# United Kingdom Materials on International Law 2007

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1. This selection of UK materials on international law is made from published sources. It does not purport to include everything that could be of interest to an international lawyer but it is not wholly restricted to materials that could be called "state practice" in the strictest sense: some context is provided.

We have to make very considerable exclusions of material that we know would be of interest to some international lawyers. We bear in mind first, the need to avoid the purely ephemeral, and second, to exclude materials that are concerned mainly with the UK's implementation of the international law of co-operation, particularly at the general level. We are very sparing with matters of EU law, though we report some EU positions on questions of international law with which the UK is associated.

There is only limited material on UK treaties because the texts and explanatory memoranda are readily available on the web: **www.fco.gov.uk/treaties**.

Extracts are generally reproduced in their original form, which leads to inconsistencies, eg in spelling ("judgement"/"judgment") or capitalisation "UN charter" or designation ("Chapter Seven"/"Chapter VII"/"Chapter 7").

Introductory material is printed thus:

"The Foreign Secretary wrote to the FAC . . ."

Material from documentary sources is printed thus:

"We have signed a Memorandum of Understanding . . ."

We have inserted a small amount of editorial material in the form "[. . . Ed.]" where it appears to be helpful to do so.

Cross-references to previous editions of UKMIL are written, "See **UKMIL [2006] 16/1**".

2. Hansard references are to the Web version. There may be minor discrepancies between the column references in the Web edition and the bound volumes.

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References to Hansard are given in the following forms:

Commons—HC Deb 13 November 2001 Vol 374 c345 or c134W or c101WH or c1WS, where W, WH and WS stand for Written Answers, Westminster Hall and Written Statements;

Lords—HL Deb 8 October 2002 Vol 639 c222 or 16 October 2003 Vol 653 cWA125, where WA stands for Written Answer or HL Deb 29 January 2003 Vol 643 cGC170, where GC stands for Grand Committee.

3. Some sources are given as **www.fco.gov.uk.** These are references to Press Releases or Speeches on the FCO website. The appropriate link should be followed to the date given for the item in the text.

4. From its start in 1978 and up to and including 1996, the materials in UKMIL were classified on the basis of the *Model Plan for the Classification of Documents concerning State Practice in the Field of Public International Law* adopted by the Committee of Ministers of the Council of Europe in its Resolution (68) 17 of 28 June 1968. The Committee of Ministers considered that developments in public international law since 1968 made it necessary to amend the Model Plan. Accordingly, by Recommendation (97) 11 of 12 June 1997, it adopted an Amended Model Plan as a contribution by the Council of Europe towards implementing General Assembly Resolution 2099 (XX) on technical assistance to promote the teaching, study, dissemination and wider understanding of international law. The present issue of UKMIL is based on the 1997 Amended Model Plan.

5. We are glad to acknowledge the assistance of Joanna Foakes, Jonathan Drakeford and their colleagues in the Legal Adviser's Department of the Foreign & Commonwealth Office.

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## Part One: International Law in General

### Part One: I.A. *International Law in General: Nature, basis, purpose: In general*

**1/1**

In his speech at the Lord Mayor's Banquet on 12 November 2007, the Prime Minister said:

Tonight, I want to speak about Britain's unique place in the new world. And where, as a result, our responsibilities lie; how our national interest can be best advanced; and what we can achieve by working together internationally and by contributing to building the strongest and broadest sense of common purpose.

The new context

...

Our international institutions built for just 50 sheltered economies in what became a bipolar world are not fit for purpose in an interdependent world of 200 states where global flows of commerce, people and ideas defy borders. With such transformative change comes a clear obligation, but also a great opportunity, to write a new chapter—to set down for a new era a better 21st century way of delivering peace and prosperity.

Of course the first duty of Government—our abiding obligation—is and will always be the safety of the British people, the protection of the British national interest... Yet the timeless values that underpin our policies at home—our belief in the liberty of all, in security and justice for all, in economic opportunity and environmental protection shared by all—are also ideals that I believe that it is in our national interest to promote abroad. But we do so in a changing world where six new global forces unique to our generation are demonstrating our growing interdependence and pressing the international community to discover common purpose.

First, few expected when the adamantine certainties of the Cold War came to an end, we would have to address the constantly changing uncertainties of violence and instability from failed states and rogue states. The spread of terrorism has destroyed the old assumption that states alone could access destructive weapons. As dramatic in a different way is a third force for change: global flows of capital and global sourcing of goods and services have brought the biggest shift of economic power since the industrial revolution—the rapid emergence of India and China as global powers with legitimate global aspirations. The new frontier is that there is no frontier.

The unprecedented impact of climate change transforms the very purpose of government. Once quality of life meant the pursuit of two objectives: economic growth and social cohesion. Now there is a trinity of aims: prosperity, fairness and environmental care. And as energy supplies are under pressure there is a new global competition for natural resources. New global forces at work—from pandemics to worldwide migration—make the task of overcoming the great social evils of hunger, illiteracy, disease, squalor and poverty even more challenging. And if, as Tom Friedman has written, the defining image of the 20th

century was a wall representing division, the defining image of the 21st is a web championing connections—a world where we can rightly now talk not just of the wealth of nations but the wealth of networks. The web cannot be controlled in the end by any single force or any single leader. And what happens within it cannot be predicted from day to day.

. . . And because our world is now so connected and so interdependent it is possible in this century, for the first time in human history, to contemplate and create a global society that empowers people.

Why do I believe this is not only possible but essential? Because we cannot any longer escape the consequences of our interdependence. The old distinction between 'over there' and 'over here' does not make sense of this interdependent world. For there is no longer an 'over there' of terrorism, failed states, poverty, forced migration and environmental degradation and an 'over here' that is insulated or immune. Today a nation's self interest today will be found not in isolation but in cooperation to overcome shared challenges. And so the underlying issue for our country—indeed for every country—is how together in this new interdependent world we renew and strengthen our international rules, institutions and networks. My approach is hard-headed internationalism:—internationalist because global challenges need global solutions and nations must cooperate across borders—often with hard-headed intervention—to give expression to our shared interests and shared values;—hard-headed because we will not shirk from the difficult long term decisions and because only through reform of our international rules and institutions will we achieve concrete, on-the-ground results.

Building a global society means agreeing that the great interests we share in common are more powerful than the issues that sometimes divide us. It means articulating and acting upon the enduring values that define our common humanity and transcending ideologies of hatred that seek to drive us apart. And critically—and this is the main theme of my remarks this evening—we must bring to life these shared interests and shared values by practical proposals to create the architecture of a new global society.

. . . I believe that Europe and America have the best chance for many decades to achieve historic progress ----

- working ever more closely together on the project of building a global society;
- and helping bring in all continents, including countries today outside the G8 and the UN Security Council, to give new purpose and direction to our international institutions.

. . .

A new framework for security and reconstruction

Today, there is still a gaping hole in our ability to address the illegitimate threats and use of force against innocent peoples. It is to the shame of the whole world that the international community failed to act to prevent genocide in Rwanda. We now rightly recognise our responsibility to protect behind borders where there are crimes against humanity.

But if we are to honour that responsibility to protect we urgently need a new framework to assist reconstruction. With the systematic use of earlier Security Council action, proper funding of peacekeepers, targeted sanctions—and their ratcheting up to include the real threat of international criminal court actions—we must now set in place the first internationally agreed procedures to prevent breakdowns of states and societies.

...

There are many steps the international community can assist with on the ladder from insecurity and conflict to stability and prosperity. So I propose that, in future, Security Council peacekeeping resolutions and UN Envoys should make stabilisation, reconstruction and development an equal priority; that the international community should be ready to act with a standby civilian force including police and judiciary who can be deployed to rebuild civic societies; and that to repair damaged economies we sponsor local economic development agencies ---- in each area the international community able to offer a practical route map from failure to stability.

...
(www.number-10.gov.uk/output/Page13736.asp)

## Part Two: Sources and Codification of International Law

**Part Two: I.A**. *Sources and Codification of International Law—Sources of international law—Treaties*

**2/1**
In answer to a question about global warming, the Environment Secretary said:

It is only through the UN and United Nations Framework Convention that we can have legally binding treaty obligations. All the work that is being done through the European Union, the Group of Eight and the Gleneagles dialogue is vital preparatory work, but in the end it must be in the UN forum that we make progress.

(HC Deb 8 March 2007 Vol 457 c1662)

**Part Two: II:** *Source and Codification of International Law—Codification and progressive development of international law*

**2/2**
The FCO Legal Adviser made the following statement to the UNGA Sixth Committee on 30 October 2007:

It is of course important that all States take the opportunity to engage with the Commission, and to assist the Commission with its work. The conduct of States

is the pivot around which the work of the Commission operates, whether it is codification or progressive development.

. . . it is of course also important that the Commission reflects the contribution of States, not in the sense of adopting the views of any one State, but in the sense of seeking the views of States and of addressing those views in its work. While the Commission is usually attentive to this responsibility, and does seek the contribution of States, this has not always been the case. On occasion, even under the current work programme, it is not always clear, on every topic, that the Commission is addressing the comments of States. We can of course appreciate the desire of Special Rapporteurs and of the Commission more generally to make progress with its work. It is important, however, that the Commission proceeds in step with the community to which it is speaking. In this regard, the working methods of the Commission will also stand as an exemplar for the practice of other bodies that are engaged in similar endeavours, even in different areas, such as the International Committee of the Red Cross, which engages actively in the codification and progressive development of international humanitarian law . . .

(Text supplied by FCO)

**2/3**
(See also **6/21**)
The FCO Legal Adviser made the following statement to the UNGA Sixth Committee on 30 October 2007:

Turning finally to chapter VI of the ILC Report [Fifty-ninth session, A/62/10, Ed.], on the topic of expulsion of aliens. We thank the Special Rapporteur, Mr Maurice Kamto, for his Third Report. This is a difficult and complex subject, and one with which many countries, including the United Kingdom, are having to grapple on a daily basis.

As the Commission's work on this topic progresses, it is becoming increasingly clear to the United Kingdom that this is a problematic issue for the Commission to address at the present time. Indeed, we have come to the view that this is not yet a suitable topic for codification. The United Kingdom does not believe that the law on this topic—in its present form—can be consolidated or codified, given the numerous political and legal sensitivities and difficulties which surround these issues. We note that several members of the Commission have also expressed this view, and have observed that it is more suited to political negotiation than codification by an expert body.

The United Kingdom also agrees with the comment made by some members of the Commission during the debates on this topic that the issue of expulsion of aliens is mainly governed by national laws, subject, of course, to respect for the relevant rules of international law. Another of the inherent difficulties with this topic is that different States have different international obligations concerning the expulsion of aliens.

The United Kingdom also notes that the issue of expulsion of aliens is one which is being discussed in various regional fora. The many political and legal difficulties in this topic are increasingly plain from these discussions. Whether

a solution to these difficulties can be found which could form the basis of wider international work remains to be seen. For the moment, the United Kingdom can only emphasise its strong doubts about whether now is the right time for an effort to codify and consolidate the law in this area.

The United Kingdom considers that one way in which to proceed would be for the Commission's work on this topic to take the form of a study of State practice on the issue of expulsion of aliens, without attempting to codify that practice.

(Text supplied by FCO)

**2/4**
(See also **5/45**)
The UK representative made the following statement to the UNGA Sixth Committee on 23 October 2007:

The Sixth Committee and the General Assembly have considered the future of the Articles [on State Responsibility] on two occasions. In 2001, at its fifty-sixth session, the General Assembly welcomed the Articles in Resolution 56/83, the text of which was annexed to the resolution, and 'commend[ed] them to the attention of Governments without prejudice to the question of their future adoption or other appropriate action'. Three years later, at its fifty-ninth session in 2004, in Resolution 59/35, the General Assembly postponed further consideration of the final form of the Articles until the sixty-second session of the General Assembly in 2007.

The United Kingdom is of the view that the action of the General Assembly in 2001 in commending the Articles to the attention of Governments was the right course of action to adopt, and that no further action was necessary or desirable. The United Kingdom is also of the view that the General Assembly's action in 2004 to commend them to the attention of Governments, without prejudice to the question of their future adoption, was the right course. For the reasons set out in our written comment to the Secretary-General in January this year [see below], and which are reproduced in UN Doc A/62/63 dated 9 March 2007, this remains our firmly held opinion. It suffices to summarise the reasons for the United Kingdom's view.

First, reaching agreement on the text of the Articles was not easy, and required intense negotiation and compromise. Consequently, the text of the Articles in its entirety is not wholly satisfactory to any State. Nevertheless, States generally have accepted the Articles in their current form. At present, many of the Articles reflect an authoritative statement of international law and have been referred to by international courts and tribunals, writers and, more recently, domestic courts. As is evidenced by the Report by the Secretary-General dated 1 February 2007 containing the Compilation of Decisions of International Courts, Tribunals and Other Bodies (UN Doc A/62/62), and also a more recent study undertaken by the British Institute of International and Comparative Law, which is available on the British Institute's website, the Articles have gained widespread recognition and approval. Many States, including the United Kingdom, regularly turn to the Articles and the commentaries as guidance on issues of State responsibility that arise in day-to-day practice.

Second, it is difficult to see what would be gained by the adoption of a convention. Resolution 56/83 provided the Articles with a firmer standing than if they had not been annexed, and Resolution 59/35 enhanced this standing. The Articles are already proving their worth and are entering the fabric of international law through State practice, decisions of courts and tribunals, and the writings of publicists. They are referred to consistently in the work of foreign ministries and other government departments. The impact of the Articles on international law is likely only to increase with time, as is demonstrated by the growing number of references to the Articles in recent years.

Finally, the United Kingdom considers that there is a real risk that in moving toward the adoption of a convention based on the Articles, old issues may be reopened. Our view remains that any move at this point towards the crystallisation of the Articles in a treaty text would raise a significant risk of undermining the carefully constructed balance represented by the scope and content of the Articles. The danger is therefore that if the negotiation of a treaty is forced at this stage, any text emerging is unlikely to enjoy the wide support currently accorded to the Articles. If few States were to ratify a convention, that instrument would have less legal force than the Articles as they now stand, and may stifle the process of development and consolidation of the law that the Articles in their current form have set in train. In fact, there is a significant risk that a convention with a small number of participants may serve to undermine the current status the Articles have achieved, and may be a 'limping' convention, with little or no practical effect.

Accordingly, the United Kingdom considers that it would be sensible and appropriate to take no further action on the Articles, leaving them to exert a growing influence through state practice and jurisprudence.

The written comments referred to above:

3. The United Kingdom is of the view that the action of the General Assembly in 2001 in commending the draft articles to the attention of Governments was the right course of action to adopt, and that no further action was necessary or desirable. For the reasons set out below, this remains our firmly held opinion. We understand that other States share this view.

4. Reaching agreement on the text of the draft articles was not easy, and required intense negotiation and compromise. Consequently, the text of the draft articles in its entirety is not wholly satisfactory to any State. It is well known within the Sixth Committee that the United Kingdom has some concerns regarding certain provisions of the draft articles. Of course, some aspects of the draft articles are more controversial than others.

5. Despite this, States generally have accepted the draft articles in their current form. At present, the draft articles reflect an authoritative statement of international law and have been referred to by international courts and tribunals, writers and, more recently, domestic courts. As is evidenced by the table set out in section III of the present document, since 2001 the draft articles have gained widespread recognition and approval. Many States, including the United Kingdom, regularly turn to the draft articles and the commentaries as guidance on issues of State responsibility that arise in day-to-day practice. Interestingly, reliance on the draft articles is not restricted to generally accepted provisions.

As is seen in section III, reference has also been made to more controversial articles, including those concerning countermeasures and violation of peremptory norms.

6. It is difficult to see what would be gained by the adoption of a convention. Resolution 56/83 provided the draft articles with a firmer standing than if the draft articles had not been annexed, and resolution 59/35 enhanced this standing. The draft articles are already proving their worth and are entering the fabric of international law through State practice, decisions of courts and tribunals and writings. They are referred to consistently in the work of foreign ministries and other Government departments. The impact of the draft articles on international law will only increase with time, as is demonstrated by the growing number of references to the draft articles in recent years.

7. This achievement should not be put at risk lightly. The United Kingdom considers that there is a real risk that in moving towards the adoption of a convention based on the draft articles old issues may be reopened. This would result in a series of fruitless debates that may unravel the text of the draft articles and weaken the current consensus. It may well be that the international community is left with nothing. Our view remains that any move at this point towards the crystallization of the draft articles in a treaty text would raise a significant risk of undermining the currently held broad consensus on the scope and content of the draft articles. Accordingly, we consider that it would be sensible and appropriate to take no further action on the draft articles at this point.

8. Even were a text to be agreed, it is unlikely that the text would enjoy the wide support currently accorded to the draft articles. The Commission's work on State responsibility differs from the more discrete and specific subject matter of other topics, in that the draft articles are a common thread running through all State practice and will have implications for a vast number of international legal issues. This is already evident in the wide range of areas in which references to the draft articles are occurring, from traditional areas of international law such as the use of force, to human rights and international trade law. For many States, including the United Kingdom, there is a difference between noting and utilizing the work of the Commission, even though there may be some concern as to certain elements, and signing up to a convention that would be binding upon the State in all aspects. If few States were to ratify a convention, that instrument would have less legal force than the draft articles as they now stand, and may stifle the development of the law in an area traditionally characterized by State practice and case law. In fact, there is a significant risk that a convention with a small number of participants may have a de-codifying effect, may serve to undermine the current status of the draft articles and may be a "limping" convention, with little or no practical effect.

9. The preferable course of action is to take no further action on the draft articles, leaving the draft articles to exert a growing influence through State practice and jurisprudence. The United Kingdom is aware, however, that other States do not share this view, favouring instead the adoption of a convention based on the draft articles. Given the risks, we would urge those States to reconsider, having regard to the possible consequences of moving towards a convention.

(UN Doc A/62/63, 9 March 2007)

**2/5**
(See also **6/4**)
The UK representative made the following statement to the UNGA Sixth Committee on 19 October 2007:

As is evident from the commentaries to the draft articles [Report of the ILC's fifty-eighth session, 2006, A/61/10, pp. 22–100, Ed.] diplomatic protection is a long established area of international law and there exists a large body of State practice on much of the subject-matter covered by the draft articles. The topic has remained largely uncodified, with development achieved through State practice and the decisions of international courts and tribunals.

The United Kingdom notes the recommendation of the Commission that Governments move toward the adoption of a convention based on the text of the draft articles. However, the United Kingdom would prefer, for various reasons, that member States pause for a period of reflection before making any decision about the negotiation of such a convention.

First, the Commission's draft articles are still relatively new. They and their commentaries were only recently made available to Governments, and it remains the case that we have not had sufficient time to go through the necessary process of extensive study and consultation within Government on the text and the commentaries. Further, as the United Kingdom has noted on a number of occasions, there are also important elements of the draft articles that constitute proposals for the development of new law, for example, article 8 on the diplomatic protection of stateless persons and refugees. While the United Kingdom may be willing to accept some of these elements as a desirable direction for the development of customary international law, we are not so comfortable with other aspects. Among the latter aspects, we are concerned with the inclusion of the new article 19, entitled 'recommended practice'. It is the view of the United Kingdom that the inclusion of this article risks undermining well-established rules of customary international law. For these reasons that the United Kingdom considers that further time is needed for Governments to become familiar with the draft articles before deciding on any future action.

Second, the United Kingdom notes the comment of the International Law Commission's Special Rapporteur, John Dugard, who observed in his Seventh Report on Diplomatic Protection that the fate of the draft articles is closely bound up with that of the ILC's Articles on State Responsibility. The United Kingdom concurs in that assessment, and considers that so long as no decision is made about elaborating a convention on State responsibility, any decision to do so for the draft articles on diplomatic protection would be also premature.

Third, and finally, the relative novelty of these draft articles means that we have not had the opportunity to put the articles to the test of practical application in State practice or in the decisions of international courts and tribunals. The United Kingdom considers that postponing any decision on the future of the draft articles would permit them to be consolidated and refined through their application in State practice and by international courts and tribunals.

(Text supplied by FCO)

**2/6**
The UK representative made the following statement to the UNGA Sixth Committee on 22 October 2007 on the matter of international liability in case of loss from transboundary harm arising out of hazardous activities:

As the United Kingdom has previously stated, it is generally satisfied with the overall direction of the work of the Commission and the Special Rapporteurs on this topic (UN Doc A/CN.4/516 of 3 April 2001). With regard to the Commission's work on the first part of this topic, the United Kingdom welcomes the draft articles on 'Prevention of Transboundary Harm from Hazardous Activities' (UN Doc A/CN.4/L.601 of 3 May 2001). At this stage, the United Kingdom sees little need for the conclusion of a convention in this respect, as in our view there are a number of sectoral and regional instruments governing issues of harm from hazardous activities by which we are already bound. However, if other States are firmly convinced of the added value of a convention based on the Commission's work, we are prepared to consider the matter with an open mind. As for the second part of the Commission's work on this topic, the United Kingdom also agrees with the Commission's approach in concluding that the outcome of its work should be adopted as non-binding draft principles (UN Doc A/CN.4/562/Add.1 of 12 April 2006).

(See also **UKMIL [2006] 13/1**)

(Text supplied by FCO)

## Part Three: The Law of Treaties

### Part Three: I.B. *The law of treaties—definition, conclusion, and entry into force—conclusion, including signature, ratification, and accession*

**3/1** Text of Explanatory Memorandum for Treaty of Amity and Co-operation in South East Asia (01/07/07) Cm 7196

Subject Matter

The Treaty of Amity and Co-operation in Southeast Asia (TAC) binds together the 10 countries of the Association of Southeast Asian Nations (ASEAN) (Burma, Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand and Vietnam).

The original Member States of ASEAN signed the Treaty on 24 February 1976 and it entered into force on 21 June 1976. Its purpose is to promote peace, stability and co-operation in Southeast Asia. The TAC contains provisions to enhance co-operation in economic, trade, social and scientific matters. The TAC also contains the principle of non-interference in the internal affairs of one another as well as the mutual respect for sovereignty, territorial integrity and national identity of all nations. The TAC is essentially a political declaration of intent in these areas in a treaty format, however the UK would not be required to change any existing laws or practices.

While the TAC was originally designed to apply only to States within the Southeast Asian region, it was amended in 1987 to allow for States outside the region to accede to it. States outside the region that have acceded to the TAC are: Papua New Guinea, China; India; Japan; Pakistan; Republic of Korea; the Russian Federation; Mongolia; New Zealand; Australia; East Timor; France.

In July 2006 EU Member States agreed to initiate proceedings towards the accession of the EU and the European Community to the TAC. However the TAC will first need to be amended further to allow for the accession of non-states. It is therefore unlikely that EU and EC accession will take place before the end of the year. As stated above, France has already acceded to the TAC bilaterally.

...

(3) Reservations and Declarations

On accession to the TAC, the UK will write to the Chair of ASEAN formally recording our understanding of the TAC. This ensures that UK accession to the TAC will not affect the UK's rights and obligations under other bilateral or multilateral agreements, that the TAC is to be interpreted in conformity with the principles of the UN Charter and that the TAC will not apply to, nor affect the UK's relationship with States outside Southeast Asia.

Consultations

Relevant UK government departments were consulted regarding UK accession to the TAC, no objections were raised. ASEAN Member States were consulted through the Philippines as Chair of the ASEAN Standing Committee who has extended a formal invitation for the UK to accede to the TAC.

Presented to Parliament July 2007

(Treaty Series No. 34 (2006) Fourth Supplementary List of Ratifications, Accessions, Withdrawals, etc., for 2006 Cm 7159)

## **Part Three: I.C.** *The law of treaties—definition, conclusion, and entry into force—reservations, declarations, and objections*

### 3/2

The Attorney-General was asked by the Constitutional Affairs Committee about his decision to terminate a corruption investigation on grounds of national security. He said:

My view in relation to that is very clear. I do not believe that the OECD Convention prevents any country which has signed up from having regard to something so fundamental as national security. I do not believe we would have signed up to this Convention if we believed that we could not have regard to national security. Put on one side commercial considerations, ordinary diplomatic relations, I do not believe we would have signed up to it. I would be

astonished if any country would have signed up to it on that basis and there is absolutely nothing in the Convention which says, certainly explicitly, that you cannot. So I do not believe that national security is something you cannot take into consideration at all. [Q.26]

He was then asked:

The problem with that is that a definition of national security which is that broad would undermine the international relations part of the Treaty itself?

He said:

I do not know, if I may say so, why you regard it as so broad. The details . . . why Saudi Arabian cooperation in the counter-terrorism field is regarded by those who understand it as so important. That is not a broad definition of national security, that is really quite a narrow definition of national security, recognising security to citizens in this country and to others within our shores. [Q.27]

He went on:

I absolutely stand where I am in relation to this and where the Director is. The Convention took a very important step, which we entirely support, that countries should not have regard to commercial considerations in determining investigation or prosecution and what I would term "general relations" with another state. It is no use saying just, "Well, if we prosecute in this case they will get upset with us," in a sort of very general sense, but I do not accept that we would have signed up to that Convention if the effect was that there is a case in which national security would be put at jeopardy—the way, for example, the Prime Minister has spoken about it—and that is something that we simply cannot regard. We have to say, "We have signed up to put our citizens' lives at risk," particularly against an uncertain, or in my view a case which would never have gone ahead. [Q.31]

(Constitutional Affairs Committee, The Constitutional Role of the Attorney-General, Evidence 7 February 2007, HC 306-i))

## 3/3

The representative of the UK made the following statement to the UNGA Sixth Committee on 2 November 2007:

I will turn first to chapter IV of [the ILC Report, Fifty-ninth session, A/62/10, Ed.], on reservations to treaties . . .

