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Chairman:

Mr. OPSAHL

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT: INITIAL REPORTS OF STATES PARTIES DUE IN 1977 (agenda item 4)
(continued)

Report of the United Kingdom (CCPR/C/1/Add.17) (continued)

1. Mr. LALLAH commended the United Kingdom Government for its initial report which, although submitted before the Committee had issued its guidelines on reporting, left very little to be desired in terms of coverage. The United Kingdom was perhaps the country with the most remarkable record in respect of decolonialization and promotion of the principle of self-determination.
2. The main theme he wished to take up in the context of his comments on the report was that of discrimination within the constitutional framework of the United Kingdom and within the perspective of the laws it had adopted to give effect to human rights. He was not among those who believed that the Covenant presupposed a particular type of constitutional system; for him, the most important question was the impact of any given system on the enjoyment of the basic rights embodied in the Covenant.
3. The constitutional framework of the United Kingdom consisted of a Parliament made up of two chambers, namely, the House of Commons and the House of Lords. Article 2, paragraph 1, of the Covenant prohibited discrimination on the grounds of a number of criteria, including birth, while article 25, (subparagraph (a)), guaranteed the right of every citizen to take part in the conduct of public affairs. He wished to know in what respects the constitutional system of the United Kingdom was or was not justifiable in the light of those two provisions, having regard to the fact that only persons of a certain class or birth could be members of the upper chamber as of right.
4. Because of its history and evolution, the United Kingdom had been very intimately connected with the history of a large number of countries that were now independent. It had adopted a policy of immigration that was highly commendable in every sense, with the result that part of its present population was of immigrant origin and, unfortunately, of different race and colour. He appreciated that the Government had done a great deal - inter alia through the enactment of the Race Relations Act - to ensure that that section of the population was not discriminated against or afforded treatment that was objectionable. However, he would like to know whether a person from that section of the population who was addressed as a "nigger", a "wog" or a "coon" would receive the kind of protection to which citizens were entitled given the assumption that those terms were highly derogatory and that a person addressed thus was subjected to degrading treatment. How many cases that were reported as breaches of the Race Relations Act were in fact prosecuted? It would appear that all such prosecutions stood a grave risk of being declared inadmissible because the conditions of proof were unnecessarily severe. If the legal provisions governing race relations were not effective, would the Government reconsider them with a view to improving the situation in that regard?
5. Having regard to the provisions of articles 3 and 23 of the Covenant, he asked what was the situation of a female citizen of the United Kingdom who married a foreign man as compared with that of a male citizen who married a foreign woman. Was there any discriminatory treatment in respect of residence or any of the other conditions conducive to making the family the natural and fundamental group unit of society which was entitled to protection by society and the State?

6. When constitutions had been drafted for dependent territories during the decolonization period, a number of inhabitants of those territories had been left in a somewhat uncertain situation with regard to their nationality, and there were a large number of individuals who, although born in countries like Kenya or Uganda, still held British passports. He wished to know whether such persons had an absolute right of entry into the United Kingdom. It was his understanding that great care had been taken, when drawing up more recent constitutions, to ensure that the inhabitants of the territories concerned had at least some guarantee of citizenship somewhere.

7. Turning to article 7 of the Covenant, he said that he would welcome information about the rules which regulated the treatment of prisoners. The type of situation he had in mind was that of the "blanket people" in Northern Ireland, who apparently refused to wear prison clothes, were forbidden under prison regulations to wear their own clothes and therefore wore the blankets they were given instead. There might be some justification for that provision; if so, he would like to be apprised of it.

8. With regard to paragraph 4 of the comments on article 17 (page 21), he asked what was the justification for any control that might be exercised over prisoners' correspondence, bearing in mind the provision of article 17, paragraph 1, of the Covenant.

9. Referring to the comments on article 10, he asked whether the procedure for the punishment of prisoners by the Governor or the Board of Visitors applied also in cases of criminal offences committed in prison such as, for example, an assault on a prison officer or another prisoner, or a drug offence. If the procedure was the same as for offences against discipline, was it in conformity with the provision of article 14, paragraph 1, that all persons charged with a criminal offence should be entitled to a fair and public hearing by a competent, independent and impartial tribunal?

10. With regard to the comments on article 9, paragraph 4 (page 8), he asked whether the United Kingdom Government considered that the remedy of habeas corpus was always sufficient to meet the requirements of the related Covenant provision. When a court considered a writ of habeas corpus, did it examine the lawfulness of detention in every respect, or was it content to pronounce upon whether the detention order had been made by the lawful authority? In the case of detentions made under regulations stemming from the Mental Health Act, was the discretion of the Home Office subject to review by the court?

