Newton reports to be made enforceable, the matter would have to be brought before Parliament and legislation passed. Consultations were under way on the action to be taken on the reports and she would advise her Government of the Committee's views on the matter.

58. Mr. HEATON (United Kingdom), replying to the question concerning the retroactive effect of the Human Rights Act 1998, said it would be difficult to meet the United Kingdom's obligations under article 12 of the Convention, on prompt investigation, in relation to events that had occurred more than 20 years previously.

59. Mr. McGUCKIN (United Kingdom) said there had been a series of investigations in the McKerr case. The first police investigation, between 1982 and 1984, had resulted in charges being brought, but the court had concluded there was no case to answer. A second, independent, investigation had been conducted between 1984 and 1986 by senior officers from constabularies completely uninvolved with the case; and the file had been sent to the Director of Public Prosecutions, who had concluded that the evidence did not warrant any further prosecution and that the false and misleading statements made by the police officers in the course of the first investigation did not justify further proceedings. The coroner's inquest opened in 1984 had been adjourned and resumed several times. In short, proceedings had certainly been brought against three police officers, but the court had concluded there was no case to answer and the Director of Public Prosecutions had conducted his own independent inquiry into the reasons for that verdict. Unless new information came to light there were no grounds for reopening the investigation.

60. In 2001 the European Court of Human Rights had found that there had been an unreasonable delay between the deaths and the opening of the inquest proceedings, whereupon the Government had taken a series of steps to bring the procedures used in Northern Ireland into line with article 12 of the Convention. Inquests were opened and conducted at the coroner's initiative and strenuous efforts had been made to speed up the conduct of such proceedings, for example by allocating funds, appointing an additional coroner and providing the coroners with increased administrative and technical support. Efforts were now being made to improve the efficiency of proceedings not only in Northern Ireland but also in England and Wales, and a thorough reform of the system was under consideration. As many of the recommendations required the adoption of legislation, the Northern Ireland authorities intended to put in place a series of interim administrative measures.

61. Another question on Northern Ireland had related to women's prisons. Many of the 41 recommendations made in the Northern Ireland Human Rights Commission report had been or were being implemented by the prison authorities. Detention conditions had improved considerably: prisoners were spending more time outside their cells, had access to activities, and security arrangements were better. The transfer to Hydebank Wood had provided an opportunity to reform the prison regime and a recent survey had shown that the prisoners' situation was generally speaking much more satisfactory. As to access by the Northern Ireland Human Rights Commission to Hydebank Wood, he said the transfer had caused a certain amount of disruption until recently, but the judicial services were due to make an inspection in the very near future. Lastly, he said the Chief Commissioner for Human Rights had been invited to visit Hydebank Wood but had not yet done so.

62. Mr. DAW (United Kingdom) confirmed that England and Wales had had a Prisons Ombudsman for 10 years. The Ombudsman's office had also been dealing with probation issues for the past five years and in April 2004 had been made responsible for investigating, reporting and making recommendations on all prison deaths regardless of whether the circumstances had warranted an inquiry. Complaints could also be addressed to the Health Service Ombudsman.

63. Mr. GUN (United Kingdom) said the Scottish prisons service had had a Prisons Complaints Commission since the mid-1950s. The current Scottish Prisons Complaints Commissioner was a Canadian with wide experience of his own country's prison system. The prison authorities were actively trying to reduce overcrowding and improve sanitary conditions in Scotland's prisons. Extensive funding had been allocated to the current modernization programme.

64. Mr. HOWARD (United Kingdom), referring to the case of the British officer who had been present at an interrogation in Iraq under conditions which had failed to comply with the Geneva Conventions, said he could confirm after painstaking inquiries on the part of the British authorities that no other such case had come to light. His delegation had already dealt with the question of military training and information. Briefly, military personnel were trained to perform their duties in accordance with domestic and international law, including the Convention. The officer in question had undoubtedly been given the training necessary to comply with the relevant domestic and international standards.

65. Mr. MAVROMMATIS thanked the delegation for the very detailed information it had provided and the high quality of the dialogue that had taken place. Many of the Committee's fears had been dispelled. Some differences of opinion remained, for example with regard to competence. It would be most helpful if the United Kingdom were to make a declaration under article 22 of the Convention. That would benefit not only its own people but the Committee itself, which was always very interested to hear the arguments put forward by the United Kingdom.

66. With regard to the reports on the overseas and other territories, he had merely wondered whether it might not be preferable, both for the State party and for the Committee, to consider them separately. The thought had occurred to him following the Human Rights Committee's positive experience with its consideration some time previously of a separate report for Hong Kong, just before that territory had been handed back to China.

67. Mr. GROSSMAN asked whether the delegation could state with certainty that all the provisions of the Convention were effectively applicable in the United Kingdom, given that the Convention had not been incorporated into domestic law and that compliance was therefore ensured by discrete standards and provisions. He would also like to know what guarantees existed to ensure that evidence obtained under torture could not under any circumstances be admitted by the courts.

68. The McKerr case raised a special problem of jurisdiction ratione temporis which had to do with the status of international instruments in the legal order of dualist countries. The European Court of Human Rights had found in favour of the McKerr family, who wanted the case to be reopened under article 2 of the European Convention on Human Rights. They now found themselves without recourse in the domestic courts. The Convention had been incorporated into domestic law under the Human Rights Act 1998, which had entered into force in 2000. However, the Act had no retroactive effect, which meant that the Convention could not be invoked before the British courts in respect of murders such as that of Gervaise McKerr, committed before 2000. What could be done to avoid situations of that kind, which did an injustice to victims' families by leaving their questions unanswered?