The United Kingdom notes that the Commission considered and provisionally adopted nine draft guidelines during its session for 2007. The first of the draft guidelines, guideline 3.1.5, states that: 'A reservation is incompatible with the object and purpose of the treaty if it affects an essential element of the treaty that is necessary to its general thrust, in such a way that the reservation impairs the raison d'être of the treaty.' Draft guideline 3.1.6 goes on to give guidance on the determination of the object and purpose of the treaty. The United Kingdom has previously expressed its scepticism about the exercise of defining the concept of the 'object and purpose' of the treaty in an abstract way, and has wondered

whether the search for object and purpose is necessarily identical in different contexts. The Commission's commentary to draft guideline 3.1.5 highlights that the phrase 'object and purpose' is used in no less than eight different provisions of the Vienna Convention on the Law of Treaties, none of which provide any particular 'clues' as to the meaning of the concept. We note that the Commission has indicated that this draft guideline indicates a 'direction' rather than establishing a clear criterion that can be directly applied in all cases. We would agree with the Commission's view that identifying the object and purpose is a question of interpretation, and we commend the Commission for having adopted the flexible approach encapsulated in draft guidelines 3.1.5 and 3.1.6.

The United Kingdom has also previously expressed doubts about draft guidelines 3.1.7 to 3.1.13. Having now had a further opportunity to review these, together with the commentaries, we agree with draft guideline 3.1.7, on vague or general reservations. As for draft guideline 3.1.8, on reservations to a provision reflecting a customary norm, we are not convinced by the first paragraph, which provides that the fact that a treaty provision reflects a customary norm is a pertinent factor in assessing the validity of a reservation. As we said in our observations on the Human Rights Committee's General Comment No 24, 'there is a clear distinction between choosing not to enter into treaty obligations, and trying to opt out of customary international law.' We do, however, agree with the second paragraph of that draft guideline, which states that such a reservation does not affect the binding nature of the relevant customary norm, which shall continue to apply.

With respect to draft guideline 3.1.12, the United Kingdom does not agree that human rights treaties should be treated any differently than other international agreements. As we said in our comments to the Sixth Committee last year, and also in the previous year, it is the United Kingdom's firmly held view that reservations to normative treaties, including human rights treaties, should be subject to the same rules as reservations to other types of treaties. We see no legal or policy reasons for treating human rights treaties differently. Any suggestion that special rules on reservations may apply to treaties in different fields, such as human rights, would not be helpful. It should not be forgotten that the law on reservations to treaties owes its origin to the Advisory Opinion of the International Court of Justice of 28 May 1951 on Reservations to the Genocide Convention.

As regards draft guideline 3.1.13, on 'Reservations to treaty provisions concerning dispute settlement or the monitoring of the implementation of a treaty', the United Kingdom observes that this draft guideline may be redundant. This is because it merely confirms that such reservations are to be assessed in accordance with their compatibility with the object and purpose of the treaty in question, which should already be apparent from the content of draft guidelines 3.1.5 and 3.1.6.

(Text supplied by FCO)

## 3/4
International Convention for the Suppression of the Financing of Terrorism Adopted New York 09 Dec,. 1999 028/2002 Cm 5550

Note-

On 03 August 2006, the Secretary–General of the United Nations, as depositary, received from the government of the United Kingdom, an Objection to the declaration made by Bangladesh upon accession 1, as follows:

"The Government of the United Kingdom of Great Britain and Northern Ireland have examined the understanding of the International Convention for the Suppression of the Financing of Terrorism made by the Government of the People's Republic of Bangladesh at the time of its accession to the Convention. The Government of the United Kingdom consider the understanding made by Bangladesh to be a reservation that seeks to limit the scope of the Convention on a unilateral basis.

The Government of the United Kingdom objects to the aforesaid reservation."

[Bangladesh's Understanding reads as follows:

"[The] Government of the People's Republic of Bangladesh understands that its accession to this Convention shall not be deemed to be inconsistent with its international obligations under the Constitution of the country.", Ed.]

(Treaty Series No. 34 (2006) Fourth Supplementary List of Ratifications, Accessions, Withdrawals, etc., for 2006 Cm 7159)

**3/5**

On 28 February 2007, the Secretary-General of the United Nations, as depositary, received an objection from the government of United Kingdom, as follows;

"The Government of the United Kingdom have examined the reservations made by the Government of the Sultanate of Oman to the Convention on the Elimination of all Forms of Discrimination Against Women (New York, 18 December 1979).

In the view of the Government of the United Kingdom a reservation should clearly define for the other States Parties to the Convention the extent to which the reserving State has accepted the obligations of the Convention. A reservation which consists of a general reference to a system of law without specifying its contents does not do so. The Government of the United Kingdom therefore object to the Sultanate of Oman's reservation from all provisions of the Convention not in accordance with the provisions of the Islamic Sharia and legislation in force in the Sultanate of Oman.

The Government of the United Kingdom further object to the Sultanate of Oman's reservations from Article 15, paragraph 4 and Article 16 of the Convention.

These objections shall not preclude the entry into force of the Convention between the United Kingdom of Great Britain and Northern Ireland and Oman."

[Oman has entered the following reservations:

1. All provisions of the Convention not in accordance with the provisions of the Islamic sharia and legislation in force in the Sultanate of Oman;

2. Article 9, paragraph 2, which provides that States Parties shall grant women equal rights with men with respect to the nationality of their children;

3. Article 15, paragraph 4, which provides that States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile;

4. Article 16, regarding the equality of men and women, and in particular sub-paragraphs (a), (c), and (f) (regarding adoption).

5. The Sultanate is not bound by article 29, paragraph 1, regarding arbitration and the referral to the International Court of Justice of any dispute between two or more States which is not settled by negotiation, Ed.]

(First Supplementary List of Ratifications, Accessions, Withdrawals, etc., for 2007 Cm 7258)

## **Part Three: I.D.** *The law of treaties—definition, conclusion, and entry into force—provisional application, and entry into force*

### 3/6

(See also **19/29**)

Extradition Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America with Exchange of Notes, Washington, 31 March 2003

EXCHANGE OF NOTES

No. 1

The Home Office to the Embassy of the United States of America in London

Your Excellency

I have the honour to refer to the Extradition Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America signed at Washington on 31 March 2003 hereinafter "the 2003 Treaty"). The United Kingdom has completed the steps necessary under its law to implement the 2003 Treaty in the United Kingdom, and in Jersey, but not in Guernsey or the Isle of Man.

In order to permit entry into force of the 2003 Treaty without further delay, I have the honour to propose that the United Kingdom and the United States proceed with an early exchange of instruments of ratification. Having regard however to the need to complete the necessary steps in both Guernsey and the Isle of Man, the Government of the United Kingdom is not yet able to apply the 2003 Treaty in respect of those Dependencies. I therefore have the honour

to propose that the 2003 Treaty be suspended in its application to Guernsey and the Isle of Man until the Government of the United Kingdom should notify the Government of the United States of America by Diplomatic Note that the steps necessary for its implementation in respect of Guernsey and the Isle of Man have been completed.

Notwithstanding any provision to the contrary in the 2003 Treaty, the Extradition Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America signed at London on 8 June 1972 and the Supplementary Treaty signed at Washington on 25 June 1985, as amended by an Exchange of Notes signed at Washington on 19 and 20 August 1986, will continue to apply to Guernsey and the Isle of Man until such time as the 2003 Treaty is no longer suspended with respect to those Dependencies.

If the forgoing proposals are acceptable to the Government of the United States of America, I have the honour to propose that this Note and Your Excellency's reply in that sense shall constitute an agreement between the two Governments concerning the 2003 Treaty.

No.2

The Embassy of the United States of America in London to the Home Office

Your Excellency

I have the honour to acknowledge receipt of your Note dated 26 April 2007 Referring to the Extradition Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America signed at Washington on 31 March 2003. Your Note reads as follows:

[As in No.1]

I am pleased to confirm that your proposals are acceptable to the Government of the United States of America and that your Note and this reply shall constitute an agreement between the two Governments concerning the 2003 Treaty and that this agreement shall enter into force today.

(Treaty Series No. 34 (2006) Fourth Supplementary List of Ratifications, Accessions, Withdrawals, etc., for 2006 Cm 7159 [Instruments of Ratification were exchanged on 26 April 2007 and the Treaty entered into force on 26 April 2007])

## 3/8
## International Convention for the Suppression of Terrorist Bombings, New York, 15 December 1997

Note

On 03 August 2006, Secretary-General of the United Nations, as depositary, received from the government of United Kingdom, the following objection to a declaration made by Arab Republic of Egypt upon ratification, as follows;

"The Government of the United Kingdom of Great Britain and Northern Ireland have examined the declaration, described as a reservation, relating to article 19, paragraph 2 of the International Convention for the Suppression of Terrorist Bombings made by the Government of the Arab Republic of Egypt at the time of its ratification of the Convention.

The declaration appears to purport to extend the scope of application of the Convention to include the armed forces of a State to the extent that they fail to meet the test that they do not violate the rules and principles of international law. Such activities would otherwise be excluded from the application of the Convention by virtue of article 19, paragraph 2. It is the opinion of the United Kingdom that the Government of Egypt is entitled to make such a declaration only insofar as the declaration constitutes a unilateral declaration by the Government of Egypt that Egypt will apply the terms of the Convention in circumstances going beyond those required by the Convention to their own armed forces on a unilateral basis. The United Kingdom consider this to be the effect of the declaration made by Egypt.

However, in the view of the United Kingdom, Egypt cannot by a unilateral declaration extend the obligations of the United Kingdom under the Convention beyond those set out in the Convention without the express consent of the United Kingdom. For the avoidance of any doubt, the United Kingdom wish to make clear that it does not so consent. Moreover, the United Kingdom do not consider the declaration made by the Government of Egypt to have any effect in respect of the obligations of the United Kingdom under the Convention or in respect of the application of the Convention to the armed forces of the United Kingdom.

The United Kingdom thus regard the Convention as entering into force between the United Kingdom and Egypt subject to a unilateral declaration made by the Government of Egypt, which applies only to the obligations of Egypt under the Convention and only in respect of the armed forces of Egypt."

[Egypt has entered the following reservation to Article 19(2):

"The Government of the Arab Republic of Egypt declares that it is bound by Article 19, paragraph 2, of the Convention insofar as the military forces of the State, in the exercise of their duties do not violate the rules and principles of international law."]

(Treaty Series No. 33 (2006) Third Supplementary List of Ratifications, Accessions, Withdrawals, etc., for 2006, Cm 7045)

**3/9**

Note-

On 03 August 2006, Secretary–General of the United Nations, as depositary, received from the government of the United Kingdom, the following objection to a declaration made by the Arab Republic of Egypt upon ratification, as follows;

"The Government of the United Kingdom of Great Britain and Northern Ireland have examined the explanatory declaration relating to article 2, paragraph I (b) of

the International Convention for the Suppression of the Financing of Terrorism made by the Government of the Arab Republic of Egypt at the time of its ratification of the Convention. The Government of the United Kingdom consider the declaration made by Egypt to be a reservation that seeks to limit the scope of the Convention on a unilateral basis.

The Government of the United Kingdom objects to the aforesaid reservation."

[Egypt's reservations and declaration:

1. Under article 2, paragraph 2 (a), of the Convention, the Government of the Arab Republic of Egypt considers that, in the application of the Convention, conventions to which it is not a party are deemed not included in the annex.

2. Under article 24, paragraph 2, of the Convention, the Government of the Arab Republic of Egypt does not consider itself bound by the provisions of paragraph 1 of that article.

Explanatory declaration:

Without prejudice to the principles and norms of general international law and the relevant United Nations resolutions, the Arab Republic of Egypt does not consider acts of national resistance in all its forms, including armed resistance against foreign occupation and aggression with a view to liberation and self-determination, as terrorist acts within the meaning of article 2, paragraph 1, subparagraph (b), of the Convention, Ed.]

(Treaty Series No. 33 (2006) Third Supplementary List of Ratifications, Accessions, Withdrawals, etc., for 2006, Cm 7045)

**Part Three: IV.C.** *The law of treaties—invalidity, termination and suspension of operation—termination and suspension of operation, denunciation, and withdrawal*

**3/10**
Agreement establishing an International Foot and Mouth Disease Vaccine Bank London 26 June, 1985 043/1985 Cmnd 9602

In a depositary note dated 20 March 2007, the Government of the United Kingdom of Great Britain and Northern Ireland, proposing to terminate the Agreement unless in 90 days . . . , no such objection was raised by participating states indicating their objection to the depository in writing. Terminated 19 June 2007.

(Treaty Series No. 29 (2007) Second Supplementary List of Ratifications, Accessions, Withdrawals, etc., for 2007 Cm 7267)

**3/11**
Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality

On 01 May 2007, the Secretary-General of the Council of Europe, as depositary, received a declaration, from the government of Belgium, as follows;

In accordance with the Agreement on the interpretation of Article 12, paragraph 2, of the Convention, accepted by the Parties to the Convention and signed by the Secretary General on 2 April 2007, the Kingdom of Belgium denounces Chapter I of the Convention.

On 05 April 2007, the Secretary-General of the Council of Europe, as depositary, issued, the following;

Certificate of the Secretary General of the Council of Europe containing the agreement on the interpretation of Article 12, paragraph 2, of the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality (ETS n° 43)

Considering that Austria, Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Spain, Sweden and the United Kingdom are Parties to the Convention of 6 May 1963 on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality (ETS 43), which entered into force on 28 March 1968 and was supplemented by two protocols;

Considering that Article 12, paragraph 2, of the Convention provides that any Contracting Party may, in so far as it is concerned, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe;

Considering that some of the States Parties have declared that they no longer wish to be bound by Chapter I of the Convention concerning the reduction of cases of multiple nationality;

Considering that the Committee of Experts on Nationality (CJNA), after having consulted the Committee of Legal Advisers on Public International Law (CAHDI), recommended the twelve States Parties to the Convention to reach an agreement, through written procedure, on the interpretation of Article 12, paragraph 2, of the Convention allowing the partial denunciation of the Convention;

Considering that the Chair of the Rapporteur Group on Legal Co-operation informed orally the Committee of Ministers about this question at the 829th meeting of the Ministers' Deputies, on 26 February 2003;

Considering that, by letter dated 5 March 2003, the Secretary General proposed to the twelve States Parties to the Convention the following agreement:

1. Any Contracting Party may at any time, in so far as it is concerned, denounce Chapter I of this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

2. Such denunciation shall take effect one year after the date of receipt by the Secretary General of such notification.

3. The provisions of Article 7, paragraph 2, of the Convention shall apply as amended by the 1977 Protocol.

Considering that the twelve States Parties to the Convention have notified to the Secretary General their acceptance of the agreement;

The Secretary General of the Council of Europe hereby certifies as follows:

The following text constitutes the agreement on the interpretation of Article 12, paragraph 2, of the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality (ETS 43), of 6 May 1963.

AGREEMENT ON THE INTERPRETATION OF ARTICLE 12, PARAGRAPH 2, OF THE CONVENTION ON THE REDUCTION OF CASES OF MULTIPLE NATIONALITY AND MILITARY OBLIGATIONS IN CASES OF MULTIPLE NATIONALITY (ETS 43)

1. Any Contracting Party may at any time, in so far as it is concerned, denounce Chapter I of this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

2. Such denunciation shall take effect one year after the date of receipt by the Secretary General of such notification.

3. The provisions of Article 7, paragraph 2, of the Convention shall apply as amended by the 1977 Protocol.

Done at Strasbourg, on 2 April 2007.

(Treaty Series No. 29 (2007) Second Supplementary List of Ratifications, Accessions, Withdrawals, etc., for 2007 Cm 7267)

**3/12**

In a statement to Parliament, the Foreign Secretary said:

The Government regret the unilateral decision by the Russian Federation to cease compliance with its obligations under the Conventional Forces in Europe Treaty (CPE) [*sic*] from 12 December. Russia has sought to explain this decision principally on the grounds that members of the North Atlantic Treaty Organisation (NATO) have not ratified the adapted version of the CFE treaty. Together with our NATO allies, the United Kingdom has made a public statement (http://www.nato.int/docu/pr/2007/p07-139e.html).

This Russian decision is unjustified. The United Kingdom, along with NATO allies, has made clear our commitment to ratify as quickly as possible the adaptation of the CFE treaty, which would provide the basis for addressing most of Russia's concerns about the current CFE regime. But it remains right that Russia should in parallel honour its own commitments, made at the 1999 Organisation for Security and Co-operation in Europe summit in Istanbul, to regularise the status of its forces and equipment in Georgia and Moldova. The principle that host nation consent is required for the stationing of foreign forces is central to effective security and stability in Europe. NATO has engaged intensively with the Russian Federation to seek ways of overcoming differences over how to ensure both these sets of commitments are delivered.

The Government also consider that the Russian Federation's "suspension" of their obligations cannot be justified either under the provisions of the CFE

Treaty or on the grounds set out in the Vienna Convention on the Law of Treaties. Accordingly, on 11 December, we sent a Note Verbale, via the Treaty Depository, to all CFE States Parties, making this clear.

We judge, however, that European security is not fundamentally or immediately threatened by this Russian action. In the short term, we understand Russia will stop exchanging data or sending notifications on the whereabouts and composition of its conventional forces, and will refuse to allow verification inspections. However, if Russia were to persist in this course of action, in the longer-term that would erode the transparency and predictability which the CFE regime contributes to overall stability in Europe.

To help maintain that stability, the United Kingdom will until further notice, along with its NATO allies, continue to honour all our obligations under the CFE Treaty, including towards the Russian Federation. We will assess the impact of any non-compliance by the Russian Federation, and consult with NATO allies on a further joint response. With NATO allies, we will also continue to promote engagement with the Russian Federation with a view to reaching an agreed way forward.

(HC Deb 13 December 2007 Vol 469 c57WS–58WS)

## Part Four: Relationship between International Law and Internal Law

### Part Four: I. *Relationship between international law and internal law—In general*

**4/1**

The Foreign Secretary was asked if she would extend the Ponsonby Rule to apply to all international treaties; and if she would bring forward proposals for the referral by the House of all such treaties to the relevant select committee for scrutiny and report where appropriate. An FCO Minister wrote:

Most treaties that are signed by the Government and which are subject to ratification, accession, acceptance or approval, or the mutual notification of completion of procedures, are subject to the Ponsonby Rule. Such treaties must therefore be laid before both Houses as a published Command Paper for a minimum of 21 sitting days, and be accompanied by an explanatory memorandum, prior to ratification, accession, acceptance or approval. Only bilateral double taxation agreements, which are scheduled to the relevant Order in Council which implements the agreement, and treaties that enter into force on signature are exempt from this requirement. There are no plans to extend the Ponsonby Rule to such agreements.

All treaties that are subject to the Ponsonby Rule are copied to the relevant departmental select committee when they are laid, in accordance with an undertaking given by the Government in response to a report by the Procedure Committee in October 2000. Additionally, all treaties that raise significant human rights issues are copied to the Joint Committee on Human Rights.

(HC Deb 27 February 2007 Vol 457 c1186W)

**Part Four: II.** *Relationship between international law and internal law—Application and implementation of international law in internal law*

**4/2**
The Foreign Secretary was asked if she would meet the Cabinet Secretary for Justice in the Scottish Government at an early date to discuss the implications of the recently signed memorandum of understanding between the UK and Libya. [The MoU apparently dealt with the repatriation of prisoners. There was a strong Scottish interest in the position of Ali Mohmed al-Megrah, who was imprisoned in Scotland for his part in the Lockerbie bombing, Ed.] An FCO Minister wrote:

Officials in Government Departments are consulting with their counterparts in the Scottish Executive, according to the principles set out in the memorandum of understanding with the devolved administrations of 2001. It sets out how the Government and the devolved administrations should interact in the conduct of international relations.

(HC Deb 14 June 2007 Vol 461 c1217W)

**4/3**
An FCO Minister wrote:

The UK was not in a position to sign the Council of Europe Convention on the Protection of Children against Sexual Abuse and Exploitation at the Conference of European Ministers of Justice in Lanzarote. Before we sign any convention we must be satisfied that we will be in a position to implement the obligations contained in the convention. We are in the process of formally confirming with relevant departments and the devolved administrations that we are in position to sign and hope to be able to do so shortly.

(HL Deb 4 December 2007 Vol 969 cWA173)

## Part Five: Subjects of International law

**Part Five: I.A.1.** *Subjects of international law—states—status and powers—personality*

**5/1**
The representative of the UK made the following statement in the Security Council following the adoption of Resolution 1762 on 29 June 2007 on the termination of the mandate for UNMOVIC:

The United Kingdom would like to draw the attention of the Security Council to the report of the Special Advisor to the Director of the CIA. This catalogued the state of Iraq's disarmament and the residual stocks of WMD material. UNMOVIC has previously reported to the Security Council on Chemical Weapons finds made by coalition forces.

The United Kingdom welcomes the commitment made by the Government of Iraq to respect and apply existing international commitments and obligations to non-proliferation of nuclear, chemical and biological weapons.

In particular, we welcome the Government of Iraq's full constitutional commitment to taking disarmament forward. This includes: preparations to accede to the Chemical Weapons Convention; its intention to agree an Additional Protocol to its Safeguards Agreement with the International Atomic Energy Agency; and the establishment of a National Monitoring Directorate to oversee and control the movement of dual use items.

We are not closing the file on WMD in Iraq. But we are changing the approach. We look forward to the Government of Iraq's report to the Security Council on its progress in adhering to all applicable treaties and international agreements; in harmonising Iraqi export legislation with international standards; and on progress made by the National Monitoring Directorate in its work.

It is the United Kingdom's assessment that for some time neither UNMOVIC nor the IAEA's Iraq Nuclear Verification Office have been in a position to carry out their functions in a way which serves the aims of disarmament and non-proliferation. Instead, we should now move forward and focus on ensuring that Iraq itself continues to take steps to support the international non-proliferation regime and itself adheres to disarmament and non-proliferation treaties and related international agreements. The UK will continue to help Iraq do that, both as a friend of Iraq and as a partner within the Multinational Force.

We also encourage Iraq's neighbours and the international community to co-operate with and assist Iraq in implementing its non-proliferation obligations and building capacity in the relevant areas.

(UN Doc S/PV.5710, 29 June 2007)

**Part Five: I. A.2**. *Subjects of international law—states—status and powers—sovereignty and independence*

**5/2** (See also **5/5–6, 5/23–25,**)
**Somalia**
An FCO Minister wrote:

We have urged all of Somalia's neighbours to respect its sovereignty and to play a constructive role in bringing peace and stability to Somalia. We believe that the deployment of a regional force along the lines of United Nations Security Council Resolution 1725 will help to create the conditions for sustainable security in Somalia.

We have continually made it clear to all parties that we do not believe there can be an exclusively military solution to the situation in Somalia. Consequently we have consistently called for discussions to create a broad and representative government.

(HC Deb 15 January 2007 Vol 455 c830W)

**5/3**
The Foreign Secretary was asked what reports she had received of the role of Somalia's clans and tribal groups in the peace process; [and] what assessment she had made of whether political consensus can be achieved across the different clans and tribal groups. She wrote:

A broad base of support within Somalia's complex clan structure is crucial to a lasting peace in Somalia. Therefore, it is vital that the Transitional Federal Government (TFG) reaches out to all the clans and lends a fully inclusive political process. We are stressing this in our contacts with the TFG, for example when the Under-Secretary of State for Foreign and Commonwealth Affairs met President Yusuf in London on 22 February. We are urging the TFG to convene as soon as possible the National Reconciliation Congress, to involve all clans. We are encouraging other members of the international community to do likewise and we strongly endorse the Communiqué of 3 April from the International Contact Group on Somalia, of which the UK is member. The Communiqué emphasises the paramount importance of establishing an inclusive and genuine political process reaching out to all parts of Somali society.

(HC Deb 10 May 2007 Vol 460 c398W)

**5/4**
**Cyprus**
An FCO Minister wrote:

The Government are not able to prevent property development in northern Cyprus. We believe that the difficult and complex issue of property is only likely to be fully resolved in the context of a comprehensive settlement. In our contacts with the Turkish Cypriot leadership, we recognise the Turkish Cypriots' need for economic development in support of reunification. But we urge them to ensure that any property development that does take place does so in a manner that is both environmentally sustainable and does not complicate an eventual solution.

Similarly, we call on the Turkish Cypriot administration to show sensitivity to Greek Cypriot churches and cemeteries in the north. Our high commissioner in Nicosia visited the Karpas region on 22 June and raised such issues with his Turkish Cypriot interlocutors.

The 8 July 2006 agreement between the leaders of the two communities presented an opportunity to make progress towards a resumption of full settlement negotiations. Despite attempts since by the UN to implement this agreement no real progress has been made. We continue to urge both sides to show the political will and flexibility required to bridge the gap between words and deeds, and engage constructively with the efforts of the UN. Negotiations on a final political solution have been at an impasse for too long.

We consider that confidence-building measures, such as the opening of Ledra Street, and other crossing points, would help bring the two communities closer together. This message was reinforced in the resolution adopted by the UN Security Council on Cyprus on 15 June [Resolution 1758, Ed.]. The Security

Council's resolution also expressed concern about the diminishing opportunities for bicommunal activity within Cyprus. As such, we hope that the announcement by the Republic of Cyprus of a package of measures to address this will promote reconciliation between the communities.