11. Mr. GRAEFRAITH thanked the United Kingdom representative for his enlightening introductory statement and commended the Government for its detailed report and its willingness to co-operate with the Committee.

12. When it had ratified the Covenant, the United Kingdom Government had expressly stated to which of its colonies or dependent territories all or part of the Covenant would or would not apply. With the exception of Southern Rhodesia, which he would exclude from his comments, he asked whether that enumeration included all the dependent territories of the United Kingdom. Furthermore, the question arose whether it was possible to exclude any such territories from the application of all or part of the Covenant. The original draft prepared in 1955 had contained an article on territorial application which

stipulated that the Covenant's provisions should be applicable equally to all dependent territories. That article had subsequently been deleted because, as was stated in paragraphs 135 and 137 of the 1966 report of the Third Committee (A/6546), many representatives had considered that a clause prescribing the extension of the Covenant's provisions to the dependent territories of States parties was unnecessary and might be harmful, in view of the fact that the concept of colonial subjugation had been declared illegal and that any reference to such territories might therefore imply some kind of approval of an illegal practice. There had been wide agreement, however, that the absence of a territorial clause from the Covenant would not relieve an administering State from the duty to extend the benefits of the instrument's provisions to all its dependent territories. The question involved was not simply one of reservations; it raised the whole issue of colonialism and unequal treatment of people under colonial domination. Consequently, he regretted that the report under consideration concerned only the territory of the United Kingdom itself, and that the supplementary report on the so-called dependent territories would be submitted only at a later date and in a separate document; that procedure would make it difficult for the Committee to ascertain whether or not any discrimination existed in respect of application of the Covenant's provisions.

13. Paragraph 1 of the comments on articles 2 and 3 (page 2) contained a statement to the effect that the United Kingdom Government had reserved the right to apply to lawfully detained persons such laws and procedures as it might from time to time deem necessary for the preservation of custodial discipline. That reservation was couched in such broad terms that he wondered whether it was meant to derogate also from article 7 of the Covenant. A similar question arose in connexion with article 12, paragraph 4, in respect of which the United Kingdom had reserved the right to continue to apply such immigration control as it might deem necessary (page 15). While he did not question the right of any State to promulgate its own immigration laws, the reservation was so sweeping that there was some doubt as to whether it might not be extended, as far as immigration was concerned, to the prohibition of discrimination as set out in articles 2 and 26 of the Covenant. Such restriction of movement could be discriminatory in two ways: first, it affected in principle only the freedom of persons under British colonial rule who were not citizens of the United Kingdom; secondly, it treated people under British administration who were not citizens of the United Kingdom less favourably than aliens from countries of the western European community who, as he understood it, had free access to the United Kingdom. Accordingly, he would welcome detailed information on the practical aspects of the United Kingdom's immigration policy and, in particular, the extent to which the Covenant's provisions concerning the prohibition of racial discrimination were complied with in the framework of that policy.

14. At a previous meeting of the Committee, the issue of whether an individual could be punished for spoken or published words had been raised. It emerged from the introductory comments in the report and from the comments on articles 19 and 20 that such a practice was not unknown in the United Kingdom. However, no mention was made of racist organizations in that connexion, and he wished to know whether they too were prohibited.

15. The information provided on pages 2 and 29 of the report in respect of equality of rights and prohibition of discrimination was not very comprehensive. In particular, he would welcome further clarification of the situation in respect of equal rights of men and women. Were men and women equal in citizenship? Did existing legislation not provide for complete reciprocity in the obligations of spouses? To what extent did women participate in public life in the judiciary and other public institutions?

16. Having regard to the provisions of article 26, it would appear that protection of the law did not suffice to prevent discrimination in public life. For instance, the rate of unemployment seemed to be much higher for women than for men, in Scotland and Wales than in England, and for Catholics in Northern Ireland than for others. Accordingly, he would welcome further information on such legislation as the Race Relations Act of 1976, the special legislation concerning discrimination in Northern Ireland enacted in 1973, and the legislation relating to the private sector enacted in 1976. In particular, he would like to know why such legislation had been enacted and the results achieved through the application of its provisions.

17. Referring to paragraph 1 of the comments on article 7 (page 5), he asked whether corporal punishment of children, particularly in public schools, was lawful or possible.