69. He also wondered what reasons might justify making an exception to the principle that superior orders could not be used as a defence for torture under foreign law. Lastly, he asked what the precise status of the Newton report was. The delegation had stated that a dialogue and consultations had been launched following publication of the report. Could it give details of that process?

70. Mr. SPENCER (United Kingdom) said the Government was responsible for overseas territories' foreign relations, which is why it had included those territories in its report to the Committee. That would not prevent a separate report from being drafted if the Committee so wished.

71. Mr. HEATON (United Kingdom) said the validity of the dualist system was not at issue. The system relied on a combination of statute and common law to guarantee implementation of the international instruments to which the United Kingdom was a party. If Mr. Grossman set such store by the incorporation of such instruments into domestic law, it was doubtless out of a concern for clarity and consistency; that concern was shared by the British Government, which had set up programmes aimed at simplifying and clarifying its domestic legislation.

72. In British law, torture was both a civil and a criminal offence and had long been so. Even before the United Kingdom's ratification of the Convention, British subjects had had the possibility of taking proceedings in their own behalf in either jurisdiction. The provisions of the Convention were thus applied on the basis of existing legislation, even if they could not be directly invoked before the courts. In the McKerr case, the problem of jurisdiction ratione temporis did not arise in respect of the Convention, since torture had been a possible cause of judicial action since well before the Convention's ratification by the United Kingdom.

73. Ms. TAN (United Kingdom) said the preparation of the Newton report, its submission to the Home Secretary and its consideration by the two Houses of Parliament had all been provided for by law. The Anti-Terrorism, Crime and Security Act 2001 was subject to annual renewal: otherwise its provisions would lapse. It was in the context of the annual debate on renewal that the Home Secretary had launched a series of consultations to canvass opinion on the long-term future of the Act. He had made every effort to involve numerous organizations, including several NGOs, in that process. The replies obtained were now being analysed and would be used in formulating proposals for the next annual debate in March 2005.

74. Mr. McGUCKIN (United Kingdom) said the murder of Gervaise McKerr had been thoroughly investigated. Unfortunately, as in many similar cases associated with the Northern Ireland conflict, it had not been possible to find sufficient evidence to bring the proceedings to a successful conclusion. What needed to be done now was to address past events and provide answers to all those who were still awaiting closure on such cases. One of the measures taken had been to set up a team, in early 2004, to look into serious offences within the Northern Ireland police forces. The team had begun reviewing a number of old cases to establish whether there were grounds for reopening proceedings. It was an enormous task, and one on which the most up-to-date techniques would be brought to bear. It would certainly be necessary to accept that in most of the cases the undertaking would yield no results on the judicial front, but it was no less essential for the victims' families.

75. Mr. EL MASRY requested some clarification regarding the admissibility of evidence. In its replies, the delegation had stated that there was no infallible way of establishing the circumstances in which some information had been obtained. In the case of A. et al. v. Secretary of State, the British Government had asked the court to take into account the importance of international cooperation in the fight against terrorism and in particular the exchange of information between States. Although the Home Secretary had unreservedly condemned the use of torture, he had also stated that it would be irresponsible not to take account of information that might help in maintaining national security, in which case it would seem quite possible for statements obtained under torture to have been used as evidence, or to be so used in the future, in breach of article 15 of the Convention.

76. Mr. FISH (United Kingdom) reaffirmed that under British law any evidence obtained under torture by or with the connivance of British officials, whether on national or foreign territory, was inadmissible in civil or criminal proceedings. SIAC had clearly stated that none of the cases it had considered had included any evidence that might have been obtained by such means.

77. Mr. PRADO VALLEJO said he would like to see the memorandum of 17 March 2003 that had been mentioned by the delegation in its reply to his question regarding the legitimacy under the Charter of the United Nations of the military operations in Iraq.

78. The CHAIRPERSON said that, in citing the Bankovic case, the United Kingdom was adopting a restrictive interpretation of the concept of jurisdiction, whereas the Convention could be interpreted as covering both territorial and personal jurisdiction. The question was how to define jurisdiction in the context of the operations in Iraq and Afghanistan given the divergences between the standards applied by the European Court of Human Rights and those set by the United Nations treaties.

79. Mr. HOWARD (United Kingdom) said there was considerable debate in the United Kingdom on that complex issue. As no conclusion had yet been reached, it was difficult to add anything to the delegation's stated position, that the United Kingdom had no jurisdiction in Afghanistan or Iraq.

80. Mr. EL MASRY said that under United Nations rules any Occupying Power was accountable for its actions in the territories it occupied. The United Nations Legal Counsel had given an opinion on that question in respect of Israel. The opinion had been requested in the course of the travaux préparatoires for the Convention and had been taken into account in drafting the final version. In that light, he was in no doubt that the Convention could be deemed to apply in Iraq.

81. The CHAIRPERSON, on behalf of all the members of the Committee, commended the quality of the dialogue that had been conducted with the delegation. He thanked the delegation for attending in such numbers and for its very comprehensive replies to the questions put to it.

The meeting rose at 6 p.m.