(HC Deb 25 June 2007 Vol 462 c209W)

**Part Five: I.A.3.** *Subjects of international law—states—status and powers—domestic jurisdiction*

## 5/5

### Somalia

The Foreign Secretary was asked what assessment she had made of the extent of the presence of al-Qaeda in Somalia. An FCO Minister wrote:

Al-Qaeda seeks to exploit ungoverned space to advance its terrorist agenda. Therefore, we are working with the international community to re-build the Somali State, through the establishment of Transitional Federal Institutions, in order to bring peace and stability to the country. This will make it more difficult for al-Qaeda to operate in Somalia.

In the meantime, we continue to work with the Transitional Federal Government of Somalia, and our international allies, in tackling the threat posed by al-Qaeda from Somalia.

(HC Deb 16 April 2007 Vol 459 c48W)

## 5/6

The Foreign Secretary was asked what steps she was taking to seek a ceasefire by Islamic insurgents in Somalia. An FCO Minister wrote:

The UK does not have contact with the Islamist insurgents in Somalia, but we have called for an immediate end to all fighting and publicly urged all parties to commit to a truce and agree a lasting ceasefire.

We have repeatedly made clear that all parties in Somalia need to reject violence and allow the Transitional Federal Government (TFG) to do their job. Any differences that some groups in Mogadishu might have with the TFG should be pursued through the National Reconciliation Congress and dialogue with the TFG rather than by resorting to violence. We condemn any attacks on the TFG, which is the only legitimate route through which governance, peace and stability can be restored to Somalia. At the same time, we have repeatedly made clear to the TFG that they must make genuine attempts to reach out to all groups in Somalia that credibly reject violence.

(HC Deb 2 May 2007 Vol 459 c1717W)

5/7

**Democracy**

(See also **6/47**)

The Foreign Secretary was asked what (a) her Department's and (b) EU policy was on funding non-governmental organisations in other democratic countries which campaign actively against those countries' Governments' policies. An FCO Minister wrote:

The Foreign and Commonwealth Office (FCO) is committed to promoting democratic values and principles, including a vibrant civil society.

We recognise the vital role civil society plays in promoting human rights, democracy and good governance. We value the expertise which many non-governmental organisations (NGOs) working to implement human rights possess and therefore work with them to encourage governments, including democratic ones, to meet international human rights standards.

The FCO has a range of programme funds which aim to support its work on human rights. The merits of all funding requests are considered on a case by case basis. Further information can be found on the FCO website at:

www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029394988.

The EU has a human rights and democracy programme, the European Instrument for Democracy and Human Rights (EIDHR). NGOs are eligible to bid for project funding. Information on the activities and actions of EIDHR is accessible at: http://ec.europa.eu/europeaid/projects/eidhr/index_en.htm.

(HC Deb 16 May 2007 Vol 460 c779W)

**Part Five: I.A.4.** *Subjects of international law—states—status and powers—non-intervention in domestic jurisdiction*

5/8

**Northern Ireland**

The Secretary of State for Northern Ireland made the following Ministerial Statement:

Following the successful restoration of devolution in Northern Ireland, I am pleased to enter into an intergovernmental agreement with Ireland.

This treaty reaffirms both Governments' commitment to protect, support and where appropriate implement the provisions of the Belfast agreement, subject to the alterations to the operation of the institutions agreed at St. Andrews. The conditions laid out in legislation for the restoration of the devolved institutions in Northern Ireland have now been met. In this historic context, it is fitting that these commitments are formalised promptly with the Irish Government and the

Government welcome this opportunity to provide a shared understanding of these arrangements across these islands.

This agreement was laid before Parliament as a Command Paper (Cm 7078) on Wednesday 18 April. The tenets of this agreement have been considered by Parliament during the passage of the Northern Ireland (St. Andrews Agreement) Act 2006 and, following the successful restoration of devolution to Northern Ireland on 8 May, the Government consider it appropriate to truncate the standard 21-day laying period under the Ponsonby rule to ensure the agreement can be brought into force as soon as possible. This will provide swift formal clarity to the agreed alterations to the arrangements and institutions established by the Belfast agreement of 1998.

(HC Deb 9 May 2007 Vol 460 c14WS)

**5/9**
**Estonia**
(See also **7/4**)
The Foreign Secretary was asked what reports she had received of Russia's action in relation to Estonia since the relocation of the Russian war memorial statue; and what representation she had made to the Russian authorities on this subject. An FCO Minister wrote:

The Government recognise the right of the Estonian Government to relocate war memorials and war graves and see this as an internal matter for Estonia. The Foreign Secretary was briefed on Estonian-Russian relations by Estonian Foreign Minister Urmas Paet at the EU General Affairs and External Relations Council on 14 May. Russian-Estonian relations were discussed at the EU-Russia Summit on 18 May.

The Government support the remarks made by the President of the EU Commission, Jose Manuel Barroso, at the EU-Russia summit that the EU is based on principles of solidarity and difficulties for one member state constitute a difficulty for the entire EU. We are fully supportive of both the EU presidency statement of 2 May and the NATO statement of 3 May, which both expressed grave concern over the safety of the Estonian Embassy and its staff in Russia and urged Russia to address the dispute through dialogue.

(HC Deb 24 May 2007 Vol 460 c1488W)

**5/10**
The EU had earlier issued the following statement:

The Presidency of the European Union is gravely concerned about current developments in relations between Estonia, a Member State of the European Union, and the Russian Federation. At the present time the situation of the Estonian Embassy in Moscow gives cause for concern. The Presidency of the European Union strongly urges the Russian Federation to comply with its international obligations under the Vienna Convention on Diplomatic Relations and protect the staff and premises of the Estonian mission and ensure unimpeded access to it.

In talks with all parties the Presidency is endeavouring to help de-escalate the situation.

Given the emotionally charged atmosphere surrounding the Soviet war graves in Estonia, it would be advisable to have a dispassionate dialogue on the matter. The Presidency of the European Union strongly urges that the problems that have arisen should be addressed in a spirit of understanding and mutual respect.

(CFSP Statements, 2 May 2007, www.eu2007.de)

**5/11**
[NATO had earlier issued the following statement:

NATO is deeply concerned by threats to the physical safety of Estonian diplomatic staff, including the Ambassador, in Moscow, as well as intimidation at the Estonian Embassy. These actions are unacceptable, and must be stopped immediately; tensions over the Soviet war memorial and graves in Estonia must be resolved diplomatically between the two countries. NATO urges the Russian authorities to implement their obligations under the Vienna Convention on diplomatic relations.

(Press release (2007)044, 3 May 2007, www.nato.int), Ed]

**Part Five: I.B.1.** *Subjects of international law—states—recognition of States*

**5/12**
**Bosnia and Herzegovina**
An FCO Minister said:

The UK recognised Bosnia and Herzegovina (BiH) as an independent state in 1992. BiH's constitutional arrangements and internal boundaries are those set out in the Dayton Accords which were concluded in Paris on 14 December 1995.

We remain firm in our support for the Dayton Accords: they are the basis of the peace and stability that BiH now enjoys. We regularly make this clear, both bilaterally and in multilateral fora. If the people of BiH wish to revisit their constitutional arrangements, this must be through a consensual process in accordance with constitutional procedures.

(HC Deb 18 July 2007 Vol 694 cWA24)

**5/13** (See also **5/27–28**)
**Cyprus**
The Government were asked whether the United Kingdom was meeting its obligations as a signatory of the 1960 Treaty of Guarantee about Cyprus. An FCO Minister wrote:

As a guarantor power, an EU partner, and UN Security Council member, the UK continues to work for progress towards a comprehensive settlement in

Cyprus which would be of benefit to all Cypriots. We continue to support the EU initiatives aimed at ending the isolation described in the reply I gave to the noble Lord on 4 December 2006 (Official Report, cols. WA92–93). Our efforts in support of a settlement and those in pursuit of lifting the isolation of the Turkish Cypriots are mutually reinforcing.

(HL Deb 31 January 2007 Vol 689 c49WA)

**5/14**
An FCO Minister wrote:

The economic situation of ordinary Turkish Cypriots has improved significantly over the past five years. However, as the World Bank report on north Cyprus recognises, the economy of north Cyprus remains underdeveloped, with only very limited opportunities to trade with the outside world. This lack of legitimate economic outlets encourages an unhealthy focus on uncontrolled construction, much of it on Greek Cypriot property, and closer integration with the Turkish economy. We therefore support the German presidency's efforts with all concerned to enable preferential trade between north Cyprus and the EU. This will facilitate a settlement by promoting convergence of living standards on the island and by bringing the Turkish Cypriots closer to the EU

(HL Deb 31 January 2007 Vol 689 c50WA)

**5/15**
An FCO Minister wrote:

The UK recognises the Republic of Cyprus as the sole state foreseen in the 1960 constitution. The "Turkish Republic of Northern Cyprus" (TRNC), established by a "unilateral declaration of independence" in 1983, is not recognised by the UK (or by any other state apart from Turkey). Following the "unilateral declaration of independence" the then Foreign Secretary . . . made the following statement in another place: "Her Majesty's Government deplore this action by the Turkish Cypriot community, which amounts to a declaration of secession. We have issued a statement which makes it clear that this is incompatible with the 1960 treaties. Our position has always been that we recognise only one Republic of Cyprus. That remains the position today". The UK policy on recognition of the TRNC has remained unaltered since 1983.

The Government continue to support the EU initiatives aimed at ending the isolation of the Turkish Cypriots . . . In particular, the Government support efforts to bring the Turkish Cypriot community closer to Europe through, for example, financial aid and trade liberalisation.

The continued division of Cyprus has an impact on the ability of Cypriots from both communities to enjoy the full range of freedoms and rights. The recent United Nations report from the Office of the High Commissioner for Human Rights on the question of human rights in Cyprus (available at: www.ohchr.orb/english/countries/cy) highlights a number of ongoing concerns. However, as that report concludes, the situation of human rights in Cyprus would be greatly

improved by the achievement of a comprehensive settlement to the Cyprus problem. It is on this that the UK will continue to focus its efforts.

(HL Deb 25 July 2007 Vol 694 cWA90)

**5/16**
**Serbia, Montenegro**

The FCO issued the following Note:

INFORMATION NOTE ON THE STATUS OF SERBIA AND MONTENEGRO

DECLARATION OF INDEPENDENCE AND UK RECOGNITION

On 3 June 2006 the Republic of Montenegro formally declared independence from the State Union of Serbia and Montenegro. This followed a referendum on the 21 May 2006. The UK has formally recognised Montenegro as an independent sovereign state on 13 June 2006, and proposed the establishment of diplomatic relations between the UK and Montenegro.

On 5 June 2006 the Serbian National Assembly decreed that Serbia is the continuing international personality of the State Union of Serbia and Montenegro and fully succeeds to its legal status. The UK accepts this. Serbia will thus remain a party to international agreements to which Serbia & Montenegro was a party and a member of international organisations of which Serbia & Montenegro was a member.

The two new independent republics will be known as:

The Republic of Serbia

The Republic of Montenegro

LEGAL OBLIGATIONS OF MONTENEGRO

In a letter from the Montenegrin Foreign Minister to the Foreign Secretary on 4 June, the Government of Montenegro stated that it would remain faithful to all international obligations formerly incumbent on the State Union of Serbia and Montenegro. Letters from Prime Minister Blair to Prime Minister Djukanovic and President Vujanovic of Montenegro confirmed that the UK regards treaties and agreements in force to which the UK and the State Union of Serbia and Montenegro were parties as remaining in force between the UK and the Republic of Montenegro. In slower time we aim to confirm exactly which treaties continue to be applicable and reach a mutually agreed schedule of treaties in force between the UK and Republic of Montenegro. We will circulate a list of existing treaties to Government Departments, who may wish to consult their legal advisers to decide if treaties relevant to them should remain in force. This list of treaties will then need to be verified by the Government of Montenegro, before a formal exchange can take place.

(Supplied by FCO)

**5/17**
(See also **5/18–20**)
**Kosovo**
In a debate, an FCO Minister was asked if the position of the UK Government was exactly the same in relation to the timing of any new UN resolution coming forward or not. The Minister said:

Yes. We want to see a UN resolution come forward, and we want to see it sooner rather than later . . . We are determined that the time has come for the Security Council to make this decision and we will discuss that with Russia, which is an extremely important player . . .

We can either bring the process to completion or consign it to the "too difficult" tray . . . it would be a very risky move. It would remind me too much of the mistakes that were made early on, when Yugoslavia broke up. The latter course carries real risks for the stability of the region. The situation will not stand still. The lesson from the 1990s in the Balkans is that drift leads to instability. The choice is to tackle Kosovo in a smooth and orderly way on the basis of a UN process endorsed by the Security Council, or to find ourselves reacting to future events in a way that could involve far greater challenges.

What of Serbia in all this? It is important to say something about it. I want to be clear that bringing the Kosovo status process through to completion is not and should not be seen as punishing Serbia. We understand the strong emotions that this issue can arouse, but this process is about putting in place the right outcome—the only realistic outcome from our point of view—for Kosovo. I want to see both countries and both Kosovo Serb and Kosovo Albanian communities prospering and moving forward towards EU and NATO membership, if that is what they want.

There has been some progress by Serbia in recent weeks. The chief prosecutor for the International Criminal Tribunal for the former Yugoslavia told the UN Security Council on 18 June that the Serb authorities had

"expressed a clear commitment to provide all necessary assistance to locate and arrest the remaining fugitives".

That has started to deliver results, with the arrest of two fugitive indictees in recent weeks . . .

[The debate was terminated, Ed.]
(HC Deb 27 June 2007 Vol 462 cs448–452)

**5/18**
An FCO Minister was asked by the FAC about the recognition of an independent Kosovo. He said:

Your general point that it is not for the UN initially to recognise is, of course, accurate . . . The issue of recognition is a matter for other sovereign states, as is their approach to any potential declaration by Kosovo. (Q.143)

I have to make it clear to the Committee that in our view Kosovo is destined to be an independent sovereign state. (Q.144)

But, it was put to him:

Resolution 1244 also gives the mandate to the police and the soldiers. It has either to be rescinded or it will endure . . . It either has to be repealed or altered by resolution of the Security Council. If it does not, it goes on.

The Minister said:

What is clear is that whatever scenario we end up with, in terms of Kosovan independence, there needs to be international authorities on the ground with legal cover. [Q.149]

And, asked about other contested situations in Europe and the impact of the Helsinki Final Act on their resolution, the Minister said:

In terms of precedent, I know that this Committee has looked at these important issues of the frozen conflicts, not least Transnistria, Abkhazia and others, and will rightly continue to do so. However, we do not believe that the process in which we are now engaged in Kosovo establishes a precedent in the way that you are alluding to, in the way that the Russians have said publicly. We do not believe that. [Qs.150, 151]

(FAC Second Report, Global Security: Russia, HC 51(2007))

**5/19**
The Foreign Secretary wrote:

On 7 December, representatives of the Contact Group submitted to the UN Secretary-General the report by the EU-Russia-US troika on their work aimed at achieving a negotiated settlement for Kosovo's future status.

The troika correctly set themselves the objective of "leaving no stone unturned" in the search for an outcome mutually acceptable to both Belgrade and Pristina. During the four months of their mandate, the troika undertook an intense schedule of meetings with the parties. Over ten rounds of negotiations—including six sets of direct talks, one of them in extended conference format—the parties considered options covering the spectrum from independence, autonomy, confederation, partition and a status-neutral approach. One or other of the parties rejected all these options.

The troika have therefore reported that the parties have been unable to reach an agreement on Kosovo's status.

I pay tribute to the troika's work. They have worked tirelessly and imaginatively. Although they did not secure an agreement between the parties, their work generated sustained and intensive high-level dialogue between Belgrade and Pristina. The troika have also been able to extract important commitments from the parties, including pledges to refrain from actions that might jeopardise the security situation in Kosovo or elsewhere and not to use violence, threats or intimidation. These are important commitments to which we shall expect both sides to adhere strictly in the period ahead.

The troika's efforts followed those of UN Special Envoy Ahtisaari who laboured heroically for 14 months to reach agreement between the parties before concluding

that this was out of reach. He therefore drew up his own proposal for how to move forward based around the concept of supervised independence. That recommendation was supported by the EU, US and UN Secretary-General. It was rejected by Serbia and Russia.

It is hard to argue now that there is any value in further negotiations or that serious options have yet to be fully explored. The failure to reach agreement is not because of lack of time, energy or imagination on the part of the international community. It is because the positions of the parties are irreconcilable. Kosovo insists on independence. Serbia insists on a settlement that locks the door on any prospect of independence. The UK shares the firm view of the EU representative on the troika, Ambassador Wolfgang Ischinger, that the parties would not be capable of reaching agreement on this issue if negotiations were to be continued, whether in the troika format, or in some other form.

The Kosovo status process has now reached a decisive moment, presenting the international community with difficult but important decisions.

One point on which almost all in the international community are agreed is that the status quo is unsustainable. This was stated in clear terms by the UN Secretary-General when he addressed the Contact Group Ministerial meeting in September in New York. The Contact Group, including Russia, subsequently expressed their agreement in a joint Ministerial statement.

The international community cannot therefore allow the status process to grind to a halt or to be shuffled off into a siding by convening further fruitless negotiations. We learned to our cost in the 1990s the heavy human and political price attached to an indecisive international response to looming problems in the Western Balkans. The stability and security of part of Europe is at stake. It is essential that we respond in a decisive and far-sighted manner.

The UK's preference would be for a settlement to be supported by the passage of a resolution of the UN Security Council. We believe there should be further rapid consultations in New York to this end before the end of 2007. However in the absence of agreement between the parties, we need to be realistic about the slim prospects of securing the necessary level of consensus in the Security Council.

Against this background it is important that the EU demonstrates its readiness to meet its responsibilities and objectives in respect of stability and security in Europe. Securing a viable and sustainable future for Kosovo is a major responsibility for the EU. The effectiveness and cohesiveness of the EU's common foreign and security policy will be judged against our ability to deliver on this responsibility. The EU must demonstrate firm resolve to bring the status process through to completion and play a leading role subsequently in implementing a settlement. I welcome the fact that the EU is already intensively engaged in the necessary preparations to meet these responsibilities.

In moving towards a Kosovo settlement, it will be necessary for the EU and others to take a strategic approach answering to a series of key challenges. There will be a need to ensure Kosovo's security. The North Atlantic Treaty Organisation is already deployed in strength in Kosovo to maintain a safe and

secure environment. The EU has indicated a readiness to provide a European Security and Defence Policy policing/rule of law mission. The EU should deliver on this commitment.

There will be a need to ensure good governance in Kosovo. The proposal of the UN Special Envoy provides a good basis for this. The provisions it set out for the internal governance of Kosovo, and the allocation of responsibilities it contains, must be the foundation for how we deliver security and help Kosovo improve its ability to meet European standards. The EU should be ready to play a major part in settlement implementation including through the appointment of an EU Special Representative and through contributing to an International Civilian Office in Kosovo.

There will be a need to achieve certainty and permanence in respect of Kosovo's future status. Again, the UK believes that the proposal of the UN Special Envoy for supervised independence provides a good basis.

There will be a need to look beyond the immediate challenge of resolving Kosovo's future status. Following a settlement, Kosovo will face formidable economic and state-building challenges. The international community—with the EU to the fore—will need to be ready to meet this challenge, including through the swift convening of a donors' conference.

Finally, there will be a need to address the regional dimension. The UK recognises that moving through this phase will be difficult for Serbia, as well as for other countries in the region. The EU must be clear and far-sighted in its commitment to helping them meet European standards and so move farther towards eventual accession. There is a compelling strategic case for enlargement to the Western Balkans so that this troubled region can share in the security, stability and prosperity that the EU offers. The EU needs to take forward this agenda vigorously in the months ahead.

(HC Deb Vol 467 c28WS–30WS)

**5/20**

The Foreign Secretary was asked by the FAC:

Are you confident that there is an adequate legal basis for implementation of the Ahtisaari plan [for Kosovo] within Security Council resolution 1244 without a new successor resolution?

He said:

In short, yes, but as I said in my written ministerial statement yesterday [(above)] we want to go to the UN. The last four months of dialogue and mediation have taken place in good faith. We have urged all sides—I have done so personally when meeting them-to engage properly to try to bridge the gap between the sides, but as Ahtisaari found, the troika team have also found it impossible to bridge the gap. We think that it is right to go back to the UN, but we think that there is a full force in resolution 1244—NATO Foreign Ministers agreed that last Friday, so NATO forces will stay there—and I think that it provides a sound legal base for the future. [Q.605]

He was asked further:

Would that include the European Union civilian presence there with regard to assistance to the judicial and police authorities? Can that continue without a Security Council resolution?

He said:

There is a Security Council resolution-1244. It provides the foundation for the European Security and Defence Policy mission as well as the KFOR mission. [Q.606]

He was asked:

Will that view be shared by all your fellow [EU, Ed.] Foreign Ministers at the discussions tomorrow?

He said:

Strikingly large numbers of EU Foreign Ministers have looked carefully at the legal text, and it is much less of an issue between us than before. I do not want to say "all", but a vast majority now accept 1244 as a sound legal basis. [Q.607]

And then he was asked:

. . . it is still possible, is it not, that several EU countries will decide for their own domestic or other reasons that they will not support the implementation of an Ahtisaari plan without the Security Council resolution?

He replied:

There are two issues. One is going along with an Ahtisaari plan, and the second is recognising a newly independent country. Different European countries take different views on those two issues. I am not sure whether any European countries will hold out against the use of 1244 as the basis for European action . . .

I think that there will be some that do not recognise an independent Kosovo in the first wave; I do not know whether there are countries that will say that they will never do so. [Qs.608, 609]

He was then asked:

. . . as we know, the writ of the Kosovo Government does not run in the Serbian northern area of the country. In effect, to recognise Kosovo as an independent state on its present boundaries is basically to endorse a Cyprus-type situation. Do you rule out the possibility of partition as a solution?

He said:

Yes. Partition has floated around in discussions during the past two years. It certainly does not have our support, and it has very few supporters elsewhere. People often ask whether an independent Kosovo can make a go of it as a viable country. If that question is asked of Kosovo, it applies in spades to the north of

the country around Mitrovica. I do not think that partition offers a way forward. The truth is that the Ahtisaari plan has significant devolved authority for that northern part of Kosovo, rightly, and it is important that the minority rights there are respected, although, as I said in the House yesterday, there are Serb minorities elsewhere in Kosovo and not just in the north. [Q.610]

The Foreign Secretary was asked:

What is your present assessment as to what the repercussions would be in Kosovo at the moment, and indeed in Serbia, if there is effectively a unilateral declaration of independence by the Kosovan Government?

He replied:

I think that the best answer is that it depends. If it was unilateral in the sense of being chaotic and unconnected to the international community's response, I think that there would be dangers. If it is carefully done, in a way that recognises and lives by the guarantees that have been made by the Kosovan Government and the Serbian Government to the international authorities with regard to preventing violence, and if it also respects the Ahtisaari plan with regard to minorities, there is a reasonable chance of moving forward, not in a way that everyone would like, but in a way that would preserve the basics of a respect for life and security on all sides. [Q.611]

He was asked about holding out to Serbia the prospect of membership of the EU. He said:

. . . the more that we can all keep making the point, within our different contexts, that this process is not about punishing Serbia but about finding a sustainable way for Serbia to live in the wider region, with its "European vocation", which the Serbian Foreign Minister often talks about, the better. [Q.612]

It was put to the Foreign Secretary that Serbia

. . . will [not] contemplate anything that takes the Kosovo province away from them . . . They now believe that, legally and properly, Kosovo is part of Serbia. I think that there is absolutely no chance of the Russians ever agreeing to anything that the Serbians do not want. What I seek from you today, Foreign Secretary, is a commitment that Britain will not join again with America and invade, taking part in something that may have nothing to do with us at all, unless there is a clear, concise, agreed mandate from the UN and that the "enforcement" of the separation of Kosovo from Serbia would be different from anything troops already there were intended to do. [Qs.613, 614]

He said:

The "enforcement" is a separate issue. It is up to individual countries to recognise other countries. It will be for every country to make a decision about whether or not it wants to recognise a putative Kosovan state. I think that resolution 1244 set out a political process that did not circumscribe the outcome. It did not prescribe one outcome or another; it left the outcome open. But it did create a political process.

I do not know if you will agree, but I think that it is important that the UN Secretary-General came to a Contact Group meeting in New York that I chaired in September. He started off by saying that the status quo is unsustainable. That is a very, very important point. It is unsustainable politically, because you have a UN protectorate within a sovereign country; it is unsustainable economically, because no one is investing in Kosovo because they do not know the political status, and it is unsustainable socially, because you have this limbo. You may be right that it is a situation that none of us would have chosen to be in, and certainly no one wanted the tragedies of the 1990s to happen, but we have to deal with the situation as it now.

Just so that we are clear, the mandate of the NATO forces is to prevent violence against people. That is what they are there for. They are there to protect human life. [Qs.613–615]

(FAC, Foreign Policy Aspects of the Lisbon Treaty, HC120-I (2007))

**Part Five: I.B.2.** *Subjects of international law—states—recognition of governments*

**5/21**
**Fiji**
An FCO Minister wrote:

On 5 December 2006 we issued a press statement condemning the military coup in Fiji and calling for a return to democracy as quickly as possible. A full copy of the statement can be found on the Foreign and Commonwealth Office website at:
www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029391638&a=KArticle&aid=1163678514483

On 29 December 2006 we issued a further statement following reports of human rights abuses committed by the Republic of Fiji Military Forces (RFMF), urging the RFMF to respect their citizens' human rights and reiterating a call for a return to democracy.