18. He welcomed the detailed information on police regulations provided in paragraphs 3 and 4 of the comments on article 7 (pages 5 and 6), as well as the lengthy comments on article 10 (pages 8 to 13). As he understood it, new legislation had recently been enacted and a Royal Commission established on the question of ill-treatment of prisoners. He asked whether those steps had been taken as a reaction to the inhuman treatment commonly applied in Northern Ireland and what specific changes had been introduced to ensure that inhuman interrogation techniques were no longer applied.

19. With regard to paragraph 4 of the comments on article 8 (page 7), he requested additional information concerning the practice which made it possible to require a convicted person to perform unpaid work for not less than 40 or more than 240 hours.

20. It was stated in the comments on article 9, paragraph 2 (page 7) that "In general, an arrested person must be informed of the true ground of his arrest". What were the exceptions that seemed to be implied by the use of the term "in general"?

21. He was particularly interested in the system of bail applied in the United Kingdom and mentioned in the comments on article 9, paragraph 3, (page 8), since no such system existed in his country. Might not a system which made the release of a person awaiting trial dependent upon the amount of money to which he had access be in contradiction with articles 14 and 26 of the Covenant, which laid down that all persons should be equal before the law?

22. Turning to paragraph 7 of the comments on article 10, paragraph 1 (page 9), he requested further information about the regulations governing solitary confinement.

23. Paragraph 1 of the comments on article 13 (page 15) contained the statement that a person might be deported from the United Kingdom "if the Home Secretary deems his deportation conducive to the public good". He asked what was the exact meaning of that provision and how it was applied in practice. Furthermore, he would welcome some clarification concerning the last sentence of that paragraph, which did not appear to be entirely consistent with the wording used in the Immigration Act itself.

24. The language used in the first sentence of paragraph 1 of the comments on article 14, paragraph 1 (page 15) differed from that used in article 14 itself. He wondered whether that difference was significant, especially in view of the fact that the bail system made it impossible to treat all persons as equals before the court. He also wished to know whether the first sentence of the comments on paragraph 3(e) of that article (page 17) implied that an accused person would not be able to call the witnesses necessary for his effective defence unless he possessed sufficient financial resources. A similar problem arose in connexion with the procedure described in paragraphs 3, 4 and 5 of the comments on paragraph 6 (page 20); it would seem that a person who was not wealthy enough to bring civil proceedings against the public authority concerned would be obliged to accept an ex gratia payment. Concerning the impartiality of justice, he would welcome information about the social origin of judges and the financial resources which would need to be available to a person who wished to become a judge. With regard to the comments on article 14, paragraph 3(f), he said that the provision which required that only the evidence should be interpreted for a prisoner who was ignorant of the English language seemed to be much narrower than the right embodied in the Covenant.

25. Turning to paragraph 4 of the comments on article 18 (page 22), he said that it appeared to be necessary for parents to insist that children be excused from attendance at religious worship and instruction in school.

26. Finally, he regretted that the comments on article 4 (page 3) mentioned only the state of emergency declared in relation to Northern Irish affairs and provided no substantial information on measures which derogated from the obligations laid down in the Covenant and which might still be in force. Furthermore, no indication was given of the territorial application of the emergency measures, since the reference was not to "Northern Ireland" but to "Northern Irish affairs".

27. Mr. TARNOPOLSKY commended the United Kingdom Government for its very detailed and penetrating report. It was also gratifying to note that the Government had felt sufficiently devoted to the causes of the Covenant to accept the optional procedure under article 41.

28. With regard to article 1 of the Covenant, he asked what would be the position of the United Kingdom Government in a case where a people expressed the desire to exercise its right of self-determination but disposed of resources that were clearly inadequate to sustain independence. Would the Government feel obliged to grant independence and provide substantial aid, would it refuse to grant independence, or would it grant independence but not provide assistance?

29. Turning to article 2, he asked whether there would in practice be any possibility of restraining a parliament from contravening the Covenant, in a constitutional system which was based on parliamentary supremacy. If a person considered that the United Kingdom Parliament had enacted legislation which ran counter to the Covenant, what hope would he have of obtaining redress?

30. There were various ways in which an individual could seek to obtain enforcement of the remedies set out in article 2, paragraph 3. One method, which had been applied on occasion in the United States of America, was that of exclusion of evidence. In the United Kingdom, however, even evidence obtained illegally was admissible if it was relevant. It followed that an official who had contravened the Covenant would be able to produce such evidence, which would be taken into consideration in the court's decision. What sanctions could be taken in such a case? In practice, how effective was a tort remedy against an official who had infringed one of the rights protected by the Covenant?