We have made no representations for elections to be held, but have urged the military, and the interim government, to return to democracy as quickly as possible.

We continue to discuss the situation in Fiji with our high commissions in Suva, Canberra and Wellington on a regular basis. We are also liaising closely with our EU partners and the Governments of Australia, New Zealand and the US in support of efforts to bring about a restoration of democracy and constitutional government in Fiji.

(HC Deb 15 January 2007 Vol 455 c824W)

**5/22**
**Palestine**
In its reply to the FAC Report, Global Security: the Middle East, The Government wrote:

17. The Government viewed the issue of a National Unity Government as an internal matter for the Palestinian people. But we, along with our international partners, made clear—starting from 30 January 2006—that we would be ready to engage with any new government that was based on the Quartet principles.

(Eighth Report of the Foreign Affairs Committee Session 2006–7 Global Security: The Middle East Response of the Secretary of State for Foreign and Commonwealth Affairs Cm 7212)

**5/23**
**Somalia**
An FCO Minister wrote:

We are concerned about the conflict in Somalia. With our international partners we are working actively to promote a peaceful resolution to Somalia's difficulties on the basis of a sustainable peace process.

We have frequent bilateral contacts with the Transitional Federal Government of Somalia and countries in the region including Ethiopia. We are working closely with EU partners and in the UN Security Council to achieve peace and stability in Somalia.

We urge rapid implementation of the UN Security Council Resolution 1725, adopted unanimously on 6 December 2006, which authorises the Intergovernmental Authority on Development and the African Union to establish a protection and training mission in Somalia. In this regard, we look forward to Ethiopia withdrawing its troops from Somalia as quickly as it can, as it has stated it wants to.

We are also encouraging all parties inside and outside Somalia to use the current opportunity to embed a political process across Somalia as envisaged in the Transitional Federal Charter. We will support the Transitional Federal Institutions and Transitional Federal Government in pursuing this.

(HC Deb 8 January 2007 Vol 455 c361W)

**5/24**
The Foreign Secretary was asked what recent assessment she had made of the (a) political and (b) security situation in Somalia. She wrote:

After years of lawlessness and little effective government, a historic opportunity now exists for a sustainable political solution to Somalia's difficulties. We fully support the Transitional Federal Institutions in their efforts to find a lasting and inclusive political settlement and to become an effective governing authority. The Transitional Federal Charter sets out a roadmap for constitutional process

and transition to a democratically elected Government. This is the framework within which the Transitional Government should pursue a political process in Mogadishu.

The security situation is still confused and volatile. At the moment no British officials can travel to Somalia. But we hope the Transitional Federal Government and the Transitional Federal Institutions will be able to move from Baidoa to Mogadishu shortly. We are working with Somalia's Transitional Federal Institutions, and our international partners, to help stabilise Somalia through the early deployment of a regional security force, restore governance through an inclusive political process, and rebuild Somalia through increased international assistance.

(HC Deb 18 January 2007 Vol 455 c1334W)

**5/25**
The Foreign Secretary was asked if she would make a statement on the visit of the President of the Transitional Federal Republic of Somalia to the UK on 21 to 22 February. She wrote:

President Yusuf of the Transitional Federal Republic of Somalia visited the UK as a guest of the Government. His programme included calls on the Secretary of State for International Development and the Parliamentary Under-Secretary of State for Foreign and Commonwealth Affairs. He also called on the Foreign Affairs Committee and spoke at Chatham House.

Asked further what discussions the Minister for Africa had had on the independence of Somaliland from Somalia when she met the President of the Transitional Federal Republic of Somalia on 22 February, she wrote:

The independence of Somaliland was not discussed in any detail when President Yusuf of the Transitional Federal Republic of Somalia met the Parliamentary Under-Secretary of State for Foreign and Commonwealth Affairs on 22 February. We continue to encourage the Transitional Federal Government and institutions to discuss with the Somaliland authorities all issues of mutual interest.

(HC Deb 7 March 2007 Vol 459 c2002W)

**Part Five: I.B.4(a)**. *Subjects of international law—states—recognition—acts of recognition—implied/express*

**5/26**
**Diplomatic relations with Transnistria area**
The Government were asked:

Does the FCO have any diplomatic relations with the area known as Transnistria near to Moldova? And if so what level of communication does the FCO have with the authorities in Transnistria and since the 1st of January 2005 how many times have FCO staff travelled to Transnistria and for what purposes.

An FCO representative said:

Her Majesty's Government does not have any diplomatic relations with Transnistria. Staff from our Embassy in Chisinau do visit the Transnistrian region. However, our Embassy does not keep a record of these visits.

Our Embassy does have very limited contact with the so-called Transnistrian authorities. This contact is part of wider EU efforts to contribute to a peaceful settlement of the Transnistria conflict. In his capacity as local EU Presidency, our Ambassador in Chisinau has accompanied the EU's Special Representative (EUSR) for Moldova to two meetings with the so-called 'Transnistrian Foreign Ministry' this year (in April and July). These meetings were part of the EUSR's efforts to establish and maintain contacts with the relevant actors in the Transnistrian settlement process, in accordance with his mandate. Our Ambassador also travelled to Transnistria on 23 September, this time accompanying the EUSR's political adviser.

He was then asked what was the current FCO policy towards Transnistria on arms exports and arms control measures.

He said:

The FCO does not have specific arms export or arms control measures for Transnistria. However, we do have security concerns about alleged trafficking of arms from the region. For this reason the FCO fully supports the EU's decision to respond positively to the joint Moldovan-Ukrainian request for assistance in enhancing the effectiveness of border and customs control and border surveillance activities on the Moldova-Ukraine border, in particular the Transnistria segment.

(Text supplied by FCO)

**Part Five: I.B.6** *Subjects of international law—states—recognition—acts of recognition—non-recognition and its effects*

**5/27**
**Northern Cyprus**
(See also **5/13–15**)
A note by the FCO to the FAC said:

So far as entry to the UK is concerned, Official Home Office guidance states that "The "Turkish Republic of Northern Cyprus" (TRNC) is not recognised as a state by the United Kingdom Government and its passports must not, therefore, be endorsed by immigration officers. Holders of such documents should not be refused entry. Leave to enter, if granted, should be endorsed on another document, eg. a Declaration of Identity for Visa Purposes (also known as a GV3). If the person otherwise qualifies for entry, leave to enter should be given by endorsing that document.

(FAC Report, Visit to Turkey and Cyprus, HC 473 (2007), p.16 fn3)

**5/28**

The Government were asked what were the legal obstacles to direct flights to the Turkish Republic of Northern Cyprus that cannot be overcome without the co-operation of the Greek Cypriot Administration in the south of the island; what was the legal authority for this opinion; and whether the human rights of Turkish Cypriots had been considered. An FCO Minister wrote:

The simplest way of enabling direct flights would be a decision by the Republic of Cyprus to designate Ercan as an international airport under the terms of the Chicago Convention on International Civil Aviation. In the absence of such a decision there are legal obstacles. The Government do not intend to pursue a policy which would be in contravention of international law. An application for a licence is under consideration by the Department for Transport and it would be inappropriate to comment further at this stage.

The UK and its EU partners remain committed to lifting the economic isolation of the Turkish Cypriots through targeted financial aid and trade liberalisation.

And further, whether there were any embargos between other nations or traditions in the European Union comparable to that of the Turkish Republic of Northern Cyprus and the Greek Cypriot Administration on direct flights to the former.

The Minister wrote further:

The status of the divided island of Cyprus is unique within the EU and as such creates an unparalleled situation with regard to direct flights. There are no direct flights between Northern Cyprus and any EU member states. The Government fully support the work of the EU towards lifting the isolation of the Turkish Cypriots. We welcome the ongoing implementation of the financial aid regulation and support further progress on trade liberalisation. However, a full solution to the difficulties faced by the Turkish Cypriots can be achieved only through a comprehensive settlement facilitated by the UN. We would echo the call of the UN Secretary-General in his latest report to the Security Council, as well as the statement of the Finnish EU presidency on 11 December, in urging the two communities to engage in discussions under UN auspices to achieve a resumption of negotiations for a comprehensive settlement as early as possible in 2007.

(HL Deb 8 January 2007 Vol 688 cWA18)

**5/29**

**Taiwan**

An FCO Minister wrote:

The UK does not recognise Taiwan as a state or country, nor its authorities as a government.

(HC Deb 24 July 2007 Vol 463 c1060W)

**Part Five: I.D.5(a)(iii).** *Subjects of international law—states—formation, continuity, extinction and succession of states—succession—situations of state succession—separation*

**5/30**

**Montenegro**

Note-

In a letter addressed to the Foreign Secretary, dated 04 June 2006, the Minister of Foreign Affairs of the Republic of Montenegro wrote:

The Republic of Montenegro shall observe all principles of international law and all treaties and provisions of international agreements signed by the state union of Serbia and Montenegro.

In a letter addressed to the Montenegrin Foreign Minister Mr Vlahovic dated 13 June 2006, the Foreign Secretary wrote:

I note that the Government of Montenegro has stated that it will remain faithful to all international obligations formerly incumbent on the State Union of Serbia and Montenegro, and I can confirm that we regard treaties and agreements in force to which the United Kingdom and the State Union of Serbia and Montenegro were parties as remaining in force between the United Kingdom and the Republic of Montenegro.

(i) Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field Geneva 12 Aug., 1949 039/1958 Cmnd 550

(ii) Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea Geneva 12 Aug., 1949 039/1958 Cmnd 550

(iii) Geneva Convention Relative to the Treatment of Prisoners of War Geneva 12 Aug., 1949 039/1958 Cmnd 550

(iv) Convention relative to the Protection of Civilians in Time of War Geneva 12 Aug., 1949 039/1958 Cmnd 550

(v) Protocol Additional to the Geneva Conventions of 12 Aug., 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) Geneva 08 June, 1977 029/1999 Cm 4338

(vi) Protocol Additional to the Geneva Conventions of 12 Aug., 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) Geneva 08 June, 1977 030/1999 Cm 4339.

(Treaty Series No. 34 (2006) Fourth Supplementary List of Ratifications, Accessions, Withdrawals, etc., for 2006 Cm 7159)

**5/31**

The Treasury was asked what continuing financial commitments the UK has towards countries which gained independence from the British Empire. A Minister wrote:

Upon independence from the UK, financial (and all other) responsibility passed to the independent country's government.

(HC Deb 9 July 2007 Vol 462 c1226W)

**Part Five: I.E.** *Subjects of international law—states—self-determination*

**5/32**
**Papua**
An FCO Minister said:

[I] must start with a clear statement that the UK does not support independence for Papua. Like the vast majority of other international players, we respect Indonesia's territorial integrity and have never supported Papuan independence . . .

The best way to resolve the complex issues in Papua is through promoting peaceful dialogue between Papuan groups and the Indonesian Government. Meaningful dialogue with the Government of Indonesia cannot take place on the basis of preconditions of Papuan independence. President Yudhoyono has said that he is committed to a just, comprehensive and dignified solution, including through consistent implementation of special autonomy. We welcome this important objective, and encourage him to press ahead with it. The special autonomy legislation is enshrined in Indonesian law, and was supported by Papuan groups and the international community. Full implementation of the legislation will lay the groundwork for a sustainable resolution to the internal differences and the long-term stability of the province. The UK is of course also committed to improving the well-being and political participation of Papuan people, as well as encouraging freedom of expression throughout Indonesia . . .

[P]rogress [on autonomy] is being made; for example, the establishment of the Papuan People's Council and the election of a provincial governor. Legislation has been, or is in the process of being, approved on the use of Papuan symbols—essentially the flag and certain anthems—the special autonomy budget, forestry issues, protection of customary rights, health and education . . .

I return to the Act of Free Choice [This was the referendum in Papua conducted by Indonesia in 1969 and later noted by the UN, which, the Indonesian government said, produced a unanimous result against independence, Ed.].. Although we recognise that it was extremely flawed, the UK has no plans to support a review of that Act. We believe that is a matter for the Netherlands and the UN. As the 1962 New York agreement was between the Dutch and Indonesian Governments, and the UN oversaw the 1969 Act, we have little locus to question the legality of either. The 2001 special autonomy law allows the establishment of a truth and reconciliation committee to look at the incorporation of Papua into Indonesia in the 1960s, which we believe indicates that the Indonesian Government recognise the need to address the long-standing problems in Papua . . .

In respect of human rights, we do indeed have an interest . . . We believe that the human rights situation in Papua too is improving. There is little credible information to suggest that major systematic abuses of human rights are currently taking place . . . The major concerns are chronic low-level harassment, freedom of expression and association, and social and economic rights—as in other areas of eastern Indonesia. Of course, we will continue to take reports of human rights violations seriously; we raise these with the Indonesian Government, together with our European partners and as part of our bilateral dialogue . . . Several Jakarta-based correspondents, including representatives of the BBC and the Washington Post, received permission to visit Papua in 2006, including sensitive areas in the central highlands. We welcome this increased access for journalists. We regularly encourage the Indonesian Government to permit journalists to visit Papua to promote better international understanding of conditions within the provinces.

[The cases of] Filep Karma and Yusak Pakage who were shamefully imprisoned in 2005 for flying a flag identified with the separatist struggle [were raised]. The Indonesian Government have obligations under the International Covenant on Civil and Political Rights and their own constitution to guarantee freedom of expression throughout Indonesia. We encourage the Indonesian Government to implement those obligations . . .

Papua is one of the wealthiest provinces in Indonesia in fiscal terms. However, most Papuans do not see the benefits of that wealth. Papua is the province with the highest level of poverty—40 per cent of Papuans live below the poverty line—and health, education and infrastructure are consistently below the national average. Much of that discrepancy can be put down to corruption, which is serious and endemic at the local government level. The UK's projects to build local government capacity, which I described earlier, aim to improve that. We welcome the fact that, at the urging of the new governor, Papua's provincial budget is now being scrutinised by the national anti-corruption commission.

. . . we will do everything that we can to support the implementation of the special autonomy law and the dialogue between the representatives of the Papuan people and the Indonesian Government. In the mean time, we are working to improve the economic and political situation for ordinary Papuans through targeted development assistance, the encouragement of dialogue between the Government and their representatives, and project-funding to improve human rights and local government accountability.

(HL Deb 8 January 2007 Vol 688 c101–106)

**5/33**
**Western Sahara**
A Minister said:

The UK regards the status of Western Sahara as undetermined, pending UN efforts to find a solution. To this end, the UK fully supports the efforts of the UN Secretary-General and his Personal Envoy to the Western Sahara, Peter Van Walsum, to assist the parties to achieve a just, lasting and mutually acceptable political solution, which will provide for the self-determination of the people of Western Sahara.

On 30 April the UN Security Council, chaired by the UK, adopted UN Security Council Resolution 1754, which took note of Morocco's proposal presented to the UN Secretary-General on 11 April, and called for both sides to enter into negotiations without preconditions.

The UK welcomes the first round of these talks between Morocco, the Polisario, and their neighbours, hosted by the UN on 18–19 June and the agreement by all parties to take part in a further round in August.

(HC Deb 25 June 2007 Vol 462 c222W)

**5/34**
**Kurds**
An FCO Minister said:

[the Government] have no plans to assist the development of regional autonomy for Kurds in eastern Turkey and western Iran. We respect the territorial integrity of Turkey and Iran.

. . . it is absolutely proper that the rights of ethnic minorities—or large ethnic minorities—should be respected. However, autonomy and self-determination are, and must be, a matter for sovereign Governments.

(HL Deb 3 July 2007 Vol 693 c899)

**Part Five: II.A.1(b).** *Subjects of international law—international organisations—general—status and powers—privileges and immunities of the organisation*

**5/35**
The Foreign Secretary was asked what reports she had received on the arrest and detention of Marios Matsakis MEP in Akrotiri Sovereign base area, Cyprus. An FCO Minister wrote:

Having already failed to attend the Sovereign base area court following two previous summonses relating to alleged acts of criminal damage on property belonging to the Ministry of Defence in the Sovereign base areas, warrants were issued for the arrest of Dr. Matsakis. He was therefore arrested at the direction of the Court on 12 April, while making a visit to the Sovereign base areas. Although he was offered the opportunity of making a modest bail payment pending court appearance, Dr. Matsakis refused and declined an offer by a colleague to pay on his behalf. He was therefore remanded in police custody. Following concern for his health Dr. Matsakis was transferred to medical facilities in the Republic of Cyprus. This resulted in his leaving the jurisdiction of the Sovereign base areas and therefore his release from custody.

(HC Deb 14 May 2007 Vol 460 c498W)

**5/36**
A Treasury Minister wrote:

Under UK tax law there is no such person as an "international civil servant". However, officials of the United Nations are sometimes referred to as international civil servants. There is no requirement for visiting officials to notify HM Revenue and Customs of their presence in the UK. Those who are present in the UK for a sufficient length of time to become resident in the UK will be dealt with locally. Information is not collated centrally.

The UK tax position of employees of the United Nations is set out in the United Nations and International Court of Justice (Immunities and Privileges) Order 1974. This provides immunities and privileges that are normal for international organisations. It includes among other things that officials of the UN shall be exempt from income tax on remuneration received by them from the UN. UN Officials are however subject to a form of internal tax operated by the UN, which is referred to as the Staff Assessment.

(HC Deb 17 October 2007 Vol 464 c1142W)

**Part Five: II.A.2(a)** *Subjects of international law—international organisations—general—participation of states and international organisations in international organisations and in their activities—admission*

**5/37**
The Foreign Secretary was asked if she had made an assessment of whether Scotland would automatically assume membership of the EU should it become an independent state. An FCO Minister wrote:

By virtue of the United Kingdom's EU membership, Scotland is part of the EU. If Scotland were to leave the UK, it would not automatically assume membership of the EU. The terms under which an independent Scotland might become a member of the EU would have to be negotiated.

(HC Deb 16 January 2007 Vol 455 c1003W)

**Part Five: II.A.2(b)** *Subjects of international law—international organisations—general—participation of states and international organisations in international organisations and in their activities—suspension, withdrawal, expulsion and deportation*

**5/38**
**NATO**
The Government were asked whether there was any procedure whereby NATO members could be expelled or suspended from the organisation

in light of their inability or unwillingness to provide troops to take part in the organisation's operation in Afghanistan. An FCO Minister wrote:

There is no mechanism for expelling or suspending a NATO member. All allies contribute troops to the NATO operation in Afghanistan and at the recent Riga summit reaffirmed their commitment to the operation's success.

(HL Deb 8 January 2007 Vol 688 cWA5)

**5/39**
**EU**

An FCO Minister wrote:

Parliament may amend or repeal any existing Act of Parliament, including the European Communities Act 1972. There is no formal procedure for withdrawal in the EU treaties, nor are there any provisions in the treaties or any other international obligations which affect the ultimate ability of the UK to withdraw from the EU. However, given that the UK has been a member of the EU for more than 25 years, and its laws and economy are intricately bound up with those of the EU, the Government would in practice have to negotiate the terms of any departure over a lengthy period.

(HL Deb 8 February 2007 Vol 689 cWA155)

**5/40**
**Council of Europe**

The Foreign Secretary was asked if she would suspend the UK's financial contribution to the Council of Europe pending review of the appropriateness of Serbia taking the Presidency of the Committee of Ministers of the Council of Europe. An FCO Minister wrote:

The Government do not believe it would be in the United Kingdom's interest to suspend its financial contribution to the Council of Europe. To do so would be in breach of our obligations under Article 39 of the Statute. Failure to fulfil our financial obligations could result in the suspension of the UK's right of representation on the Committee of Ministers and Parliamentary Assembly. A suspension in contributions would also damage the vital work of the Council of Europe in promoting and protecting human rights, democracy and the rule of law in Europe.

Serbia still has much work to do to meet its Council of Europe accession commitments, as well as other international obligations, in particular full co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY). However, we hope that their Chairmanship of the Committee of Ministers will provide encouragement for Serbia to demonstrate its commitment to Council of Europe core objectives of human rights, democracy and the rule of law as well as other international obligations, in particular full co-operation with the ICTY.

(HC Deb 14 May 2007 Vol 460 c501W)

**5/41**
**Commonwealth**
It was put to the Foreign Secretary that the ground rules for membership of the Commonwealth that are enshrined in the Harare declaration mean that a dictatorship cannot be a member of the Commonwealth—or at least, that such a state must be suspended from it. He was asked:

...at what point will the British Foreign Secretary deem that the line has been crossed so that we must consider suspension of a state from the Commonwealth?

He replied:

Clear rules were set out, ironically, in Harare. In 2002, we showed that suspension is a tool to be used, and Zimbabwe was expelled from the Commonwealth. We have to judge each case against the criteria as it comes up... matters will be properly dealt with.

(HC Deb 12 November 2007 Vol 467 c400)

**Part Five: II.A.3**. *Subjects of international law—international organisations—general—legal effect of the acts of international organisations*

**5/42**
An FCO Minister wrote:

As a longstanding, committed and active member of the UN, the UK takes seriously all resolutions which are adopted by UN bodies. While the majority of these resolutions do not give rise to binding obligations, they are important expressions of the international community's opinion on an issue. Only the UN Security Council can adopt binding resolutions. The Government considers that it is acting in compliance with all such legally-binding resolutions applicable to the UK.

(HC Deb 8 March 2007 Vol 457 c2152W)

**5/43 (See also 14/7)**
The UK representative gave the following explanation of his vote in a Security Council debate on the situation in Lebanon about the establishment of the Special Tribunal for Lebanon:

The United Kingdom welcomes the adoption of resolution 1757 (2007). The proposed Tribunal is vital for Lebanon, for justice and for the region. The establishment of the Tribunal through Lebanese internal procedures had been thwarted. The Council, for its part, has been asked to adopt a binding decision to create the Tribunal. This is not a capricious intervention or interference in the domestic political affairs of a sovereign State. It is a considered response by the Council, properly taken, to a request from the Government of Lebanon for

action to overcome a continued impasse in Lebanon's internal procedures, despite long and serious efforts to find a solution within Lebanon. It is a long-held United Kingdom view that, to make this decision binding, it was necessary for such a resolution, inter alia, to be taken under Chapter VII. The use of Chapter VII carries no connotation other than that it makes this resolution binding. That is why the United Kingdom supported this resolution. We hope that all parties in Lebanon will now be able to move forward together to take the necessary decisions to build upon this formal establishment of the Tribunal.

(UN Doc S/PV.5685, 30 May 2007)

**Part Five: II.A.5.** *Subjects of international law—international organisations—general—responsibility of international organisations (see Part Thirteen: II.A.2(a)., below)*

**5/44**
The FCO Legal Adviser made the following statement to the UNGA Sixth Committee on 30 October 2007:

Turning to chapter VIII of the ILC's Report [Fifty-ninth session, A/62/10, Ed.], on the responsibility of international organisations...

In the past, the United Kingdom has expressed hesitation about how closely the Commission's work on this topic has been following the Commission's Articles on State Responsibility. We have also cautioned against the wholesale application of the Articles on State Responsibility to international organisations without giving due consideration to the differences between States and international organisations, or allowing for the diversity in the types of international organisations and their functions. I reiterate those comments today. The United Kingdom would encourage the Commission to explore the practice of international organisations, and to give further thought to the issues raised by extending the principles of State responsibility to international organisations. In this regard, we take note of the Special Rapporteur's comments in his Fifth Report, where he explains that the Commission's draft articles are expressed at a level of generality, which means that it is not appropriate that they be tailored to suit certain entities. We agree, but remain nonetheless uncertain as to how some of the draft articles might ever apply to an international organisation. Accordingly, we welcome the suggestion of the Special Rapporteur to consider including a draft article which would incorporate the *lex specialis* rule, and also his proposal to revisit some of the issues raised in the comments of States and international organisations before the end of the first reading.

The United Kingdom is aware that difficulties may be posed by the relative lack of practice concerning the responsibility of international organisations, to which the Commission has referred on numerous occasions in its Report, such as at paragraphs 331 and 337, and also within the commentaries to the draft articles themselves. We would encourage the Commission to seek further responses from international organisations and States in order to fill in the practical background.

The United Kingdom would also like to comment on certain specific provisions that have been adopted at this year's session. First, draft article 35 sets out a

general principle that an international organisation cannot invoke its own rules in order to justify a failure to comply with obligations under international law which are entailed by the commission of an internationally wrongful act. The commentary clarifies that this provision has been drafted with reference to article 32 of the Commission's Articles on State Responsibility. The United Kingdom considers that these two situations are not identical. States have full sovereignty under international law, and as such, have the full range of powers to fulfil their international obligations. The powers of international organisations, however, are limited. They can only exercise those powers which are conferred on them, either expressly or impliedly, in their constitutive instruments. In this regard, article 27, paragraph 2, of the Vienna Convention on the Law of Treaties between States and International Organisations does not represent a complete parallel for draft article 35. If an international organisation has accepted a treaty obligation, it must be assumed to have the powers to carry out that obligation. But this is not necessarily the case for all the international obligations that an international organisation may have, such as those which arise under customary international law. The lack of relevant practice makes this provision difficult to assess, but we consider that more consideration is needed of the wording of this draft article.

The United Kingdom also notes the content of draft article 43, and the commentary to this provision, where it is recorded that the majority of the Commission considered that States which are members of an international organisation are not under any general obligation to take all appropriate measures to provide the organisation with the means for making reparation. The United Kingdom agrees with this view, and observes that this was also the conclusion of the English courts in the litigation concerning the International Tin Council. However, we do not consider that the compromise provision, as drafted, accurately reflects that view. The key point is that this is an issue which is determined by the rules of the international organisation in question. The draft article, as it presently stands, provides that the member States have to take 'appropriate measures' in accordance with those rules, but whether this obligation is only owed to other member States, as an internal institutional rule, or to non-members as well, is not clear. The way that the provision is presently drafted might even be interpreted as supporting the existence of the general obligation, which the majority of the Commission rejected. We would therefore recommend that the wording of this draft article be given further consideration.

(Text supplied by FCO)

**Part Five: II.B.2.** *Subjects of international law—international organisations—particular types of organisation—regional organisations*

**5/45**
The Foreign Secretary was asked what articles of the EU treaties require membership of the European Court of Human Rights. An FCO Minister wrote:

There is no requirement in the EU treaties for member states to accede to the European Convention on Human Rights (ECHR). However, all EU member

states are members of the Council of Europe and signatures of [parties to, Ed.] the ECHR. There is no provision in the treaty establishing the European Community which either requires or empowers the European Community to accede to the ECHR. Article 6 of the treaty on EU, which requires the EU to respect fundamental rights, refers to the ECHR as an instrument containing such rights, but does not require the EU as an organisation to accede to the ECHR.

(HC Deb 27 February 2007 Vol 457 c1187W)

**Part Five: IV.B.** *Subjects of international law—international organisations—entities and groups other than states and international organisations—dependencies*

**5/46 (See also 11/4)**
**Gibraltar**

The Foreign Secretary was asked a number of questions about Gibraltar:

1. What status the tripartite agreement gave to British aircraft travelling to Gibraltar when in Spanish airspace.

An FCO Minister wrote:

The tripartite agreement has no effect on the status of British aircraft flying in Spanish airspace. The rights of an airline of one country to traverse the airspace of another country are enshrined in the International Convention on Civil Aviation, signed at Chicago in 1944.

2. What effect the tripartite agreement had had on claims by the Spanish Government over sovereign British territorial waters surrounding Gibraltar.

The Minister wrote:

The tripartite agreement has had no effect on the United Kingdom and Spain's respective positions on the waters surrounding Gibraltar.

3. What were the UK's claims to territorial water surrounding Gibraltar.

The Minister replied:

Under international law, coastal states are entitled, but not required, to claim territorial sea up to a maximum breadth of 12 nautical miles. Where the coasts of two states are opposite or adjacent, neither is entitled, unless they agree otherwise, to extend its territorial sea beyond the median line. The Government consider that a limit of three nautical miles is sufficient in the case of Gibraltar.

4. Whether there were plans to discuss claims to increase British territorial water surrounding Gibraltar with the Spanish Government.

The Minister wrote:

There are no such plans.

5. What restrictions exist on vessels travelling from Gibraltar to Spanish ports.

The Minister wrote:

Spanish restrictions require military vessels travelling from Gibraltar to travel to another non-Spanish port before entering a Spanish port. This restriction is not applied to cargo vessels, cruise ships or other passenger boats.

6. What the customs procedures are for Gibraltarian citizens who cross the border from Spain to Gibraltar.

The Minister replied:

Gibraltarian citizens who cross the border from Spain to Gibraltar are not in practice subject to customs checks by the Spanish customs authorities before they can exit Spain. They are subject to a customs check by Gibraltarian customs upon entering into Gibraltar.

(HC Deb 2 March 2007 Vol 457 c1611W)

**5/47**
(See also **12/2)**
The FCO wrote to the FAC on 9 November 2006 about the Cordoba Trilateral agreements.

The committee will be aware that the recent Cordoba agreements on the enhanced use of RAF Gibraltar relate only to commercial aircraft, and that Spanish restrictions on the use of their airspace by British Military aircraft flying to and from Gibraltar have not yet been lifted. The Committee's recollection is correct that it remains the UK Government's objective to lift these restrictions and we continue to lobby the Spanish Government to reconsider its position on this. With respect to the Gibraltar/Spain direct military communication link, we understand that the UK MoD is reassessing the requirement for this capability. Based on this reassessment, which we expect to be complete in early 2007, the decision can be made as to whether or not we continue to lobby the Spanish on this issue.

With regard to your second question, the UK and Spain have made a number of attempts to resolve the blocked ratification of the 1996 Hague Convention on the International Protection of Children. As the Committee may be aware it was most recently discussed as part of the trilateral process and while we were unable to reach an agreement ahead of 18 September, the UK and Spain are both committed to finding a solution. Negotiations are consequently at an advanced stage and we hope that a final agreement will be reached within the next few weeks. Indeed, this is the position that the British and Spanish delegations jointly presented to delegates at the recent Hague Conference's Special Commission on child protection issues.

Finally, you ask about the settlement on pensions. The Cordoba settlement does not directly address Community Care's Household Cost Allowance. However,

both the UK and Spanish Governments view the Cordoba settlement as a satisfactory and equitable outcome for all involved and a full and final resolution of the longstanding pensions issue. The wider effect of the Cordoba arrangements is that they will facilitate the unfreezing of Gibraltar Social Insurance Fund (GSIF) pensions for pensioners remaining in the GSIF. To this end, the Chief Minister has already announced that the Government of Gibraltar will uprate the pensions of all those in the GSIF from April 2007 (i.e. from the same date that the UK starts to make uprated payments to Spanish pensioners who have opted to leave the GSIF).

(FAC Report Developments in the European Union (Written Evidence) HC 166-iv) (10 October 2007))

## 5/48
## Diego Garcia

An FCO Minister wrote:

Under the 1966 Exchange of Notes between the US and UK [about Diego Garcia], non-US and non-UK nationals who are not serving members of the US military cannot be detained without notification to the Government.

There is no US facility for foreign detainees on Diego Garcia. The only civilian detention centre is at the small UK-run police station.

The US authorities have repeatedly given us assurances that no detainees, prisoners of war or any other persons in this category are being held on Diego Garcia, or have at any time passed in transit through Diego Garcia or its territorial waters or airspace. This was most recently confirmed during the 2007 US/UK Political Military Talks held in Washington on 11 and 13 September.

The Government co-operated fully with the Council of Europe's inquiry last year, together with an inquiry on similar issues by the European Parliament. At that time the Government explained that we had carried out extensive searches of official records and found no evidence of detainees being rendered through the UK, or Overseas Territories, since 1997, where there were substantial grounds to believe there was a real risk of torture.

(HC Deb 11 October 2007 Vol 464 c703W)

## 5/49

The Minister of Defence wrote:

The 1966 UK/US Exchange of Notes [on Diego Garcia] requires the US to seek prior approval at the highest political level for any offensive action by the US from their base at Diego Garcia. It is a matter of record that the UK approved US offensive action from Diego Garcia in support of operations in Afghanistan in 2001 and Iraq in 2003. However, I am withholding a full list of the occasions when the US has sought such approval as the release of such information would, or would be likely to, prejudice our international relations.

(HC Deb 17 October 2007 Vol 464 c1117W)

**5/50**
**Overseas Territories**
Speech by an FCO Minister to Cayman Islands Chamber of Commerce

Good governance in the Overseas Territories is one of the UK's key priorities. We will ensure the highest standards of governance with transparency and accountability at all levels of government. I commend the recent enactment of a Freedom of Information Law.

We will also ensure that our Overseas Territories meet international norms, whether a Caribbean Financial Action Task Force evaluation or a UN convention. For example, at our meeting last week, we agreed to extend conventions on Child Labour, Discrimination against Women, and Corruption to the Overseas Territories.

I look forward to constitutional talks. The desire for greater autonomy is a natural one, and we will consider any proposals carefully. But the British government must retain certain powers relating to good governance and law and order. Any new constitution has to give due weight to human rights. The challenge for us all now is to find the right balance.

(www.fco.gov.uk/news, 12 December 2007)

**Part Five: IV.C.** *Subjects of international law—international organisations—entities and groups other than states and international organisations—special regimes*

**5/51** (see also **5/32**)
An FCO Minister said:

We do not plan to raise Papua in the United Nations Security Council. We respect Indonesia's territorial integrity and do not support Papuan independence. We believe that full implementation of existing special autonomy legislation is the best way to proceed towards a sustainable resolution to the internal differences and the long-term stability of Papua. The best way to resolve the complex issues in Papua is through promoting peaceful dialogue between Papuan groups and the Indonesian Government.

(HL Deb 13 November 2007 Vol 969 c446)

## Part Six: The Position of the Individual (including the Corporation) in International Law

**Part Six: I.** *The individual (including the corporation) in international law—nationality*

**6/1**
In the written observation of the UK in C-300/04 *M.G. Eman and O.B. Sevinger v College van burgemeester en wethouders van Den Haag*), it was argued on behalf of HMG:

"The grant of nationality is recognised in international law as an essential attribute of State sovereignty. If Member States were not free to confer their nationality on persons resident in the OCTs (Overseas Countries and Territories):

The British Overseas Territories Act 2002 (and, it is believed, the equivalent provisions of the other Member States with Annex II territories) would have to be repealed and replaced.

The basis for the relationship between the Member States and the people of their Annex II territories would be transformed, and could even be jeopardised.

Some residents of the OCTs could be left stateless, since in many cases it is far from clear where their citizenship would come from if not from the associated Member State".

At the hearing, counsel for HMG said:

"The grant of nationality is recognised in international law as an essential attribute of state sovereignty. It is also recognised in Community law as a matter entirely for the Member States."

(Text supplied by FCO)

**6/2**

The FCO wrote to the FAC about changes in British citizenship law brought about as a result of changes in the laws of India and Nepal:

Ethnic Citizenship (EMC) Applications—British Nationality Act (Hong Kong) 1997

Recent clarification of Indian citizenship law means that British nationals of Indian descent who were previously thought not to meet the criteria for registration as British citizens under the British Nationality (Hong Kong) Act 1997 (BNA (HK) 1997), may now qualify. In addition, the Nepalese community in Hong Kong have recently become aware of their potential eligibility for registration as British citizens under the Hong Kong Act.

* * *

Applicants of Indian Descent

The Indian authorities had previously indicated that minors of Indian descent would continue to be considered Indian nationals even if they had been registered as British Dependent Territory Citizens (BTDC) or British Nationals (Overseas) [BN{O}]. They would therefore not meet the criteria to be solely British and were considered ineligible for registration under the Hong Kong Act. Around 600 applications were refused for this reason. The Indian authorities have now provided further clarification of their citizenship laws and have stated that any minor who was registered as a BDTC or BN(O) would have lost Indian citizenship upon registration and therefore could have met registration requirements (children who were BDTCs by birth retain Indian citizenship until they reach 18).

The Home Office has decided to reassess these cases on request. New applications are also expected from those who did not previously apply

on the basis that they believed they did not meet the "solely British" criteria.

Handling

The most commonly affected provision of the British Nationality Act is Section 1(1) of the BNA (HK) 1997 available to individuals who were and continue to be ordinarily resident in Hong Kong.

The majority of the requests for reassessment of Indian cases and new applications for both Nepalese and Indian cases will be in Hong Kong. Guidance for both Nepalese and Indian cases is posted on the Hong Kong website and the IND page of the Home Office website. Reassessment of Indian cases which have been previously refused will be done remotely. Applicants will be asked to post or fax written details of their initial application, including Home Office reference numbers, to their nearest British mission. These requests should be sent to the Home office for reassessment. The Home Office have given a definitive time scale of five weeks for completing reassessments, effective from April 2006.

(Letter from FCO to FAC, 13 February 2007)

## 6/3

During evidence on 13 December 2006 for the Developments in the EU Inquiry, [a member] asked about overseas territories citizens and visa requirements for travel in Europe (Q95–99). The Foreign Secretary undertook to provide further details on the visa requirements of certain categories of British Nationals who wished to travel within the Schengen area. The FAC was concerned that there might be an alteration to the Schengen Common Visa List (CVL) that would require British overseas territories citizens (BOTCs) from Bermuda and the five British overseas territories in the Caribbean to have visas in order to visit the Schengen area of Europe. In order to provide a full and comprehensive answer I will set out the background and context of the amendment to the CVL and its implications for British Nationals.

Categories of British Nationals and the requirements for their entry into the UK

BOTCs come from any of 14 British overseas territories scattered across the globe. The great majority of BOTCs have a right of abode in the UK as in 2002 the British Overseas Territories Act made all existing BOTCs, except those whose BOTC status derived solely from a connection with the Cyprus Sovereign Base Areas (CSBA), automatically become British citizens. As British citizens, these BOTCs are not subject to immigration control for entry into the UK.

There are a small number of BOTCs who are not also British citizens and who therefore do not have the right of abode in the UK. These are persons who were registered or naturalised as BOTCs after 2002 and who have not subsequent y been registered as British citizens, and those whose BOTC status derives solely from a connection with the CSBA. People who became BOTCs after 2002 can apply for British citizenship unless their BOTC status derives from a connection with the CSBA, or unless they have previously held, but given up, British

citizenship. The application will then be considered at the Home Secretary's discretion, and in practice all applications are granted except for when an applicant is suspected of acquiring BOTC status improperly.

BOTCs who are not also British citizens, British Overseas citizens (BOCs), certain categories of British subjects (BSs)—primarily those who have a connection with India and Pakistan rather than with Southern Ireland -- and British protected persons (BPPs) do not have automatic returnability to their country of residence or any right of abode in the UK. These categories of British nationals must satisfy an immigration officer that they qualify for entry into the UK in accordance with the Immigration Rules. These nationals also need a visa in certain situations, e.g., when seeking entry for a period exceeding six months or for a purpose for which prior entry clearance is required under the Immigration Rules.

There is one important exception to this. All BOTCs who derive their BOTC status through a connection with Gibraltar are EU Citizens. As EU Citizens they benefit from free movement rights within the EU.

All British citizens have the right of abode in the UK, i.e. they are entirely free from UK immigration controls.

Negotiations on the CVL

The United Kingdom does not participate in the CVL, and therefore does not have a vote on matters pertaining to it. Nevertheless, the Commission agreed to take our views into account as long as our position was clear and unambiguous, and no immigration risk was perceived by other Member States.

In their initial proposal the Commission suggested that the 3.4 million British Nationals Overseas (BN(O)s) should be exempt from visa requirements to enter the Schengen area. The Commission considered that they would not constitute a migratory risk or a risk in terms of public policy, as they are re-admissible to Hong Kong and the passports that British offices issue exclusively to them have highly reliable security features. Most BN(O)s also hold Hong Kong Special Administrative Region passports, which allow visa-free travel to EU Member States.

This change was agreed by Member States BN(O)s do not have the right of abode in the UK. They do not need a visa to come to the UK, unless seeking entry for a period exceeding 6 months or for a purpose for which prior entry clearance is required, but they must satisfy an immigration office that they qualify for entry in accordance with the Immigration Rules.

The Commission's initial proposal also stated that all BOTCs and BSs should be subject to the Schengen visa regime. However, at the Visa Working Group meetings of 26 October 2006 and 14 November 2006 the Commission agreed — in view of a UK intervention and ECJ case law—to allow those BSs and BOTCs with a right to abode in the UK visa free access into the Schengen area. The Commission felt that re-admissability to the country of origin was less certain for those BOTCs and BSs without the right of abode in the UK than for the BN(O)s, and was therefore unwilling to grant visa exemptions to them.

This proposal was accepted by the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA)/Mixed Committee of 9 November 2006 and the Permanent Representatives Committee (COREPER) of 23 November 2006 where agreement was reached on the text of the then draft Regulation. The amendments to the CVL mean that Schengen immigration control requirements for the relevant British nationals are now more in alignment with the UK's immigration control. The FCO was consulted about how to conduct the above negotiations, and was content with the strategy that was used.

Proving a right of abode in the UK

BOTCs have a right of abode in the UK if they simultaneously possess British citizenship. As British citizens, they additionally enjoy the rights of free movement and establishment conferred by or under the EC Treaty and, therefore, visa free access to the Schengen area. The majority can prove their status at border controls by producing one of two documents; a British citizen passport or a BOTC passport containing a certificate of entitlement to the right of abode in the UK. A BOTC passport without this certificate will not suffice. The only exception to this is for BOTCs who derive their status from a connection with Gibraltar, as their passports are in an EU format and are evidence of the holders free movement rights within the EU. All BOTCs who are also British citizens would be granted a British citizen Passport and/or a certificate of entitlement to the right of abode in the UK (to put in their BOTC passport) upon application and payment of the requisite fee.

BS passports are endorsed on issue either to show that the holder has right of abode (generally speaking, those whose BS status derives from birth in Ireland) or that the holder has right of re-admission to the UK.

As mentioned above, BOTCs who derive their BOTC status from a connection with Gibraltar have no need to prove a right of abode in the UK. Spain recognised Gibraltarian ID cards as valid travel documents to establish the holders right of free movement within the EU in 2000. Free movement rights are governed by the Free Movement Directive 2004/38/EC that entered into force on 30 April 2006, which also supports that Gibraltarian ID cards establish the holders right of free movement within the EU. All BOTC(Gib) EU format passports arc [sic] also evidence of the holders free movement rights. We are writing separately to the Commission on this point.

Conclusion

BOTCs from Bermuda and the British overseas territories in the Caribbean who possess British citizenship, and hence have the right of abode in the UK, have visa free access to the Schengen area. The great majority of these BOTCs possess British citizenship, and most of those who do not possess British citizenship can register as British citizens if they wish and also obtain the right of abode.

To pass Schengen border controls without a visa, a BOTC with simultaneous British citizenship may need to show either a British citizen passport or a BOTC passport which contains a certificate of entitlement to a right of abode in the UK. Those who do not already possess either one of these documents can apply for them by virtue of their British citizenship. The certificate of entitlement to

a right of abode in the UK is applied for separately from the BOTC passport, but they must be displayed together.

## Background

Beside British citizens there are, as a legacy of empire, a number of other categories of British passport holders: British Nationals (Overseas) (BN(O)s), British overseas territories citizens (BOTCs), British subjects (BSs), British Overseas citizens (BOCs) and British protected persons (BPPs). EU Member States previously imposed national visa requirements on certain British nationals resulting in a variegated system to the latters' detriment. (For example, a BOC needed a visa to enter France but not Malta.) It has long been our policy to seek the removal of EU visa requirements on British nationals, particularly the 3.4 million BN(O)s.

Schengen, of which the UK is not a member for the purpose of border control, operates a Common Visa List (CVL). The amendment to the Schengen CVL (Regulation 539/2001) for the first time introduced a common EU visa policy for British nationals. Because of our approach to Schengen border provisions, we are not allowed to participate or vote on legislation in this area. However, we engage in debate and have been able to persuade the Commission and other Member States to act in our interest. Regulation (EC) 1932/2006 amending Regulation (EC) 539/2001 entered into force on 19 January 2007.

Below is a table on the different categories of British National, and how the amendment to the CVL has affected them. We cannot guarantee the exact location of all British nationals, so I include our best approximation.

Category of British Passport

| Category of British Passport | Location (approx) | Previous Visa situation | New Visa situation |
|---|---|---|---|
| BOTC (200,000) | Across the globe in British Overseas Territories | No visa required if using a British citizen passport, a BOTC passport from Gibraltar, or a Gibraltarian ID card. If using a BOTC passport from other territories then visa requirements varied. | No visa required if using either a British citizen Passport, a BOTC passport from Gibraltar, or a BOTC passport from another territory which contains a certificate of entitlement to a right of abode in the UK. |
| BOC (1,500,000) | Mostly Malaysia or East Africa | Visa required (except in Estonia, Malta, Greece, Lithuania, Slovenia, Benelux) | Visas required—situation regularised |

| | | | |
|---|---|---|---|
| BPP (10,000) | Mostly East Africa | Visa required (except in Estonia, Malta, Greece, Lithuania, Slovenia, Benelux) | Visas required—situation regularised. |
| BN(O) (3,400,000) | Mostly Hong Kong | Visa required except Estonia, Malta, Greece, Lithuania, Slovenia, Benelux, Denmark, Iceland, Italy, Greece, Luxembourg, Netherlands and Sweden | No visa required |
| British Subjects (200,000) | Mostly Indian sub-continent and East Africa | Visas for all (except in Estonia, Malta, Greece, Lithuania, Slovenia, Benelux) | No visa required except for those subject to UK immigration control |

(www.publications.parliament.uk/pa/cm200607/cmselect/cmfaff/memo/166/uceu2502.htm)

**Part Six: II.** *The individual (including the corporation) in international law—diplomatic and consular protection (see also Part Thirteen II.A.1(c), below)*

**6/4**
(See also **2/5**)
The Government's reply to the EU Commission's Green Paper on Diplomatic and Consular Protection (28304, 6192/07, COM(06) 712) was annexed to a report of the European Scrutiny Committee:

1. Introduction

1.1 The UK welcomes the Commission's Green Paper on Diplomatic and Consular Protection of Union citizens in third countries. Our commitment to providing high quality consular assistance is reflected in the UK Government's current strategic international priorities, the ninth of which reads:

"Delivering high-quality support for British nationals abroad, in normal times and in crises".

1.2 The UK takes seriously Member States' obligation not to discriminate against other unrepresented EU nationals in delivering consular assistance. We are acutely aware that, in some parts of the world, delivering consular assistance

to British nationals is only possible through the consular and diplomatic networks of our EU Partners. And while providing assistance at times of crisis is only one element of the broad range of activities which make up consular assistance, co-ordination amongst Member States is integral to planning and providing effective responses to crises when they do occur.

1.3 The UK shares the Commission's objectives of ensuring unrepresented Member States' nationals know they can seek consular assistance from other Member States' missions, and of ensuring any assistance provided to them is efficient, effective and non-discriminatory. We are pleased co-ordination amongst Member States has improved in recent years and grateful to the Commission for its consideration of how it might be improved still further.

1.4 Member States provide their consular assistance in a variety of international and domestic legal frameworks. Consequently, it would be useful to set out the basis on which the UK provides consular assistance.

1.5 Firstly, the UK differentiates between consular assistance, passport issuance, notarial services and visa applications. Although these four activities are often performed by the same personnel, they have different legal and policy foundations. The Green Paper is concerned primarily with consular assistance: the provision of assistance by consular officials or diplomatic authorities to nationals in difficulty overseas. The list of activities under Article 5 of Decision 95/553/EC serves as good illustration. Article 20 TEC, to which Decision 95/553/EC and this Green Paper respond, is also concerned with consular assistance.

1.6 Secondly, it is important to recognise diplomatic protection as a distinct legal concept from consular assistance. Consular assistance can be easily confused with diplomatic protection. This may be because consular assistance is often referred to as consular protection, or because it is frequently provided by staff who have both consular and diplomatic functions. Diplomatic protection is formally a state-to-state process by which a state may bring a claim against another state in the name of a national who has suffered an internationally wrongful act at the hands of that other state. Under international law, states may exercise diplomatic protection only on behalf of their own nationals, and not on behalf of nationals of other states. Conversely, consular assistance is the provision of support and assistance by a state to its nationals, or those nationals to whom it has agreed to provide assistance, who are in distress overseas. The vast majority of such cases do not involve an internationally wrongful act.

1.7 Thirdly, British nationals do not have a legal right to consular assistance overseas. The UK Government is under no general obligation under domestic or international law to provide consular assistance (or exercise diplomatic protection). Consular assistance is provided as a matter of policy, which is set out in the public guide, "Support for British Nationals Abroad: A Guide". Other Member States provide consular assistance on a range of bases, some of which recognise a right to consular assistance under national law, and some of which do not.

1.8 In relation to EU law, Article 20 TEC sets out an obligation of non-discrimination. It requires Member States to treat requests for consular assistance by unrepresented nationals of Member States on the same basis as requests by their

own nationals. In compliance with this, the UK provides consular assistance to significant numbers of unrepresented Member States' nationals. But Article 20 TEC, does not create any right to assistance beyond this. Decisions 95/553/EC and 96/409/CFSP do not affect this position or broaden the basic legal principle set out in Article 20.

1.9 In relation to EU law, Article 20 TEC sets out an obligation of non-discrimination. It requires Member States to treat requests for consular assistance by unrepresented nationals of Member States on the same basis as requests by their own nationals. In compliance with this, the UK provides consular assistance to significant numbers of unrepresented Member States' nationals. But Article 20 TEC, does not create any right to assistance beyond this. Decisions 95/553/EC and 96/409/CFSP do not affect this position or broaden the basic legal principle set out in Article 20.

2. Information for citizens

2.1 The UK agrees with the Commission that Member States' nationals should be better informed about Article 20 and their opportunity, where unrepresented by their own State, to seek consular assistance from other Member States. To this end, we welcomed the General Secretariat's recent brochure on Decision 95/553/EC. We would encourage the Commission to co-ordinate with the Council to ensure the public is aware of further action pursuant to Article 20...

2.10 Individual Member States are in the best position to advise their nationals on the risks they face and how to mitigate them. Different EU nationalities do not necessarily face the same risks in third countries or benefit from the same advice. These differences can only be captured by the provision of separate travel information.

2.11 Fundamentally, it is to their own Member State that nationals will turn for information and assistance and it is their own Member State to whom they may make further requests or complaints if the information or assistance provided is thought to be inaccurate or unhelpful. We believe the current arrangements for keeping Member States informed of changes to one another's travel information are the best means to allow Member States to benefit from one another's knowledge.