31. Under article 4, the United Kingdom had derogated from some very important articles of the Covenant. Was that derogation broad enough to cover geographical areas other than the one in which the emergency existed with respect to any of the rights set out under the provisions mentioned in the comments on article 4?

32. Turning to paragraphs 3 and 4 of the comments on article 7 (pages 5 and 6), he asked how effective in practice was a police complaints tribunal which was run by the police itself. He would also like to know whether the rule described in paragraph 5 (page 6) applied also to tangible evidence obtained as a result of a confession which would be excluded because of its unlawfulness.

33. Referring to paragraph 7 of the comments on article 10, paragraph 1 (page 9), he requested information concerning the period of time for which solitary confinement could be renewed, as well as the number of renewals that could be ordered. With regard to paragraph 9 (page 10), he would welcome some clarification as to the scope of the word "refractory". Concerning paragraph 12 (pages 10 and 11), he asked whether force could be used directly against a prisoner and whether penalties under the Code of Discipline included corporal punishment upon the determination of the Home Secretary.

34. Referring to article 10 of the Covenant, he said that the comments made on page 10, paragraph 10, of the report did not seem to indicate whether prisoners had the right to counsel during disciplinary proceedings. He wondered whether the United Kingdom did not consider it important to introduce what were called "rules of natural justice" in Canada and "due process of law" in the United States in cases where prisoners were punished for offences against discipline.

35. The comments on article 11 of the Covenant (page 14) suggested that a person could be committed to prison for failure to pay certain rates, taxes, national insurance premiums and redundancy fund contributions. He wondered whether such imprisonment was possible pursuant only to a court judgment and why such debts did not come under the heading of contractual obligations.

36. With regard to article 14, paragraph 3(b), of the Covenant (page 16), he asked the representative of the United Kingdom to explain when the right to counsel arose and to describe the remedies available in cases where a person who had been arrested had been denied that right. The comments on article 14, paragraph 6, of the Covenant (pages 19 and 20 of the report) referred to ex gratia payments. He would like further information on such payments, because he had the impression that they were not enforceable and were not in conformity with the provisions of article 14, paragraph 6, of the Covenant.

37. In the comments on article 17 of the Covenant (page 21), it was not indicated whether the United Kingdom had any laws or regulations governing electronic surveillance, either by the authorities or by private individuals. He also requested the representative of the United Kingdom to provide specific examples of cases in which the authorities could carry out searches without a warrant.

38. The comments on article 18 of the Covenant (page 21, paragraph 2) contained the statement that "Freedom to manifest one's religion or beliefs is restricted by law only to the extent that this is necessary to secure public safety, order, health or morals or the rights of others". He would appreciate further information on the laws which provided for that kind of restriction.

39. On page 22, in paragraph (d) of the comments on article 19 of the Covenant, it was stated that radio and television programmes should not contain any matter "offensive to public feeling"; he requested the representative of the United Kingdom to explain the meaning of the words "public feeling". Referring to paragraph 1 of the comments on article 20 of the Covenant (page 23), he requested a similar explanation concerning the use of the words "disorder", "discontent or dissatisfaction". He also thought that the words "in the interests of the community as a whole" used in the comments on article 21 of the Covenant (page 23) required clarification.

40. Referring to the comments on article 26 of the Covenant (page 29), he said that, in his opinion, States parties had to enact laws prohibiting public or private discrimination in order to give effect to that article. The United Kingdom seemed to have met that requirement when it had adopted the Race Relations Act and the Sex Discrimination Act. With regard to the comment that "no person could be deprived of the equal protection of the law except by express legislation of Parliament", he asked whether any such legislation had ever been enacted and, if so, what it entailed.

41. Mr. PRADO VALLEJO commended the United Kingdom for the very complete and objective report it had submitted and for the introduction to the report given on the previous day.

42. In the very first paragraph of the report, it had been stated that the Covenant did not itself have the force of law in the United Kingdom. Moreover, in paragraph 2 of the comments on articles 2 and 3 of the Covenant (page 2), it had been stated that United Kingdom law did not confer a specific right of action in respect of the violation of any basic rights or freedoms as such. He requested the representative of the United Kingdom to clarify that statement.

43. Referring to the right to self-determination recognized in article 1 of the Covenant, he asked whether the United Kingdom had adopted a consistent policy that was applicable whenever the question of the right to self-determination arose. In that connexion, he noted that, in paragraph 2 of the comments on article 1 of the Covenant (page 2), it was stated that "proposals for constitutional advance" were under discussion in a number of the United Kingdom's remaining dependent territories. He asked whether those proposals were in fact being given serious consideration and what was actually being done to speed up the achievement of the right to self-determination by the United Kingdom's remaining dependent territories.