3. The scope of protection for citizens

3.1 The UK does not believe the consolidation of consular assistance between Member States is either necessary or desirable. There is no evidence that Member States' nationals are inconvenienced by the varying levels of consular assistance offered. The only comparison they are likely to make is with the consular assistance they expect to receive from their own Member State. In any event, given the necessary complexity of consular policy and procedures, and their widely varying legal contexts, the task of agreeing and implementing a common standard of consular assistance would be disproportionate to the benefits achieved.

3.2 As a general matter of policy, the UK does not normally provide consular assistance to non-nationals, including family members of British nationals. UK

consular assistance is funded exclusively through passport fees. UK residents make 65 million trips overseas a year and 13.6 million potential British passport holders resident overseas; a significant proportion are related to third country nationals. Extending consular assistance to third country nationals could not be covered by current resources and would not justify a rise in current passport fees.

3.3 There are also legal obstacles to providing such assistance. As discussed in paragraph 5.1 below, a sending state may not normally exercise consular functions in the receiving state on behalf of a third state unless the receiving state has been notified and been given an opportunity to object. In any event, Article 20 only requires non-discriminatory treatment of Member States' nationals, not their family members.

3.4 The UK applies a different, more flexible policy in responding to crises. In a crisis, the UK offers the same level of consular crisis assistance to the third country dependants of British nationals as we do our own nationals, particularly during evacuations, where it is our policy to avoid splitting families. In doing so, we are acting in accordance with the 'Lead State' framework, recently agreed in COCON. Where the UK offers to assist an unrepresented Member State, we aim to apply the same policy to their unrepresented national and their third country dependants as we do our own. Of course, this may be impossible where we are unable to evacuate third country nationals because they do not have the right visa status for the destination country.

3.5 Many Member States operate similar policies, with some variations. However, for the reasons stated in paragraph 3.1 above, we do not believe that harmonising this policy across all Member States is necessary or desirable. Instead, we should work together within the Lead State framework to ensure third country dependants of Member States' nationals are provided sufficient consular assistance at times of crisis...

4. Structures and resources

4.1 We share the Commission's objective of ensuring consular assistance for unrepresented Member States' nationals is provided in as efficient a manner as possible. Member States have made significant progress in the co-ordination of their consular services. The recently reviewed guidelines for co-ordinating consular assistance in third countries, agreed by COCON in 2006, are a good example of this. Some Member States' consular operations are already co-located. The UK co-locates in Almaty, Ashgabat, Dar es Salaam, Pyongyang, Quito, Reykjavik, Minsk and Chisinau. Co-location can drive down costs and improves co-ordination amongst Member States. Similarly, Member States' consulates—fully aware of their Article 20 obligations—should allocate unrepresented nationals amongst themselves on the basis of resources, language, and so on. Such agreements are best agreed, monitored and adjusted by consulates locally. They are in the best position to assess the needs of unrepresented nationals and identify those best placed to assist them. It is they that can best react to changing circumstances and demand. As part of its efforts to promote Article 20 amongst Member States' nationals, the Commission might consider maintaining a central record of these arrangements for public enquiry.

4.2 The concept of "common offices" for EU consular work in third countries is not clearly defined in the Green Paper. For example, it is not clear on what basis the level of consular assistance being provided would be set. Would it depend on the nationality of the applicant, the consular officer or a common policy? And would all Member States' nationals seek assistance from these "common offices", or just those that are unrepresented? The benefits of such "common offices" are also unclear. They would not, for example, provide any resources savings over co-location. And experience shows that Member States' nationals will continue to expect consular assistance from consular staff of their own nationality, wherever possible. This is certainly the case for British nationals.

4.3 We would like to note that consular assistance, with which this Green Paper is primarily concerned, should be distinguished from providing visa and passport services. Member States are under no obligation to provide these services to unrepresented nationals on a non-discriminatory basis.

...

4.8 However, we are concerned by the suggestion that, in the longer term, the EU should provide consular assistance through Commission delegations. The Commission has no experience in providing consular assistance and we do not believe that EU nationals would receive better consular assistance from the Commission than can be achieved by cooperation among the Member States. Additionally, it is not clear to the UK that there is a legal basis for the Commission to exercise consular functions. The rules and principles established by the Vienna Convention on Consular Relations and customary international law provide for the provision of consular assistance by states, not international or intergovernmental organisations. Although the UK accepts and welcomes the role of the Commission in facilitating co-operation and ensuring non-discrimination in the provision of consular assistance, the Commission has no competence under the EU Treaties to provide consular assistance.

5. The consent of the third country authorities

5.1 The UK understands the importance of obtaining the consent or acquiescence of the receiving state in providing consular assistance to Member States' unrepresented nationals. However, whether this requires Member States to negotiate bilateral agreements with third states depends on the agreements and arrangements already in place with the receiving states. For example, Article 8 of the Vienna Convention on Consular Relations allows consular assistance to be provided to non-nationals where the receiving state has been notified and been given an opportunity to object. In our experience, receiving states are generally content for assistance to be provided by other Member States. Consequently, the need for consent clauses in bilateral agreements is unproven in many circumstances.

5.2 However, the UK recognises the value of these provisions in facilitating such assistance. Consequently, we would welcome discussing the possibility of "consular provisions" in the context of any consultations held with the Commission pursuant to Decision 88/384/EC. Of course, it would be inappropriate for any Member State to commit in advance to the inclusion of such provisions. The negotiation of agreements with third states is complex and difficult. Whilst the

inclusion of a "consular provision" may be uncontroversial in some instances, its benefits are unlikely to justify efforts to negotiate it in many others. Moreover, any such provision would be without prejudice to the division of responsibility amongst Member States' missions for unrepresented nationals.

(European Scrutiny Committee, Sixteenth Report, Documents considered by the Committee on 28 March 2007, including: . . . Diplomatic and Consular Protection of Union Citizens in Third Countries, HC 41-xvi (2007))

## 6/5

These are extracts from "Support for British Nationals Abroad: a Guide", an FCO Publication.

### WHO WE CAN HELP

We can provide the support detailed in this guide to people outside the UK who are:

British nationals (whether or not they normally live in the UK—but see [below]);

in certain limited circumstances,

British nationals with another nationality—'dual nationals'—see [below]; and

European Union or Commonwealth nationals whose country does not have a local mission, in circumstances where we have agreed to help their nationals.

We cannot provide this support to other countries' nationals, even if they may have been lawfully living in the UK.

### WHAT KIND OF HELP WE CAN PROVIDE

We offer help which is appropriate to the individual circumstances of each case, including:

• issuing replacement passports;

• providing information about transferring funds;

• providing appropriate help if you have suffered rape or serious assault, are a victim of other crime, or are in hospital;

• helping people with mental illness;

• providing details of local lawyers, interpreters, doctors and funeral directors;

• doing all we properly can to contact you within 24 hours of being told that you have been detained;

• offering support and help in a range of other cases, such as child abductions, death of relatives overseas, missing people and kidnapping;

• contacting family or friends for you if you want; and

• making special arrangements in cases of terrorism, civil disturbances or natural disasters.

## WE CANNOT:

• get you out of prison, prevent the local authorities from deporting you after your prison sentence, or interfere in criminal or civil court proceedings;

• help you enter a country, for example, if you do not have a visa or your passport is not valid, as we cannot interfere in another country's immigration policy or procedures;

• give you legal advice, investigate crimes or carry out searches for missing people, although we can give you details of people who may be able to help you in these cases, such as English-speaking lawyers;

• get you better treatment in hospital or prison than is given to local people;

• pay any bills or give you money (in very exceptional circumstances we may lend you some money, from public funds, which you will have to pay back);

• make travel arrangements for you, or find you work or accommodation; or

• make business arrangements on your behalf.

## BRITISH NATIONALS ABROAD: A GUIDE

### SUMMARY

We can help you if you are either travelling or living abroad and are a British national.

You are a British national if you are one of the following:

• A British citizen

• A British Overseas Territories citizen (see note 1 below)

• A British overseas citizen

• A British national (overseas) (see note 2 below)

• A British subject

• A British protected person

We cannot help non-British nationals, no matter how long they have lived in the UK and what their connections are to the UK. The only exception to this rule is where a specific agreement exists with another state, for example, the agreement between European Union member states to help those EU nationals without a local embassy or consulate. We may also help Commonwealth nationals in non-Commonwealth countries where they do not have any diplomatic or consular representation, depending on the circumstances of the case.

Note 1:

Because the British Overseas Territories are 'Crown possessions' under British sovereignty, British nationals should contact the local authorities if they are in difficulty in these Territories. We provide the same help to British Overseas Territories citizens living or travelling outside the Overseas Territory as we do to any other British national in difficulty.

Note 2:

We cannot help British nationals (overseas) of Chinese ethnic origin in China, Hong Kong and the Macao Special Administrative Regions. The Chinese authorities consider British nationals (overseas) of Chinese ethnic origin as Chinese nationals, and we have no power to get involved if they are held in mainland China. However, we provide the same help to all British nationals (overseas) living or travelling outside China, Hong Kong and Macao as we do to any other British national in difficulty.

## WHAT ABOUT DUAL NATIONALS?

If you have some connection with a foreign or Commonwealth state, for example, by birth, by descent through either parent, by marriage or by residence, you may be a national of that state as well as being a British national. You should check with the authorities of any other state which you are connected with. You may have certain responsibilities with that state, such as compulsory military service. Becoming a British national may not cause you to lose your original nationality.

If you are a dual national travelling on your British passport in a third state (that is, a country of which you are not a national), we will offer you our full support. If you are travelling on the passport of your other nationality, we will normally direct you to that state's local Embassy, High Commission or Consulate. So, for example, if you are a dual US-British national travelling in France and you used your US passport when you entered France, then we would normally direct you to the nearest US Embassy or Consulate for help. We may make an exception to this rule if, having looked at the circumstances of the case, we consider that there is a special humanitarian reason to do so.

If you are a dual British national in the state of your other nationality (for example, a dual US-British national in the US), we would not normally offer you support or get involved in dealings between you and the authorities of that state. We may make an exception to this rule if, having looked at the circumstances of the case, we consider that there is a special humanitarian reason to do so. Such circumstances might include cases involving minors, forced marriages or an offence which carries the death penalty. However, the help we can provide will depend on the circumstances and the state of your other nationality must agree.

If you need help in a country where there is no British diplomatic or consular mission, you can receive help from the diplomatic or consular mission of another member of the European Union. There are also informal arrangements with some other countries, including New Zealand and Australia, to help British nationals in some countries. If other countries provide help on our behalf, you should receive the same level of help as they would give to their own nationals.

## BRITISH NATIONALS IN DETENTION OR PRISON OVERSEAS

• If you are arrested or held in custody or prison in a country overseas, the authorities in that country should ask you whether you want them to contact the British Embassy, High Commission or Consulate. However, you can also ask for this to be done, and should do so particularly if you are charged with a serious offence.

• We will aim to contact you, depending on local procedures, within 24 hours of being told about your arrest or detention. If you want us to, we will then aim to visit you as soon as possible.

• Our staff are there to support you and to take an interest in your welfare. We aim to be sensitive and non-judgemental. We also aim to treat all prisoners the same no matter what crime they are being held for, or whether they are on remand or have been sentenced. You should stay in touch with our staff and ask for their help as they have experience in dealing with many of the problems you may face.

• But, we cannot get you out of prison or detention, nor can we get special treatment for you because you are British.

• If you want us to, we can tell your family or friends that you have been arrested. If you are thinking about not telling your family, please consider the distress it may cause them if they are not told where you are. It can also be a disadvantage to you if you need money for anything in prison or fall ill. Once we have told your family and friends, we can pass messages between you in places where phone or postal services are not available.

• Although we cannot give legal advice, start legal proceedings or investigate a crime, we can offer basic information about the local legal system, including whether a legal-aid scheme is available. We can give you a list of local interpreters and local lawyers if you want, although we cannot pay for either. It is important to consider carefully whether you want to have legal representation and to discuss all the costs involved beforehand.

• We can offer you information about the local prison or remand system, including visiting arrangements, mail and censorship, privileges, work possibilities, and social and welfare services. We can also explain where there are different regulations for remand prisoners and sentenced prisoners. For example, in some countries, prisoners are allowed to send more mail when they are on remand.

• Where appropriate, we will consider approaching the local authorities if you are not treated in line with internationally-accepted standards. This may include where your trial does not follow internationally-recognised standards for a fair trial or is unreasonably delayed compared to local cases.

• With your permission, we can take up any justified complaint about ill treatment, personal safety, or discrimination with the police or prison authorities. Again, with your permission, we can make sure that any medical or dental problems you might have are brought to the attention of any police or prison doctor.

• If you are in prison in a European Union country, or in Iceland, Liechtenstein, Norway, Switzerland, Canada, the USA, Australia or New Zealand, we aim to visit you once after sentencing and then after that only if there is a real need. In other countries, while you are in prison we aim to visit you at least once a year, although we may visit you more often if necessary.

• We may be able to give you information about any local procedures for a prisoner's early release in exceptional circumstances. These procedures are generally known as pardon or clemency. We will only consider supporting pardon or clemency pleas:

- in compelling compassionate circumstances, such as where a prisoner or close family member is chronically ill or dying;

- in cases of minors imprisoned overseas; or

- as a last resort, in cases where we have evidence that seems to point to a miscarriage of justice.

• We can explain to you how you may be able to apply to transfer to a prison in the UK if you are in a country from which prison transfers are possible.

• The local authorities may have a policy of deporting foreign nationals after they have completed a prison sentence and we cannot prevent them from applying it to you, even if you had previously lived in the country before your prison sentence.
(www.fco.gov.uk/travel)

## 6/6

An FCO official submitted the following witness statement in *Mechan v FCO* [2007] EWHC 1689 (QB):

3. I can state that the applicable FCC leaflet concerning consular assistance offered to British nationals imprisoned abroad during the period 2000 until 2006 is the first document appended to my statement. This leaflet sets out what the FCO's consular staff could and could not do, during the period for which the leaflet was valid, in respect of assisting British nationals detained in foreign States. This leaflet has since been superseded by an updated version (2006), a copy of which is also appended to this statement (**6/5**).

4. It is apparent from the FCO's files that various forms of assistance and support were provided to Mr. Mechan at each stage of the proceedings in his case, in accordance with the guidelines set out in the FCO's leaflet in use at the time. This included assisting him with obtaining legal representation, providing him with information about the conditions of his detention, and ensuring that he had contact with his family. By way of illustration, I append to my statement various letters concerning Mr. Mechan's case from the FCC's files, in the following order

Memo of 11th January 2000 from an Embassy officer in Bahrain to Consular Division, London;

Memo of 12th January 2000 from the Vice Consul in Bahrain to Consular Division, London;

Letter of 12th January 2000 from the Consular Division, London, to Mr. Terry Mechan, the Claimant's father;

Memo of 15th January 2000 from the Vice Consul in Bahrain to Consular Division, London;

Letter of 16th January 2000 from the Vice Consul in Bahrain to Mr. Mechan;

Letter of 17th January 2000 from the Vice Consul in Bahrain to Consular Division, London; and,

Letter of 26th January 2000 from the Vice Consul in Bahrain to Mr. Mechan.

5. From the files it is evident that the Vice Consul in Bahrain paid weekly visits to Mr. Mechan before his trial and maintained contact with him during his trial when Mr. Mechan had legal representation. The Vice Consul and others 2 facilitated all contact between Mr. Mechan and his family and took care of many administrative and other matters on his behalf. My view, based on my reading of the papers relating to his case, and my knowledge and experience of dealing with consular assistance cases involving British nationals imprisoned overseas, is that consular staff handled the case in an exemplary manner.

6. After the trial the FCO assisted Mr. Mechan during his appeal. He was visited by FCO staff in detention. When he failed to meet a deadline for filing an appeal, the FCO prevailed on the Bahrain authorities to permit the appeal to proceed.

7. After Mr. Mechan's appeal, much work on the part of the FCO was put into considering and supporting Mr. Mechan's early release from prison. This culminated in the Foreign Secretary writing to the Government of Bahrain on 3rd June 2003 requesting that Mr. Mechan be released on compassionate grounds. A copy of this letter is appended to my statement. Mr. Mechan was released shortly thereafter in July 2003.

8. I have found in the FCO's files a copy of an e-mail from Mr. Mechan's father, dated 3rd August 2003, after his release, which thanks the Embassy for all that had been done to assist Mr. Mechan. A copy is appended to my statement.

9. From these records, it is apparent that the FCO took all appropriate steps to assist Mr. Mechan thoroughly, diligently and in line with EGO consular assistance policy while he was detained in Bahrain, and to support his case for an early release from prison.

(Supplied by FCO)

**6/7**

A Minister said in response to a suggestion that consular assistance be put on a statutory footing:

. . . it will be recognised that putting consular assistance on a statutory basis is a profound legal proposition . . . it raises substantial issues for the Government.

Once it was in statute, it would mean that all the consular service's actions in respect of incidents abroad would potentially become subject to litigation. We are all too well aware that consulates do their best and work constructively under enormous difficulties and in a vast range of circumstances. The House will recognise how significant it would be if such actions were potentially subject to litigation in this country about their effectiveness.

(HL Deb 20 April 2007 Vol 691 c461)

## 6/8

An FCO Minister wrote:

Under the Vienna Convention on Consular Relations, states are under an obligation, when requested to do so by a foreign national arrested or detained, to notify their consular representatives and that consular representatives shall be free to communicate with nationals of the sending state and to have access to them.

The Foreign and Commonwealth Office does not keep a central record of those states which may have breached this obligation. But we take very seriously any complaint that signatories to the Convention have not fulfilled this obligation, and we will continue to make representations with host Governments on a case by case basis. We also work with host Governments to promote greater awareness of their obligation with regard to British nationals among their law enforcement authorities, for example poster campaigns where posters are displayed in local police stations.

(HC Deb 18 June 2007 Vol 461 c1477W)

## 6/9

The Foreign Secretary was asked what further steps she planned to take on the case of joint UK/Chinese citizen Mr. Yu Lam Chan, imprisoned in China. An FCO Minister wrote:

The Chinese authorities continue to deny UK officials consular access to Mr. Yu Lam Chan as they consider him to be a Chinese national in China. The Director for Consular Services in the Foreign and Commonwealth Office raised this case with his Chinese counterpart on 5 June and we will continue to raise our concerns over Mr. Yu Lam Chan's health and welfare with the Chinese authorities at every appropriate opportunity . . .

Consular officials do not have first hand knowledge of Mr. Yu Lam Chan's medical conditions, as they are not permitted access to him. However, officials do maintain contact with family members and we have made clear our concerns to the Chinese authorities regarding Mr. Yu Lam Chan's health and welfare. The Chinese authorities assure us that he is receiving appropriate treatment for his illnesses.

(HC Deb 25 June 2007 Vol 462 c222W)

**6/10**
The Minister of Defence was asked if he would remove Zimbabwe from the list of countries given Commonwealth status for army recruits. A Defence Minister wrote:

The list to which you refer is in Schedule 3 of the British Nationality Act 1981 whose citizens have Commonwealth status by virtue of section 37 of that Act. Despite Zimbabwe voluntarily withdrawing from the Commonwealth in July 2003, following their suspension from the Council of the Commonwealth earlier that year, the status of their citizens is not affected in UK law, and they remain eligible to join the British armed forces. To change this situation would require an Order in Council amending the British Nationality Act 1981 and currently there are no plans to make such an Order in respect of Zimbabwe.

(HC Deb 27 February 2007 Vol 457 c1148W)

**6/11**
A Minister said:

I thank New Zealand for taking on consular responsibility [in the Pacific area] in countries in which the UK is not represented. We reciprocate that assistance in countries in which New Zealand is not represented.

(HC Deb 30 January 2007 Vol 456 c211)

**Part Six: VI.** *The individual (including the corporation) in international law—refugees*

**6/12**
The Foreign Secretary was asked what estimate she had made of the number of refugees leaving Somalia; what discussions she has had with her (a) Kenyan and (b) Ethiopian counterparts about the treatment of refugees from Somalia; [and] what the outcome was of those discussions. She wrote:

We are very concerned about the plight of Somali refugees and internally displaced persons in Kenya and on the Kenya/Somalia border...

We understand that the Kenyan border remains closed to Somalis seeking to leave the country. Our high commissioner in Nairobi has raised the issue with the Kenyan Foreign Minister, emphasising the need to allow humanitarian access across the border, while recognising Kenya's legitimate security concerns. We are maintaining close contact with the Kenyan Government and with the United Nations and other international agencies in Kenya on this issue.

We are not aware of significant numbers of Somali refugees in Ethiopia and therefore have not raised this issue with the Ethiopian Government.

(HC Deb 10 May 2007 Vol 460 c400W)

**6/13**
A Home Office Minister wrote:

The Waleed camp is inside Iraq. As such the Iraqis in Waleed are internally displaced persons (IDPs) and cannot be recognised as refugees within the 1951 UN Convention relating to the Status of Refugees. Individuals can be referred for resettlement only if they are already outside of their country of origin and have been recognised as a refugee within the 1951 UN Convention by UNHCR. The UK cannot resettle any of the IDPs within Waleed.

The UK has not made representations to the Government of the United States about the situation of people in Waleed and Al-Tanf. The USA operates a large scale resettlement operation in the region and discusses directly with UNHCR which people it can assist.

(HL Deb 25 October 2007 Vol 695 cWA130)

**Part Six: VII.B** *The individual (including the corporation) in international law—immigration and emigration, extradition, expulsion, asylum—extradition*

**6/14**
(See also **6/56** and **12/3, 4**)

**Extraordinary Rendition**
An FCO Minister was asked if the FCO had given full co-operation to the Committee of the European Parliament which was inquiring into irregular rendition. He said:

Yes. We have not only co-operated fully with it, but by co-operation we have arranged meetings with the delegation on a range of other matters, including ministerial involvement. At the end, for all the huffing and puffing—if I can put it that way—about non-co-operation, the truth of the matter is that when it went through all the evidence, it could find no new evidence whatever in respect of the United Kingdom. That was the bottom line when it came to it. I am certain that with the resources of the European Parliament and the co-operation between ourselves and other states, if there was any evidence it would have produced it. [Q.68]

(FAC Report on Human Rights Report 2006, HC269 (2007)

**6/15**
The Intelligence and Security Committee reported on Rendition. It provided definitions of the way it would use various terms:

6. The term "rendition" is used to mean different things by different people.[2] It encompasses numerous variations of extra-judicial transfer such as: to countries

[2] The Committee has taken the term "Rendition" as not applying to transfers of individuals by methods such as extradition, deportation, removal or exclusion, although others do include such transfers in their definitions of the term.

where the person is wanted for trial; to countries where the individual can be adequately interrogated; transfer for the purposes of prolonged detention; and military transfer of battlefield detainees.

7. In order to provide clarity, the Committee has used the following terms throughout this Report:[3]

"Rendition": Encompasses any extra-judicial transfer of persons from one jurisdiction or State to another.

"Rendition to Justice": The extra-judicial transfer of persons from one jurisdiction or State to another, for the purposes of standing trial within an established and recognised legal and judicial system.

"Military Rendition": The extra-judicial transfer of persons (detained in, or related to, a theatre of military operations) from one State to another, for the purposes of military detention in a military facility.

"Rendition to Detention": The extra-judicial transfer of persons from one jurisdiction or State to another, for the purposes of detention and interrogation outside the normal legal system.

"Extraordinary Rendition": The extra-judicial transfer of persons from one jurisdiction or State to another, for the purposes of detention and interrogation outside the normal legal system, where there is a real risk of torture or cruel, inhuman or degrading treatment (CIDT).

8. For example, the transfer of battlefield detainees from Afghanistan to Guantánamo Bay would fall into the category of "Military Renditions". The transfer of a detainee unconnected to the conflict in Afghanistan to Guantánamo Bay would be a "Rendition to Detention". A transfer to a secret facility constitutes cruel and inhuman treatment because there is no access to legal or other representation and, on that basis, we would describe this as an "Extraordinary Rendition".

We set out below the legal aspects surrounding rendition.[4]

UK Domestic Law

10. The case of Nicholas Mullen (often referred to as Peter Mullen) provides the basis of the UK's position on renditions. In 1989, the Secret Intelligence Service (SIS) facilitated the transfer of Mr Mullen from Zimbabwe to the UK in order for him to stand trial on charges related to Irish republican terrorism. His transfer falls into the category of what we now call "Rendition to Justice". Mr Mullen's conviction was overturned by the Court of Appeal in February 1999 on the grounds that his deportation represented a "blatant and extremely serious failure to adhere to the rule of law" and involved a clear abuse of process.[5]

[3] Quotations from third parties may not necessarily conform to these definitions.

[4] It is worth noting that the Human Rights Act, European Convention on Human Rights and other international conventions were framed without rendition operations in mind and therefore do not address such transfers explicitly.

[5] *R. v. Nicholas Mullen* [1999].

11. This judgment set a legal precedent which meant that the Security Service and SIS did not look to conduct any further renditions to the UK. The Chief of SIS told the Committee: "This outcome made it clear to SIS that rendition for trial in the UK was not viable."[6]

12. As regards torture, or CIDT, under section 6 of the Human Rights Act 1998 it is unlawful for a public authority to commit torture or to inflict inhuman or degrading treatment within UK territorial jurisdiction.

International Law

13. Under Article 3 of the United Nations Convention Against Torture (UNCAT):

No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

The UK therefore has an obligation to ensure that it does not knowingly assist in sending a person to another country, including by any form of rendition operation, where there is a real risk that he may be tortured.[7]

14. Article 3 of the European Convention on Human Rights (ECHR)—incorporated into UK domestic law by the Human Rights Act 1998—provides that:

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.[8]

Article 7 of the 1966 International Covenant on Civil and Political Rights (ICCPR) goes further than this, adding a prohibition on cruel treatment or punishment:

No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.

15. The UK interpretation of what constitutes CIDT is based upon definitions outlined by the European Court of Human Rights. Referring to inhuman and degrading treatment, the Court has said:

The acts complained of were such as to arouse in the applicant feelings of fear, anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical and moral resistance.[9]

16. In a 2005 House of Lords ruling, Lord Bingham of Cornhill argued that "the prohibition of torture requires Member States to do more than eschew the practice of torture".[10] He cited the International Criminal Tribunal for the former Yugoslavia as saying:

[6] Oral evidence—SIS, 7 November 2006.

[7] "... the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable." UN Committee Against Torture, General Comment No. 01 to UNCAT.

[8] European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms), 1950.

[9] *Selmouni v. France* [1999].

[10] *A (FC) and Others v. Secretary of State for the Home Department* [2005].

... States must immediately set in motion all those procedures and measures that may make it possible, within their municipal legal system, to forestall any act of torture or expeditiously put an end to any torture that is occurring.[11]

17. The rules governing consular access are laid down in Article 36 of the Vienna Convention on Consular Relations (1963), which is generally accepted as being customary international law. Under the Convention, the UK Government cannot offer consular protection to non-British nationals. In 2005, the then Foreign Secretary said:

...in international law we only have the standing to take up consular matters in respect of British citizens... It means that we cannot make representations on behalf of people, however long they have been resident in the UK, who are not our nationals. More to the point, the U.S. Government, consistent with their obligations under international law, would not accept such representations.[12]

The UK Government may make representations on behalf of non-British nationals in exceptional humanitarian cases, although it is under no obligation to do so. Furthermore, it may make informal non-consular representations in specific cases where it believes there are sufficient grounds, and we have seen that the U.S. may accept such representations in certain circumstances.

18. The legal aspects of the alleged use of UK airspace and airports in relation to possible Central Intelligence Agency (CIA) rendition flights are addressed separately in the "Ghost Flights" section of the Report (pages 57 to 63).

## U.S. Interpretations of International Law

19. It is important to highlight the different legal framework under which U.S. agencies such as the CIA operate. UK domestic law and European law, including the ECHR, do not apply to U.S. operations conducted outside the UK/Council of Europe. The ECHR does not impose obligations directly on the United States; however, U.S. nationals acting in the UK are bound by UK law, which conforms to the ECHR.

20. The U.S. has said that it considers itself in a state of war against global terrorism. This has led to a number of executive and military orders authorising actions to counter the threat from terrorism. President Bush said on 29 November 2001:

...non-U.S. citizens who plan and/or commit mass murder are more than criminal suspects. They are unlawful combatants who seek to destroy our country and our way of life... We're an open society. But we're at war. The enemy has declared war on us. And we must not let foreign enemies use the forums of liberty to destroy liberty itself. Foreign terrorists and agents must never again be allowed to use our freedoms against us.[13]

21. In ratifying UNCAT, the U.S. entered an understanding as to their interpretation of "where there are substantial grounds for believing that he would be

[11] Ibid., *Prosecutor v. Furundzija* [1998].

[12] Statement by the Foreign Secretary, The Rt. Hon. Jack Straw, MP, 11 January 2005, Hansard Columns 179–180.

[13] Remarks by President Bush to the U.S. Attorneys Conference, 29 November 2001.

in danger of being subjected to torture". The U.S. interprets this to mean "if it is more likely than not that he would be tortured".[14]

22. This "more likely than not" approach differs significantly from that of the UK, which uses the lower "real risk" threshold. Theoretically, this means that an operation could be legal for U.S. agencies under U.S. law (because there is less than a 50% probability of torture or CIDT) but illegal for the UK Agencies to be involved with under UK law (because there is nevertheless still a real risk of torture or CIDT).

23. On 7 December 2005, an official in the Foreign Secretary's Private Office sent a memorandum to the Prime Minister's Office which discussed the limited circumstances in which assistance to other countries' rendition operations might be legal. This document was leaked in the New Statesman in January 2006:

In certain circumstances, [rendition] could be legal, if the process complied with the domestic law of both countries involved, and their international obligations. Normally, these international obligations, eg under . . . ICCPR would prevent an individual from being arbitrarily detained or expelled outside the normal legal process. Council of Europe countries would also be bound by the ECHR, which has similar obligations in this sense. Against this background, even a Rendition that does not involve the possibility of torture [or CIDT] would be difficult, and likely to be confined to those countries not signed up to eg the ICCPR.[15]

Memorandum entitled "Detainees", sent from the Foreign and Commonwealth Office to the Prime Minister's Office, 7 December 2005. (Report of the Intelligence and Security Committes—Rendition, CM 7171 (2007))

## 6/16

The Committee presented a "Summary of Conclusions and Recommendations"

A. Our intelligence-sharing relationships, particularly with the United States, are critical to providing the breadth and depth of intelligence coverage required to counter the threat to the UK posed by global terrorism. These relationships have saved lives and must continue.

B. We are concerned that Government departments have had such difficulty in establishing the facts from their own records in relation to requests to conduct renditions through UK airspace. These are matters of fundamental liberties and the Government should ensure that proper searchable records are kept.

C. Prior to 9/11, assistance to the U.S. "Rendition to Justice" programme—whether through the provision of intelligence or approval to use UK airspace—was agreed on the basis that the Americans gave assurances regarding humane treatment and that detainees would be afforded a fair trial. These actions were appropriate and appear to us to have complied with our domestic law and the UK's international obligations.

[14] United States Understanding II.(2)—www.ohchr.org/english/countries/ratification/9.htm#reservations

[15] The United States ratification of the ICCPR also includes a reservation: "That the United States considers itself bound by article 7 to the extent that 'cruel, inhuman or degrading treatment or punishment' means the cruel and unusual treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States."

D. Those operations detailed above, involving UK Agencies' knowledge or involvement, are "Renditions to Justice", "Military Renditions" and "Renditions to Detention". They are not "Extraordinary Renditions", which we define as "the extra-judicial transfer of persons from one jurisdiction or State to another, for the purposes of detention and interrogation outside the normal legal system, where there is a real risk of torture or cruel, inhuman or degrading treatment". We note that in some of the cases we refer to, there are allegations of mistreatment, including whilst individuals were detained at Guantánamo Bay, although we have not found evidence that such mistreatment was foreseen by the Agencies. The Committee has therefore found no evidence that the UK Agencies were complicit in any "Extraordinary Rendition" operations.

E. In the immediate aftermath of the 9/11 attacks, the UK Agencies were authorised to assist U.S. "Rendition to Justice" operations in Afghanistan. This involved assistance to the CIA to capture "unlawful combatants" in Afghanistan. These operations were approved on the basis that detainees would be treated humanely and be afforded a fair trial. In the event, the intelligence necessary to put these authorisations into effect could not be obtained and the operations did not proceed. The Committee has concluded that the Agencies acted properly.

F. SIS was subsequently briefed on new powers which would enable U.S. authorities to arrest and detain suspected terrorists worldwide. In November 2001, these powers were confirmed by the Presidential Military Order. We understand that SIS was sceptical about the supposed new powers, since at the time there was a great deal of "tough talk" being used at many levels of the U.S. Administration, and it was difficult to reach a definitive conclusion regarding the direction of U.S. policy in this area. Nonetheless, the Committee concludes that SIS should have appreciated the significance of these events and reported them to Ministers.

G. The Security Service and SIS were also slow to detect the emerging pattern of "Renditions to Detention" that occurred during 2002. The UK Agencies, when sharing intelligence with the U.S. which might have resulted in the detention of an individual subject to the Presidential Military Order, should always have sought assurances on detainee treatment.

H. The cases of Bisher al-Rawi and Jamil el-Banna and others during 2002 demonstrated that the U.S. was willing to conduct "Rendition to Detention" operations anywhere in the world, including against those unconnected with the conflict in Afghanistan. We note that the Agencies used greater caution in working with the U.S., including withdrawing from some planned operations, following these cases.

I. By mid-2003, following the case of Khaled Sheikh Mohammed and suspicions that the U.S. authorities were operating "black sites", the Agencies had appreciated the potential risk of renditions and possible mistreatment of detainees. From this point, the Agencies correctly sought Ministerial approval and assurances from foreign liaison services whenever there were real risks of rendition operations resulting from their actions.

J. After April 2004—following the revelations of mistreatment at the U.S. military-operated prison at Abu Ghraib—the UK intelligence and security Agencies and the Government were fully aware of the risk of mistreatment associated

with any operations that may result in U.S. custody of detainees. Assurances on humane treatment were properly and routinely sought in operations that involved any risk of rendition and/or U.S. custody.

K. The Committee has strong concerns, however, about a potential operation in early 2005 which, had it gone ahead, might have resulted in the ***. The operation was conditionally approved by Ministers, subject to assurances on humane treatment and a time limit on detention. These were not obtained and so the operation was dropped. *** [The asterisks represented redacted material, Ed.]

. . .

Q. The sharing of intelligence with foreign liaison services on suspected extremists is routine. [In two named cases, there] was nothing exceptional in the Security Service notifying the U.S. of the men's arrest and setting out its assessment of them. The telegram was correctly covered by a caveat prohibiting the U.S. authorities from taking action on the basis of the information it contained.

R. In adding the caveat prohibiting action, the Security Service explicitly required that no action (such as arrests) should be taken on the basis of the intelligence contained in the telegrams. We have been told that the Security Service would fully expect such a caveat to be honoured by the U.S. agencies—this is fundamental to their intelligence-sharing relationship. We accept that the Security Service did not intend the men to be arrested.

S. The Security Service and Foreign Office acted properly in seeking access to the detained British nationals, asking questions as to their treatment and, when they learnt of a possible rendition operation, protesting strongly.

T. We note that eventually the British nationals were released, but are concerned that, contrary to the Vienna Convention on Consular Relations, access to the men was initially denied.

U. This is the first case in which the U.S. agencies conducted a "Rendition to Detention" of individuals entirely unrelated to the conflict in Afghanistan. Given that there had been a gradual expansion of the rendition programme during 2002, it could reasonably have been expected that the net would widen still further and that greater care could have been taken. We do, however, note that Agency priorities at the time were—rightly—focused on disrupting attacks rather than scrutinising American policy. We also accept that the Agencies could not have foreseen that the U.S. authorities would disregard the caveats placed on the intelligence, given that they had honoured the caveat system for the past 20 years.

V. This case shows a lack of regard, on the part of the U.S., for UK concerns. Despite the Security Service prohibiting any action being taken as a result of its intelligence, the U.S. nonetheless planned to render the men to Guantánamo Bay. They then ignored the subsequent protests of both the Security Service and the Government. This has serious implications for the working of the relationship between the U.S. and UK intelligence and security agencies . . .

Y. What the rendition programme has shown is that in what it refers to as "the war on terror" the U.S. will take whatever action it deems necessary, within U.S. law, to protect its national security from those it considers to pose a serious threat. Although the U.S. may take note of UK protests and concerns, this does not appear materially to affect its strategy on rendition.

Z. It is to the credit of our Agencies that they have now managed to adapt their procedures to work round these problems and maintain the exchange of intelligence that is so critical to UK security.

AA. The Committee notes that the UK Agencies now have a policy in place to minimise the risk of their actions inadvertently leading to renditions, torture or cruel, inhuman or degrading treatment (CIDT). Where it is known that the consequences of dealing with a foreign liaison service will include torture or CIDT, the operation will not be authorised.

BB. In the cases we have reviewed, the Agencies have taken action consistent with the policy of minimising the risks of torture or CIDT (and therefore "Extraordinary Rendition") based upon their knowledge and awareness of the CIA rendition programme at that time.

CC. Where, despite the use of caveats and assurances, there remains a real possibility that the actions of the Agencies will result in torture or mistreatment, we note that the current procedure requires that approval is sought from senior management or Ministers. We recommend that Ministerial approval should be sought in all such cases.

DD. The Committee considers that "secret detention", without legal or other representation, is of itself mistreatment. Where there is a real possibility of "Rendition to Detention" to a secret facility, even if it would be for a limited time, then approval must never be given . . .

FF. The use of UK airspace and airports by CIA-operated aircraft is not in doubt. There have been many allegations related to these flights but there have been no allegations, and we have seen no evidence, that suggest that any of these CIA flights have transferred detainees through UK airspace (other than two "Rendition to Justice" cases in 1998 which were approved by the UK Government following U.S. requests).

GG. It is alleged that, on up to four occasions since 9/11, aircraft that had previously conducted a rendition operation overseas transited UK airspace during their return journeys (without detainees on board). The Committee has not seen any evidence that might contradict the police assessment that there is no evidential basis on which a criminal inquiry into these flights could be launched.

HH. We consider that it would be unreasonable and impractical to check whether every aircraft transiting UK airspace might have been, at some point in the past, and without UK knowledge, involved in a possibly unlawful operation. We are satisfied that, where there is sufficient evidence of unlawful activity on board an aircraft in UK airspace, be it a rendition operation or otherwise, this would be investigated by the UK authorities . . .

JJ. The alleged use of military airfields in the UK by rendition flights has been investigated in response to our questions to the Prime Minister. We are satisfied that there is no evidence that U.S. rendition flights have used UK airspace (except the two cases in 1998 referred to earlier in this Report) and that there is no evidence of them having landed at UK military airfields.

(Report of the Intelligence and Security Committee—Rendition, Cm7171 (2007))

**6/17**
The Government published a response to the Report.

The Government accepts that, with hindsight, an emerging pattern of renditions during 2002 can be identified but notes that, as the Committee acknowledges elsewhere in the Report (Conclusion U), at the time the Agencies' priorities were correctly focused on disrupting attacks rather than scrutinising U.S. policy. Moreover, as the Committee has also recognised (Conclusions I and J), once the potential risk of mistreatment arising from renditions became clear, SIS and the Security Service routinely sought approval from Ministers and assurances from foreign liaison services on humane treatment whenever there were real risks of rendition operations arising from their actions. They also took steps to provide more detailed guidance to staff.

The Government accepts that, where the Agencies consider that counter-terrorist work with foreign services raises a real possibility that torture or mistreatment could occur, they should consult Ministers before proceeding. In practice this already happens.

Since before September 2001, we have worked closely with the U.S. on a wide range of counter-terrorism issues to achieve our shared goal of combating terrorism. The UK has had continued dialogue with the U.S. on detainee-related issues, including rendition.

In response to a letter from the then Foreign Secretary, Condoleezza Rice, the U.S. Secretary of State, made a statement on 5 December 2005 in which she stated:

"The United States has respected—and will continue to respect—the sovereignty of other countries. The United States does not transport, and has not transported, detainees from one country to another for the purposes of interrogation using torture."

Dr Rice also confirmed that the U.S. respects the rules of international law, including the UN Convention Against Torture, that the U.S. does not authorise or condone the torture of detainees, and that torture and conspiracy to commit torture are crimes under U.S. law wherever they may occur in the world.

In addition, the U.S. Detainee Treatment Act, enacted on 30 December 2005, provides that no individual in the custody or under the physical control of the U.S. Government, regardless of nationality, shall be subject to cruel, inhuman or degrading treatment or punishment. This legislation makes a matter of statute what President Bush had made clear was already U.S. Government policy.

The Government welcomes these important conclusions, which underline the fact that, as the Committee reflects in paragraph 46 of its Report, the UK's intelligence and security Agencies will not assist or involve themselves in a rendition operation where there are grounds to believe that the person being rendered would face a real risk of torture or CIDT.

The Government notes the Committee's view [conclusion DD]. The UK opposes any form of deprivation of liberty that amounts to placing a detained person outside the protection of the law.

As we have pointed out in response to Conclusions C to E, when we are requested to assist another State in a rendition operation, and our assistance would be lawful, we would decide whether or not to assist taking into account all the circumstances. We would not assist in any case if to do so would put us in breach of UK law or our international obligations, including under the UN Convention Against Torture.

The Government welcomes these clear conclusions, which support the Government's repeated assurance that there is no evidence to suggest that renditions have been conducted through the UK without our permission, or in contravention of our obligations under domestic and international law. The conclusions support our clearly stated position that we have not approved, and will not approve, a policy of facilitating the transfer of individuals through the UK to places where there are substantial grounds to believe they would face a real risk of torture.

The Government agrees that it is not possible to check every flight—instead an intelligence-led approach is and must be employed. If individuals are reasonably suspected of committing criminal offences, or if there are reasonable grounds to suspect that aircraft are being used for unlawful purposes, then action can be taken. The nature of that action would depend on the facts and circumstances of any case.

(Government Response to the Intelligence and Security Committee's Report on Rendition, Cm 7172 (2007))

## 6/18

The Foreign Secretary was asked what undertakings have been (a) sought and (b) received from the US Administration since January 2001 that the US Administration has not rendered any detainee through UK territory or airspace since May 1997. An FCO Minister wrote:

We are clear that the US would not render a detainee through UK territory or airspace without our permission. In an interview covering these issues alongside the then Foreign Secretary in March 2006 the US Secretary of State said

"the United States respects the sovereignty of our allies and of other countries in the international system".

We have also carried out extensive searches of official records and have found no evidence of detainees being rendered through the UK or overseas territories since 1997 where there were substantial grounds to believe there was a real risk of torture.

There were four cases in 1998 where the US requested permission to render one or more detainees through the UK or overseas territories. Records show the Government refused the US request in two cases and granted the request in the two others. In both these cases, the detainees were subsequently tried and later prosecuted on criminal charges in the US.

(HC Deb 20 June 2007 Vol 461 c1608)

**6/19**
An FCO Minister said:

There have been persistent allegations that the Government have refused to address rendition fully and openly and that we have somehow sought to evade accountability to Parliament. The debate is an opportunity to set the record straight.

I wish at the outset to tackle two persistent myths about rendition. First . . . I reiterate that the Government have not approved and will not approve a policy of facilitating the transfer of individuals through the United Kingdom to places where there are substantial grounds to believe that they would face a real risk of torture.

Secondly, I reject totally the allegation that the Government have refused to address the issue fully and openly. In fact, we have done everything we can to keep the House informed and co-operated fully with international inquiries into rendition, including by the Council of Europe and the European Parliament.

I recently wrote to . . . the all-party extraordinary rendition group . . . I underlined in my letter that we carried out extensive searches of official records and found no evidence that detainees were rendered through the UK or overseas territories since 1997 if there were substantial grounds to believe that there was a real risk of torture.

. . . new legislation has been called for to prescribe how any future requests for rendition through the UK should be dealt with. I am not persuaded that new legislation would add practical value, but, given the work that he and the all-party group have done, I have asked my officials to consider the matter further to confirm that assessment . . .

. . . the term "rendition" is inexact. However, the Government's policy is clear: the facts of each individual case will determine whether any particular rendition is lawful. [It was not mentioned] that there are many other states that "rendite" people. Some of them are geographically close to us. If we are requested to assist another state and our assistance would be lawful, we will decide whether to assist, taking into account all the circumstances. We would not assist in any case if it would put us in breach of UK law or our international obligations.

In 1998, the US made four requests for permission to render one or more detainees through the UK or overseas territories. Records show that the Government refused two requests and granted two others. In both cases where permission was granted, the detainees were subsequently tried on criminal charges in the US. One pleaded guilty to murder, and the other was charged for his part in the 1998 attack on the US embassy in Nairobi. He was sentenced to life imprisonment . . .

In its fourth report, "Foreign Policy Aspects of the War against Terrorism", which was published last summer, the Foreign Affairs Committee concluded that although there had been speculation about the complicity of the British Government in unlawful rendition,

"there has been no hard evidence of the truth of any of these allegations."

I commend that conclusion...

...I believe that torture is wrong in every respect, and I will fight the corner for not using it or any technique that puts an individual in a position in which, for the sake of getting intelligence or information out of them, their human rights are degraded and they are treated in an abhorrent way...We are completely opposed to such activities. They are a violation of every international treaty that we have signed up to and of British law, and I hope that that is clear.

The Minister was asked if he was seriously suggesting that the overwhelming body of evidence that has been produced in Washington to show that the Americans have been engaged in rendition, a policy that involves cruel, inhumane and degrading treatment that amounts to torture, did not exist or had been made up? The Minister said:

No, it certainly is not a figment of the imagination. Such treatment would not take place in Britain, in British prisons or in prisons that Britain is responsible for administering in any other territory.

I said that we would not allow the kinds of things that we have heard about from Guantanamo Bay to take place in this country.

I would like to make this important point. Since before 11 September 2001, we have worked closely with the US to achieve our shared goal of fighting terrorism. As part of that close co-operation, we have made it clear to the US authorities that we expect them to seek permission to render detainees via UK territory and airspace, and that we will grant permission only if we are satisfied that the rendition would accord with UK law and our international obligations. We have explained our understanding of our obligations under the UN convention against torture and the European convention on human rights. Indeed, it was this country that moved the UN General Assembly resolution—we co-sponsored it last year. It sets out our opposition to any form of deprivation of liberty that amounts to placing a detained person outside the protection of the law.

(HC Deb 26 June 2007 Vol 462 c44–48WH)

## 6/20

### Diplomatic Assurances

An FCO Minister wrote:

We have signed memoranda of understanding concerning the provision of assurances in respect of persons subject to deportation with Jordan, Libya and Lebanon. Arrangements allowing deportations with assurances (DWA) are also in place with Algeria on the basis of an exchange of letters, signed by the former Prime Minister [Tony Blair] and Algerian President Abdelaziz Bouteflika on 11 July 2006 and exchanges of diplomatic Notes Verbale. (See **[2006] UKMIL 6/33**)

To date, eight Algerian terrorist suspects have been deported to Algeria under these arrangements. Individual assurances were also sought in each case, concerning their treatment on return and criminal status in Algeria. A ninth individual holding dual Algerian/French nationality was deported to France outside the framework of the DWA arrangements.

There is no formal monitoring body in Algeria. Individuals deported from the UK under the DWA arrangements may remain in touch with our embassy in Algiers after their return and were invited to provide details of next of kin or an alternative contact point in Algeria. In turn they were provided with a contact point at the embassy and it was explained that they, or their nominated contact point, could maintain contact with the embassy after their return to Algeria. To date, two individuals have taken up this offer. Further to any deportation under these arrangements, UK officials also maintain close contact with the Algerian authorities.

We are in discussion with other countries and will update the House if and when we reach agreement. We draw on experience to date in seeking to negotiate any new agreement.

There are no plans to make reports on monitoring regularly available.

(HC Deb 4 December 2007 Vol 696 cWA181)

**Part Six: VII.C** *The individual (including the corporation) in international law—immigration and emigration, extradition, expulsion, asylum—expulsion*

**6/21**

The UK Borders Act 2007 provides, *inter alia*, for the mandatory deportation of certain foreign criminals after they have served their sentences, subject to exceptions:

33 Exceptions

(2) Exception 1 is where removal of the foreign criminal in pursuance of the deportation order would breach–

(a) a person´s Convention rights, or

(b) the United Kingdom´s obligations under the Refugee Convention.

(4) Exception 3 is where the removal of the foreign criminal from the United Kingdom in pursuance of a deportation order would breach rights of the foreign criminal under the Community treaties.

(5) Exception 4 is where the foreign criminal [is subject to various kinds of extradition proceedings].

(7) The application of an exception–

(a) does not prevent the making of a deportation order;

(b) results in it being assumed neither that deportation of the person concerned is conducive to the public good nor that it is not conducive to the public good;

but section 32(4) [that the deportation of the foreign criminal is conducive to the public good] applies despite the application of Exception 1 or 4.

**6/22**

It was put to an FCO Minister by the FAC that Manfred Nowak, the UN special rapporteur on torture, had suggested that [the UK's] MOUs with various countries, including Jordan, Libya and Lebanon, might be being used to circumvent international obligations on torture. Quite recently, a Canadian-Syrian had been picked up by US border officials and sent back to Syria, where he was duly tortured. In the past few days, the Canadian Prime Minister had apologised and compensated the victim of that wrongful arrest. The Minister was asked what assurance the FAC could have that our MOUs carry any greater certainty than the Canadian one. The Minister said:

I will deal with this in three parts. First, I have spent a great deal of time with representatives of the Human Rights Council. In addition to speaking to them personally, I have had policy and legal advisers explain to them what we are attempting to do. Our policy is absolutely consistent with our values and our obligations. It not only ensures that we meet our international obligations, it provides a platform for engagement, which is important for capacity-building work on human rights issues. The policy cannot be seen on its own. It is not about watering down our values; it is about trying to ensure the best guarantee of our own security, while at the same time being able to engage with countries about certainty on human rights and values.