44. The comments on article 4 of the Covenant (page 3) contained a reference to the United Kingdom's reservations to certain articles of the Covenant, and he wished to know whether the United Kingdom was considering the possibility of withdrawing those reservations with a view to the implementation of article 2, paragraph 2, of the Covenant.

45. He would also appreciate further information on the comment made in paragraph 1 (3) of the report (page 5) relating to article 7 of the Covenant. In particular, he wondered whether there were any restrictions on the use of force by teachers against pupils.

46. The comments on article 18 of the Covenant (pages 21 and 22) indicated that freedom of religion could be restricted by law, when necessary, in order to secure public safety and order. He wished to know which laws in the United Kingdom provided for such a restriction and whether there were any remedies available to individuals who claimed that their freedom of religion had been violated.

47. Referring to the comments on article 19 of the Covenant (page 22), he asked how the authorities decided what persons or bodies should have access to the broadcasting media. If a citizen felt that his freedom of opinion had been violated, what remedies were available to him?

48. Lastly, he said he did not think that United Kingdom law, which, according to the comment on article 20 of the Covenant (page 23, paragraph 1), did not prohibit the distribution of propaganda for war, was in keeping with the requirement of article 20 of the Covenant.

49. Mr. HANGA thanked the representative of the United Kingdom for his introduction to his country's report, which contained a wealth of factual information on United Kingdom law and practice in the matter of the implementation of civil and political rights.

50. In the introductory part of the report, it was stated that, although the Covenant did not itself have the force of law in the United Kingdom, there were safeguards of various kinds which guaranteed the rights recognized in the Covenant. He nevertheless wished to know whether an individual who claimed that his rights had been violated could invoke the provisions of the Covenant in defending himself in court.

51. In paragraph 1 of the comments on articles 2 and 3 of the Covenant (page 2), it was explained that, in ratifying the Covenant, the Government of the United Kingdom had reserved the right to apply to members of the armed forces special rules for the preservation of service and custodial discipline. He would wish to know whether members of the armed forces were nevertheless entitled to take part in public life by voting and being elected to public office.

52. The comments on article 6, paragraph 1, of the Covenant (pages 3 and 4) stated that the taking of a person's life was a criminal offence, save in certain exceptional conditions, which included cases where the taking of life had occurred during the prevention of crime. He would like additional information on that statement since the report failed to indicate whether it applied to private individuals as well as the authorities.

53. He requested the representative of the United Kingdom to clarify the statement made in paragraph 1 of the comments on article 8 of the Covenant (page 6), namely, that "in cases of breach of contract the courts will not generally order specific performance". He wondered whether there had, in fact, been cases in which the courts had ordered such performance.

54. Paragraph 1 of the comments on article 9, paragraph 1, of the Covenant (page 7) referred to liberty of the person and freedom from arbitrary arrest and to the provision of the Magna Carta that "no free man shall be taken or imprisoned ... or in any way destroyed ... except by the lawful judgment of his peers ...". He asked the representative of the United Kingdom to explain whether United Kingdom law still provided for a system by which a person could be judged by his peers.

55. The comments on article 11 of the Covenant (page 14) described the cases in which a person could be committed to prison for failure to pay a debt, and he wondered whether a person who had been imprisoned for that reason would be able to work while serving his sentence and whether his earnings would be used to pay his debt.

56. Paragraph 2 of the comments on article 14, paragraph 1, of the Covenant (page 15) stated that "all criminal proceedings are conducted in public, with the exception of cases involving public security", in accordance with the Official Secrets Act of 1920. He asked the representative of the United Kingdom to explain whether his country's concept of public security had evolved in any way since 1920, particularly from the point of view of jurisprudence and administrative practice. Moreover, referring to paragraph 3 of the comments on article 14, paragraph 1, of the Covenant (page 16), he asked whether United Kingdom law provided for measures to ensure the independence of the judiciary.

57. He would also appreciate additional information on the competence of Parliament to enact ex post facto criminal legislation, which was referred to in the comments on article 15 of the Covenant (page 20).

58. With regard to the comments on article 23 of the Covenant (pages 24 to 26), which provided extensive information on the right to marry and the conditions for the termination of marriage, he asked whether a marriage concluded because of a mistake by one of the parties or by a third party could be declared void, and whether the matrimonial regime provided that both parties had the same rights and responsibilities with regard to property during marriage and upon termination of the marriage.

59. The comments on article 24 of the Covenant (pages 26 to 28) contained a great deal of information on the measures for the protection of children provided for in United Kingdom law. He would nevertheless like to have further details on the protection of unborn children under United Kingdom law.

60. Referring to paragraph 4 of the comments on article 25 of the Covenant (page 29), which described the "certificate of qualification" issued by the Civil Service Commissioners, he said he did not understand the requirement relating to the nationality of candidates and would appreciate further information on it.

61. He also requested the representative of the United Kingdom to explain whether the principle of equality before the law and of non-discrimination recognized in article 26 of the Covenant, and referred to on page 29 of the report, had been embodied in any written legislation in the United Kingdom. Near the end of page 29, it was stated that "no person could be deprived of the equal protection of the law except by express legislation of Parliament". He wondered whether any such legislation had, in fact, been enacted.

62. Mr. MOVCHAN thanked the representative of the United Kingdom for taking part in the Committee's work and enabling it to fulfil its obligations under the Covenant.

63. Referring in general to the report submitted by the United Kingdom, he said that he had had some difficulty in determining whether it met the requirements set out in the guidelines adopted by the Committee. Although part II of the guidelines requested States parties to provide information in relation to each of the articles of the Covenant and, in particular, information on legislative, administrative or other measures in force in regard to each right recognized in the Covenant, the United Kingdom report had referred only in a very general way to such measures. The Committee was interested in receiving information on specific laws and regulations which gave effect to the provisions of the Covenant and on the de facto situation of civil and political rights in the States parties concerned.

64. In support of his opinion that the United Kingdom report did not provide sufficiently detailed information, he noted that, in the comments on article 12 of the Covenant made on page 14 of the report, it was stated that domestic law did not "generally" permit any interference with the right of a person lawfully within

the United Kingdom to liberty of movement and freedom to choose his residence, and that domestic law did not "generally" permit any interference with the right of a person to leave the United Kingdom. He wished to know what the specific rules were and when exceptions to them were allowed. Paragraph 1 of the comments on article 13 of the Covenant (page 15) stated that "subject to certain exceptions", any person who did not have the right of abode but who was lawfully in the United Kingdom could be deported under the Immigration Act of 1971. He requested the representative of the United Kingdom to explain what those exceptions were. In the same paragraph, it had been stated that a person could be deported if his deportation was "conducive to the public good". The term "public good" was very vague and he would appreciate an explanation of its exact meaning.

65. With regard to the comments on article 12, paragraph 4, of the Covenant (page 15), to which the United Kingdom had made a reservation when it had ratified the Covenant, he requested the United Kingdom representative to explain when his country might deem it necessary to apply immigration controls in respect of persons who did not have the right of abode in that country. He thought that such controls might be rather arbitrary and wondered whether there was any possibility of appeal against them.

66. He had also found paragraph 3 of the introductory part of the report very difficult to understand. In particular, it was not easy to determine when the provisions of the Covenant were applicable to the territory of the United Kingdom as a whole and when they were applicable only to parts thereof.

67. With regard to the statement in the second paragraph on page 3 of the report to the effect that the situation relating to Northern Ireland constituted a public emergency within the meaning of article 4, paragraph 1, of the Covenant, he was not convinced that the events in question threatened the life of the nation. He would appreciate information on the juridical considerations that had influenced the decision to make derogations under article 4.

68. He drew attention to the statement on page 1 of the report that the rules of the legal system fell into two main categories, namely, rules prescribed by legislation and rules deduced from the decisions of courts of authority and, with regard to the latter rules, said he would appreciate information on how the Government ensured the incorporation of the provisions of the Covenant into domestic legislation. In that connexion, he recalled that, under article 2, paragraph 2, it was the State party and not the courts which undertook to take the necessary steps to give effect to the rights recognized in the Covenant. He asked what steps could be taken to ensure that the precedents created by the courts were in general in accordance with the spirit of the Covenant.

69. With regard to article 2, he noted that the report contained no information on the measures taken to ensure equality between men and women. Moreover, observing that the immigration of non-whites into the United Kingdom was regulated by law, he asked what steps were taken to ensure racial equality.

70. The information given concerning article 5 was not sufficiently clear, and he would like to know whether the limitations in question were based on legislation and how they were applied.

71. With regard to paragraph 3 (b) on page 4 of the report, he asked whether the abortion would be performed with the consent of the pregnant woman concerned.

72. In paragraph 1 (3) of the comments on article 7 (page 5), reference was made to the lawful correction of a child. He wished to know whether such a provision was not at variance with article 24, paragraph 1, of the Covenant. Moreover, referring to paragraphs 3 to 6 of the comments on the same article, he asked whether the police discipline code also applied to military personnel who used force to quell disorders and whether there were any limitations on their activities in that regard.

73. Referring to the comments on article 8, he asked whether there were any restrictions based on race with regard to employment.

74. Paragraph 4 of the comments on article 9 (page 8) referred to the writ of habeas corpus, and he wondered whether that remedy was in force in England, Scotland, Wales and Northern Ireland. Moreover, referring to the last paragraph on page 7, he asked in what cases a person could be taken into custody without a warrant. He noted the provision concerning bail, and asked whether account was taken of the financial situation of a person awaiting trial as it appeared that recourse to that remedy depended on his financial resources.

75. In his view, the statement "as far as this can reasonably be done" in the first sentence of the comments on article 10, paragraph 2 (a), (page 11), was not in keeping with the expression "save in exceptional circumstances" used in the article.

76. Referring to the last sentence in paragraph 1 of the comments on article 13 (page 15), he asked why it would be necessary to deport - against their wishes - the wife and children of a person who had already been deported. He also drew attention to the words "except where the decision has been taken personally by the Home Secretary in the interests of national security or for reasons of a political nature" in the second sentence in paragraph 2, and said he would welcome information on the political reasons in question. In addition, he wished to know whether the Home Secretary's actions in that regard were limited to any extent. Referring to the comments in the last sentence of paragraph 3 on page 16, he said he hoped details could be provided of the procedure followed in the appointment of judges and of the measures taken to ensure the independence of the judiciary.

77. With regard to the comments on article 15 (page 20), he would appreciate information on the possibility of enacting ex post facto criminal legislation, and stressed that such legislation should not provide for a heavier penalty than the one applicable at the time of the commission of the offence.

78. Referring to the first sentence of the comments on article 19 (page 22), he drew attention to an Act adopted in 1819 concerning blasphemy and sedition, and asked whether it was still in force. In the affirmative, that would constitute a restriction on the right to freedom of expression. He also noted that the sentence in question referred to statements likely to provoke a breach of peace and said he would welcome information on the subject, which involved an opinion and not an act.

79. The comments on article 20 (page 23) indicated that propaganda for war was not prohibited by law; it would be useful to know, however, whether racist propaganda was prohibited and whether racist associations existed in the United Kingdom. It was known that racism led to war and that it was, moreover, contrary to the provisions of article 26 of the Covenant.

80. Referring to the second sentence of paragraph 1 of the comments on article 24 (page 28) in which reference was made to the citizenship of the father, he requested information on the situation with regard to the citizenship of the mother. As to paragraph 4 on page 29, which set out the requirements for employment in the civil service, he drew attention to the last sentence and said that the nationality requirement did not seem to be in accordance with the provisions of the Covenant prohibiting discrimination on grounds of race.

81. Lastly, with regard to article 27 (pages 29 and 30), he asked for further details of the steps being taken to enable minorities to develop their own culture.

82. Mr. TOMUSCHAT expressed appreciation to the United Kingdom Government for its comprehensive report, and said he was gratified by its willingness to co-operate with the Committee by sending a representative to attend its meetings during the consideration of the report in question.

83. He noted from paragraph 2 of the introduction to the report that the legal rules concerning human rights derived both from legislation and from case law, and could not be succinctly and comprehensively enumerated. In view of the rather fragmentary character of case law, he concluded that it was highly probable that the substance of the Covenant was not entirely protected by the domestic legal rules of the United Kingdom. It would therefore have been advisable to confer upon the Covenant the legal force of statutory law. He agreed in principle that States were free to decide how they would discharge their international obligations. However, as States parties had undertaken, in article 2, to respect all the rights recognized in the Covenant, he considered that it should be possible, even in the United Kingdom, to invoke the provisions of the Covenant before tribunals and administrative agencies. In the absence of any constitutional provisions under which an act of Parliament designed to curtail such rights could be opposed, it would appear that machinery should be introduced to prevent their curtailment.

84. He asked whether Parliament would be prepared to accept advice from the Government concerning the compatibility of proposed draft legislation with the Covenant. One specific case of that nature that could arise was suggested by the

comments on article 15 (page 20), in which it was stated that Parliament was competent to enact ex post facto criminal legislation. That, surely, was an instance in which the Government should advise Parliament not to enact such legislation.

85. Turning to the question of the implementation of the Covenant, he asked whether it had been publicized in the collection of statutes, because the courts would presumably have to interpret domestic legislation in accordance with the provisions of the Covenant. Official publication was therefore required so that the text of the Covenant would be easily accessible.

86. He would welcome clarification of the comments on article 4 of the Covenant (page 3). The basic principle of derogation from the normal régime of the Covenant could hardly be called in question, for where extremist groups advocated the use of - and actually used - force, the State had an obligation under article 6 to protect innocent lives and property. However, the guarantees in question extended even to terrorists who, in spite of the wrongs they had committed, remained under the protection of the law. Although obstinate and blind to social values, they had not lost their human dignity and should be treated accordingly. The language of article 4 of the Covenant was quite clear in that respect.

87. With regard to the comments on article 9, he had been amazed at the statement in the first sentence of paragraph 2 on page 7 that, in general, an arrested person must be informed of the true ground of his arrest, and would welcome clarification.

88. Referring to the first sentence of the comments on article 9, paragraph 5 (page 8), he said that there should be a right of action not only for material damage but also for moral injury. Furthermore, he wondered whether the requirements of the Covenant were satisfied by granting the right of action only against an individual who had acted in an unlawful manner. In his opinion, such a right would never be as effective as the right of action against the State itself, since jurors would be reluctant to impose a heavy financial burden on an individual, and the liability for illegal acts should be assumed by the State.

89. He expressed surprise that, according to the first paragraph on page 13, a person aged 10 could be sentenced to detention. In his view, such detention could not benefit a child of that age and indeed was likely to make him become a hardened criminal.

90. With regard to the comments on article 12 (page 14), he would welcome further information on the precise scope of the exceptions in question. The problem should be viewed in conjunction with that of the protection of the family - a point covered by article 23 of the Covenant; if one member of the family had the right of residence in the United Kingdom, the other members should also be granted that right. Furthermore, spouses of different nationality should be treated on a footing of equality, irrespective of whether the husband or the wife was a United Kingdom citizen; that was an important aspect of the equality of sexes.

91. He would like to know, in connexion with the comments relating to article 13 (page 15), whether a due account was taken of the interests of the person concerned before an order of expulsion was issued. For example, a person might have resided in the United Kingdom for a considerable time, established a family and developed close ties in the country. Would those elements be balanced against the public interest?

92. Referring to the comments on article 14, he wondered whether ex gratia payments were in conformity with the provisions of the Covenant.

93. In his view the general formula "in the interests of the community as a whole" referred to in the comments on article 21 (page 23), should be made more specific, and would welcome additional information on the relevant rules.

94. Referring to the question of freedom of association (page 23), he asked whether a person was under any obligation to join a given association. The freedom of association was clearly protected by the provisions of the Covenant, and an obligation of that nature would constitute a far-reaching curtailment of personal freedom.

95. Mr. GANJI expressed his gratitude to the Government of the United Kingdom for its comprehensive report.

96. He agreed with the statement in the second sentence of the first paragraph that each State party was free to decide the method by which it gave effect to the rights recognized in the Covenant. So long as the provisions of the Covenant were complied with, the United Kingdom was not under a duty to incorporate the Covenant in its legislation. It was the factual situation that mattered.

97. On the question of dependent territories, he drew attention to the second sentence of paragraph 1 of the comments on article 1 (page 2), and expressed the view that there was no conflict between the United Kingdom's obligations under the Charter of the United Nations and those under the Covenant. In that connexion, he drew attention to the Declaration regarding Non-Self-Governing Territories in Article 73 of the Charter and the various relevant resolutions adopted by the United Nations with which the United Kingdom had complied. He noted from paragraph 2 that the United Nations had been kept fully informed of developments in that field, and thought it would be quite appropriate for the United Kingdom to submit a supplementary report to the Committee on progress made in its territories.

98. Judging from paragraph 4 of the comments on article 8 (page 7) it would appear that the practice of imprisonment with hard labour in the United Kingdom was not in conflict with the provisions of article 8, paragraph 3(c) of the Covenant. In that connexion, he referred to ILO Convention No. 105 concerning the Abolition of Forced Labour, which had come into force in 1959, and thought that it might be well, in accordance with article 40, paragraph 3, of the Covenant, to request the Secretariat to seek the views of the International Labour Organisation on whether there was any conflict between the relevant provisions of the Convention and the Covenant.

99. Referring to the comments on article 20, he said that the Covenant was quite clear in its prohibition of any advocacy of national, racial or religious hatred. The statement in the second sentence of paragraph 2 on page 23 was not as precise, and he would therefore welcome additional information on that point.

100. Lastly, he requested clarification of the expression "except by express legislation of Parliament" in the last sentence in the comments on article 26 (page 29).

The meeting rose at 6.15 p.m.