Each of these agreements has its own parts . . . Six men were deported to Algeria between June 2006 and 2007; I cannot supply the names because of court proceedings. No detainees have so far been returned to Libya, Lebanon or Jordan. [Q.65]

The Minister was asked why there should be confidence in the scrutiny arrangements when well-known international non-governmental organisations had refused to take part. He said:

The confidence comes from the fact that we do not go into these lightly. As I said, they are set down on our principles and our values. It is not true to say that every NGO will not get involved in issues concerned with these countries. We have not, to my knowledge, asked those two organisations [Amnesty International and Human Rights Watch, Ed] to participate in that regard. There is a need for work in a range of countries, including those with which we have deportation arrangements, on the wider issues of human rights. It is true that this is best done by building capacity and working with civil society in those

countries, as well as with the Governments concerned. In doing that, we need to ensure that the work that is being done in those countries is promoted and is seen through to its logical conclusion. We must try to ensure safety for our own citizens too, so we must get the balance right. The balance must be one where we deport people with assurances, but where the assurances are worth the paper that they are written on. [Q.66]

(FAC Report, Human Rights Report 2006, HC 269 (2007))

**6/23**

An FCO Minister wrote to the FAC with further information to the evidence he had given orally to the Committee. He wrote:

DEPORTATION WITH ASSURANCES (Q65/66)

I undertook to write to the Committee with fuller details of the arrangements with Algeria, Libya, Jordan and Lebanon. We have already made much of the information that follows available to the Committee in the form of our recent response to the Committee's response to the Annual Human Rights Report… For ease of reference I attach a copy of the arrangements we have concluded with Libya. (See **UKMIL [2005] 6/24**) I hope that this short overview will be of assistance to the Committee in their work.

Libya, Jordan and Lebanon

MOUs were signed with Libya, Jordan and Lebanon in October 2005, August 2005 and December 2005 respectively. The MOUs are bilateral framework agreements which formalise the process of obtaining assurances regarding the future treatment of people we wish to deport from the UK. They contain assurances, agreed by both parties, that we believe will safeguard the rights of individuals being returned. Examples include access to medical treatment, adequate nourishment and accommodation as well as treatment in a humane manner in accordance with internationally accepted standards. Additional, specific assurances may be obtained in individual cases depending on the circumstances of each case.

At the time of signature, the British Government also set out to the governments of Libya, Lebanon and Jordan, its firm opposition to the use of the death penalty in any circumstances and confirmed in writing that the Government would not return an individual if that person were at significant risk of being subjected to such a penalty.

In Libya, Lebanon and Jordan monitoring bodies have been appointed to oversee the implementation of assurances. Monitoring is one element of the wider package (which includes the assurances which I have mentioned above). In selecting and appointing monitoring bodies, the British Government and the government of the receiving State take into consideration eg capacity, independence, access to expertise. Our Embassies are closely involved in the selection process and liaise with monitoring bodies once appointed. The monitoring body in each case

must have capacity for the task ie have experts ("Monitors") trained in physical and psychological sign of torture and ill-treatment; have, or have access to, sufficient independent lawyers, doctors, forensic specialists, and specialists on human rights, humanitarian law and prison systems and the police. Where necessary, additional training or capacity building measures can be provided to ensure the monitoring can function effectively.

The monitoring body operates under terms of reference, which are agreed by the British Government, the receiving state and the monitoring body itself. Under the Terms of Reference the monitoring body will undertake a number of tasks, including accompanying deportees from the UK to the receiving state and to their home, or other destination; to ensure that contact details are obtained for the returnee and his/her next of kin. They will make arrangements to maintain contact with an individual whether he/she is in detention or at liberty. The monitoring body should provide frank reports to authorities of both States and should contact the sending State immediately if its observations warrant.

The Qadhafi Development Foundation has been appointed as the monitoring body in Libya, the Adaleh Centre in Jordan and the Institute for Human Rights of the Beirut Bar Association in Lebanon.

Capacity building training is already being provided to the monitoring body in Jordan and will shortly be provided in Libya and Lebanon in the area of international human rights law and also in the detection of signs of torture and ill-treatment. The British Government also supports, and has done so for some time, wider human rights projects in the Middle East and North Africa. For example the British Embassy in Libya run a Prison Management Project with the International Centre for Prison Studies (ICPS) of King's College, and the Libyan Judicial Police. In Jordan the Embassy has funded training courses, capacity building and study visits in the UK for the Jordanian Ministry of Justice and the Jordanian police, as well as a project with the National Centre for Human Rights to disseminate knowledge of human rights in Jordanian schools.

Algeria

There is no MOU with Algeria. Instead the arrangements include an Exchange of Letters, signed by the Prime Minister and Algerian President Bouteflika on 11 July 2006 and an exchange of Note Verbales in each individual case. The Exchange of Letters and assurances in individual cases safeguard the rights of the individuals being returned. In the Exchange of Letters both Governments undertake to abide by fundamental freedoms such as the freedom of movement and right of abode. In particular they undertake to uphold their obligations under national and international law. The British Government set out in the Exchange of Letters its firm opposition to the use of the death penalty in any circumstances and confirmed that the Government would not return an individual to Algeria if that person were at significant risk of being subjected to such a penalty. No monitoring body has been appointed in Algeria.

General remarks

The arrangements with Algeria, Libya, Jordan and Lebanon apply to individuals whom the Government wishes to deport on grounds of national security. An individual who is served with a deportation order in these circumstances has the right to appeal against his deportation. Deportation may not take place if an appeal to the British courts is outstanding.

To date the British courts have considered five appeals against deportation to Algeria, as well as one Jordanian case and one Libyan appeal. The Special Immigration Appeals Commission has published judgments in four cases, the Jordanian and three involving Algerians. In each case the court upheld the deportation order. The Government welcomes these judgments. Judgment in respect of the Libyan case is expected shortly. [*DD & Anor v Secretary of State for the Home Department* [2008] EWCA Civ 28, upholding the SIAC conclusions that the MoU did not reduce the risk to the applicants, Ed.]

During my evidence to the Committee I also undertook to provide further information about the two Algerians who were deported from the United Kingdom in June of last year. The paragraphs below detail this information. I have also included an explanation of the position of a further four individuals, who have also since returned to Algeria.

In my evidence I explained to the Committee that I used initials to refer to the men because of British court proceedings. The same procedure applies here.

Two Algerians, "I" and "V", were deported in June 2006 following withdrawal of their appeals against deportation from the UK. They were detained and interviewed on arrival in Algeria. They were released after five days and six days in detention respectively. On release they were reunited with their families.

Between 20 and 27 January 2007 a further four Algerians were deported to Algeria after either withdrawing or waiving their appeals against deportation. They were known as "K", "H" and "P". The fourth man was formerly known as "Q"; he recently waived his right to anonymity and is now known as Mr Dendani.

Prior to removal, each individual was provided with the contact details of the British Embassy in Algiers and it was explained that they or a representative could maintain contact with the Embassy following their return. British Embassy officials have been in and remain in close contact with the Algerian authorities regarding all four deportees. Only one individual, "H", specifically requested contact arrangements. These were established before "H" left the UK. The British Embassy in Algiers has been in touch with H's family since "H" returned.

The Algerian authorities have told us that "K" was detained on 24 January 2007 and released without charge on 4 February. "P" was detained on 27 January 2007 and released without charge on 30 January. Amnesty International reported on 8 February that "K" had rejoined his family and had not reported being sub-

ject to any ill-treatment during his detention. Mr Dendani was detained on 25 January 2007 and subsequently brought before a court. He has been charged with offences under Article 87 of the Algerian Criminal Code, (membership of an armed terrorist group active abroad) and under Article 249 (assumption of the name of a third party).

"H" was detained on 31 January 2007 and brought before a court on 5 February 2007. He has been charged with offences under Article 87 of the Algerian Criminal Code (membership of an armed terrorist group active abroad). He has had contact with his family since being charged and it is the Government's understanding that he is being held in a civilian prison. He has had access to an Algerian lawyer. The British Government will continue to monitor the cases of "Q" and "H" closely.

All four men were either released or charged before the 12 day detention period, provided for in Article 51 of the Algerian Criminal Code, had expired. All were able to contact their families during that initial period of detention.

By way of conclusion I would only add that, as I said when I gave my evidence to the Committee, the United Kingdom is not in any way seeking to evade its international human rights obligations. Indeed it is precisely to uphold these obligations that the Government has sought assurances from Libya, Lebanon, Jordan and Algeria before deporting these individuals.

(FAC Human Rights Annual Report 2006, HC269 (2007)

**6/24**
The FCO responded to a FAC question, as follows:

3. HOW WELL ARE THE MEMORANDA OF UNDERSTANDING WITH JORDAN, LIBYA AND LEBANON WORKING, AND WHETHER ANY FURTHER SUCH MEMORANDA ARE DUE TO COME INTO FORCE.

Libya

The Memorandum of Understanding (MoU) on deportation with assurances was signed with the Libyan authorities on 18 October 2005. The related agreement to appoint the official monitoring body in Libya, the Qadhafi Development Foundation (QDF), was signed on 8 May 2006. Agreement has also been reached to appoint the National Council to the Independent Monitoring Boards as the UK monitoring body. Since the MoU's first test in a court of law, during the hearing of an appeal against deportation by two Libyans currently held in the UK, concluded only on 10 November, it is too soon to assess fully how well it is working. The Court (the Special Immigration Appeals Commission—SIAC) is now considering its decision.

During the hearing, the detail, advantages and reliability of the MoU and the monitoring bodies were covered in detail by the Government witness, Counsel for the Government and Counsel for the Appellants. Until SIAC's judgment is handed down, we will not know how well the MoU and its assurances were

received by the Court, but one aspect of the MoU which has worked particularly well so far is the co-operation the Libyan authorities have given to our requests for additional information and/or assurances in relation to individual deportation cases subject to appeal.

We also believe that the QDF have the ability and capacity to carry out the full range of duties to oversee the implementation of the assurances set out in the MoU. The Government is working, together with the Foundation, to enhance the capabilities of the QDF in preparation for its monitoring role. This includes plans for training in international human rights law and recognising torture.

Jordan

The MoU with Jordan was signed on 10 August 2005. A monitoring body (the Adaleh Centre) was appointed on 13 February 2006. Their terms of reference will allow them to monitor, unrestricted, an individual who is returned to Jordan under the MoU. The first Jordanian MoU case (Abu Qatada) was heard by SIAC in March/April 2006. A judgment is expected shortly. [*Othman (Jordan) v Home Secretary* [2008] EWCA Civ 290, denying removal to Jordan on the basis that the admissibility of evidence obtained by torture in Jordan render a real risk that the applicant would not receive a fair trial, Ed.] Jordanian co-operation during this hearing was excellent. We are most grateful to the Jordanians for their continued assistance and support for the MoU and we believe, strongly, that the Jordanians will adhere to the terms of the MoU as and when any individuals are returned. The Government is working with the monitoring body in Jordan to enhance its capabilities in preparation for its monitoring role. Training has been carried out in international human rights law.

There are two further Jordanian cases being prepared, to be heard by SIAC in the early part of 2007. Jordanian co-operation on both these cases continues and there is good understanding by the Jordanians as to the importance of the MoU to the UK.

Lebanon

The MoU with Lebanon was signed on 23 December 2005. No Lebanese cases have yet come before SIAC and no one has been deported to Lebanon under the terms of the MoU.

As the Committee may be aware, the framework for deportations to Algeria is not an MoU but an Exchange of Letters on deportation between the Prime Minister and President Bouteflika that was concluded during the President's visit to London on 11 July 2006. This high level exchange is supplemented by individual assurances in each case.

The Government judges that based on these arrangements it can deport terrorist suspects to Algeria while remaining consistent with the UK's domestic and international human rights obligations. This judgment is based on the changing circumstances in Algeria—in particular the Algeria Charter for Peace and National Reconciliation, on the rapidly developing relationship between the UK

and Algeria and on the assurances given by the Algerian Government on individual deportees.

The Special Immigration Appeals Commission has so far (14 December) heard four Algerian cases. Judgment has been handed down in two of those cases. In both, SIAC found it would be safe to deport the Appellant to Algeria. [*MT and Others (Algeria) v Home Secretary* [2007] EWCA Civ 808—the cases were sent back to the SIAC (but not on the adequacy of the assurarances from Algeria to reduce the risk of ill-treatment), Ed]

(FAC Report, Human Rights Report 2006, HC 269 (2007))

**6/25**
The Foreign Secretary was asked what (a) investigations she had undertaken into and (b) reports she had received on the detention of the Algerian nationals known as Q and K in Algeria following their deportation from the UK; [and] whether access is permitted to the two men. An FCO Minister wrote:

Four individuals suspected of involvement in terrorist activity were deported to Algeria between 20 and 27 January 2007. Embassy officials in Algiers are in regular contact with senior Algerian Government officials. The Algerian Government have provided information on all four men, including whether they have been detained. The latest information is that all four men were detained for questioning; two were released before the 12 day period of detention authorised under the Algerian Penal Code expired; one man remained in detention as of 6 February (the 12 day period of detention not having expired in his case); and one remained in detention, having been charged with an offence before the 12 day period expired. Article 51(a)(l) of the Algerian Penal Code states that a person held in custody is entitled to communicate with his family and to receive visits, subject to preservation of the secrecy of the investigation. Embassy officials will stay in close touch with the Algerian Government.

(HC Deb 8 February 2007 Vol 456 c1125W)

**6/26**
She was asked for further information. The Minister wrote:

Embassy officials in Algiers have remained in close contact with the Algerian Government concerning the situation of the four individuals deported from the UK between 20 and 27 January 2007. Algerian Government officials have confirmed that "K" was detained on 24 January and released on 4 February; that "P" was detained on 27 January and released on 30 January; that Reda Dendani ("Q") was detained on 25 January and subsequently brought before a court and charged with membership of an armed terrorist group under Article 87 of the Algerian Criminal Code as well as assumption of the name of a third party under Article 249 of that same Code; and that "H" was detained on 31 January and subsequently brought before a court and charged with membership of an

armed terrorist group under Article 87 of the Code. Each individual was either charged or released before the expiration of the 12 day detention period authorised under the Algerian Criminal Procedure Code. Embassy officials continue to stay in touch with Algerian Government officials.

(HC Deb 6 March 2007 Vol 457 c1826W)

**6/27**

A Home Office Minister wrote:

We put migration at the heart of our bilateral relations. We have good long-standing migration relationships with many countries. We have signed Memoranda of Understanding (MoU) that include arrangements for the return of failed asylum seekers and illegal migrants. We have these arrangements with Afghanistan, Azerbaijan, China, India, Iran, Iraq, Nigeria, Pakistan, Somaliland, United Arab Emirates (Dubai) and Vietnam. We have not been able to implement our MoU with Iran as the arrangements originally negotiated are no longer appropriate or practical. In addition to the European Community Readmission Agreements to which the UK is party, we have bilateral readmission agreements with Albania, Bulgaria, Romania and Switzerland. We have concluded negotiations with Serbia and Montenegro, but texts have not yet been signed with those countries. An agreement has been signed with Algeria and is currently in the process of ratification. The content of MoU negotiations is confidential for operational reasons; however the text of a bilateral readmission agreement becomes publicly available once it has been signed and laid before Parliament. Broadly, MoUs cover the mechanics of arranging returns of immigration offenders between the UK and the relevant country.

(HC Deb 8 March 2007 Vol 457 c132WS)

**6/28**

The Home Secretary was asked what provisions he had made for the safe reception of the families and children due to be removed by charter flight to the Democratic Republic of Congo in the week beginning 26 February. A Home Office Minister wrote:

All removals are carried out in accordance with our obligations under the 1951 Geneva Convention Relating to the Status of Refugees and its 1967 Protocol (Refugee Convention), the European Convention on Human Rights (ECHR) and in line with international human rights law.

The Home Office do not routinely monitor the treatment of individuals once they are removed from the UK. However, if specific allegations are made that any returnee, to any country, has experienced ill-treatment on return from the UK, then these are followed up through the FCO and the high commission in the returned country as a matter of urgency.

(HC Deb 27 February 2007 Vol 457 c1208W)

**Part Six: VII.D** *The individual (including the corporation) in international law—immigration and emigration, extradition, expulsion, asylum—asylum*

**6/29**
The Government were asked whether their current policy and practice regarding the repatriation of children of unsuccessful asylum applicants met all the needs of those children. A Home Office Minister said:

> . . . asylum seekers who have been found by the Home Office and independent appeals process not to be in need of international protection and who therefore have no legal basis to stay in the United Kingdom are expected to return, along with their dependants. There are safeguards in place to ensure that those whom we remove are not at risk of persecution or inhuman treatment. We cannot take responsibility for the welfare of families after their return but, when deciding whether return is practicable and when making arrangements for the return, the welfare of any child involved is, of course, an important consideration.

(HL Deb 21 February 2007 Vol 689, 1063)

**Part Six: VIII.** *The individual (including the corporation) in international law—human rights and fundamental freedoms*

**6/30** (see also **6/49**)

**Afghanistan**
The Minister of Defence wrote:

> The Memorandum of Understanding between the Government of the UK and the Government of Afghanistan on the transfer of detainees was signed on 30 September 2006. Since then, three individuals have been held in detention by UK armed forces. One was subsequently transferred to the Afghan authorities and two were released.
>
> Although there have been some minor procedural problems with the timely notification of the International Committee of the Red Cross and the Afghan Independent Human Rights Commission, both organisations have been informed about these detentions, and all other detentions which took place before the MoU was signed. We are working with both organisations with a view to ensuring that in future all notifications will occur in a timely manner.

(HC Deb 8 January 2007 Vol 455 c77W)

**6/31**
The Foreign Secretary was asked which NATO members currently involved in ISAF in Afghanistan do not have Memoranda of

Understanding on the transfer of detainees with the Afghan authorities. He wrote:

We are aware of bilateral Memorandum of Understanding (MoU) between the Afghan Government and The Netherlands, Canada, Norway, and Denmark. The UK also has a bilateral MoU.

Our MoU details the arrangements reached between the UK and Afghan Governments and sets out the responsibilities of both parties before and after the transfer to Afghan authorities of persons detained in Afghanistan by British forces.

(HC Deb 27 November 2007 Vol 468 c340W)

## 6/32

### Burma

[This is an example of many similar answers about human rights concerns in individual foreign States. They are not generally reproduced in UKMIL because the details are readily available in the FCO's Human Rights Report—www.fco.gov.uk/resources/en/pdf/human-rights-report-2007, Ed.]

The Foreign Secretary was asked what progress she had made in persuading the Government of Burma to improve their observance of human rights. An FCO Minister wrote:

The Foreign and Commonwealth Office identifies Burma as a country of concern in our 2006 Annual Report on Human Rights. The Government's policy is to promote full respect for human rights in Burma encouraging the rule of law, democracy and good governance, and the freedom of association and speech in accordance with international human rights law.

We have been at the forefront of international efforts over many years to bring pressure to bear on the military regime to re-establish democracy and to respect human rights. We take every opportunity to raise human rights issues with the regime and remind them of their obligations to adhere to international human rights law. Our Embassy in Rangoon also delivers capacity building assistance through our Global Opportunities Fund in support of these objectives.

I have raised the human rights situation regularly with the Burmese regime and other Governments in the region. On 16 June 2006, I called in the Burmese Ambassador and on 5 July 2006 I wrote to the Burmese Foreign Minister, highlighting our many concerns. On 18 September 2006, I raised the serious human rights situation with the Association of South East Asian Nations (ASEAN) Ambassadors, including the Burmese Ambassador, and on 4 December 2006 with the ASEAN Secretary-General. I have also raised Burma with the Governments of China, India, Japan, Thailand, Malaysia and South Korea. I have discussed the human rights abuses taking place in Burma with Juan Mendez, the UN Special Adviser on the Prevention of Genocide. I discussed Burma in detail with Ibrahim Gambari, the UN Under Secretary-

General for Political Affairs, on 15 November 2006, following his visit to the country. Most recently, I raised the human rights situation in Burma in my address to the Human Rights Council in Geneva on 13 March and at the EU/ASEAN Ministerial Meeting in Nuremberg on 15 March, in the presence of the Burmese Deputy Foreign Minister.

In addition, our Ambassador in Rangoon regularly raises human rights with the regime, most recently when he met the Burmese Ministers for Planning and Immigration and the Burmese Deputy Foreign Minister on 5 January.

The UK works closely with the EU and other international partners, including the UN and ASEAN, to promote human rights in Burma, and fully supports the efforts of the UN Special Rapporteur for Human Rights in Burma, Professor Sergio Pinheiro.

We supported the efforts to have Burma added to the UN Security Council agenda in September 2006 and co-sponsored with the US a UN Security Council Resolution on Burma. This was put to the vote on 12 January. Nine members of the Security Council supported the Resolution. However, three States, including two Permanent Members of the Council, voted against and as such the Resolution was not adopted. While the result was disappointing, it is important to note that all Security Council members agreed that there were serious issues of concern in Burma. This, and the positive votes from the majority of Security Council partners, reflected the international community's deep concern over the plight of Burma's people. Burma remains on the UN Security Council agenda.

(HC Deb 19 April 2007 Vol 459 c736W)

## 6/33

The Foreign Secretary was asked whether Burma will be taking part in negotiations regarding a free trade area between the EU and ASEAN. An FCO Minister wrote:

The European Commission, on behalf of the EU, and the Association of South East Asian Nations (ASEAN) countries as a bloc agreed to enter into negotiations on a Free Trade Agreement (FTA) on 4 May. It is for the ASEAN states to decide how they are to be represented at the negotiations. The mandate to negotiate the FTA was agreed by the EU at the 23 April General Affairs and External Relations Council. The UK and like-minded member states were instrumental in securing language within the council conclusions and the mandate, which will have the effect of excluding Burma from the EU/ASEAN FTA. Burma will not benefit from the proposed EU-ASEAN FTA under its current regime.

(HC Deb 13 June 2007 Vol 461 c1089W)

## 6/34

An FCO Minister wrote:

There are provisions in the Constitution of the International Labour Organisation (ILO) which allow a state to pursue a complaint that another state has breached an ILO convention; this could ultimately lead to proceedings in the International

Court of Justice. However, the Secretariat of the ILO believe that it would be wrong to start such action now in respect of forced labour in Burma. The ILO want to see the Memorandum of Understanding, that they signed with the Burmese government on 26 February 2007, produce results. The memorandum provides that alleged victims of forced labour in Burma will have full freedom to submit complaints to the ILO Liaison Officer in Rangoon.

We support the actions of the ILO aimed at ensuring that Burma complies with its international obligations on forced labour. We are actively working with our European and international partners, as well as through the UN and ILO, to press the regime to end the appalling human rights violations and to engage in a genuine process of national reconciliation involving all relevant parties and groups in Burma.

(HC Deb 13 November 2007 Vol 467 c107W–108W)

## 6/35

## Convention on the Elimination of All Forms of Discrimination against Women

A Minister wrote:

The United Kingdom entered an immigration reservation when it ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1986, in order to ensure that the Convention would not impede immigration policies and procedures in operation at the time. However, preparatory work for the implementation of the Human Rights Act 1998 subsequently ensured that all policies and practices operated by the then immigration and nationality directorate were non-discriminatory on the grounds of sex. An Interdepartmental Review of International Human Rights Instruments was carried out in 2004 and concluded that the reservation for immigration purposes was no longer appropriate and, therefore, the United Kingdom should withdraw its immigration reservation on this Convention.

(HC Deb 9 July 2007 Vol 462 c1350W)

## 6/36

An FCO Minister wrote:

The Government are working to encourage the extension of the UK's obligation under the UN Convention on the Elimination of Discrimination against Women to all the UK populated Overseas Territories. With the agreement of the respective territory governments, we have extended this Convention to the British Virgin Islands, the Falkland Islands and the Turks and Caicos Islands.

The Cayman Islands Government have formally requested that the Convention on the Elimination of Discrimination Against Women should be extended to them. Further legislative work is ongoing and will need to be completed before the Convention can be extended. The Governments of Bermuda and Gibraltar have also agreed to draft legislation to enable the Convention on the Elimination of Discrimination Against Women to be extended to them.

We will continue to encourage those UK Overseas Territories that have not yet agreed to the extension of the Convention on the Elimination of Discrimination Against Women to do so.

(HC Deb 10 October 2007 Vol 464 c673W–674W)

## 6/37

**Convention on the Rights of the Child**

The Home Secretary was asked if she will consider removing the UK's immigration reservation to Article 22 of the United Nations Convention on the Rights of the Child. A Minister wrote:

The UK supports the work that the United Nations is doing in improving standards of care for children in countries where care arrangements are non-existent or poor. In the UK our domestic laws honour the spirit of the Convention in relation to the standards of care and treatment available to children, including asylum-seeking children. The Government believe the reservation remains justified in order to maintain an effective immigration control. The Convention on the Rights of the Child obliges its signatories to put the 'best interests' of the child first in making decisions and there are a number of instances where this may prevent lawful immigration functions being carried out. The Convention on the Elimination of Discrimination against Women obliges signatories to treat men and women equally which creates less of a concern for carrying out immigration functions.

We provide protection to children subject to immigration control via the Children Act and other domestic legislation that requires the authorities to fulfil duties in relation to children; and also through the Human Rights Act. In addition we are proposing to introduce a code of practice to ensure that in carrying out its functions in the UK the Border and Immigration Agency takes appropriate steps to keep children safe from harm while they are in the UK.

[The reservation reads as follows:

The United Kingdom reserves the right to apply such legislation, in so far as it relates to the entry into, stay in and departure from the United Kingdom of those who do not have the right under the law of the United Kingdom to enter and remain in the United Kingdom, and to the acquisition and possession of citizenship, as it may deem necessary from time to time, Ed.].

(HC Deb 9 July 2007 Vol 462 c1350W–1351W)

## 6/38

An FCO Minister said:

The Government have no plans to incorporate the Convention on the Rights of the Child into domestic legislation. UK law often goes further than the convention requires. The key articles and general principles are given full effect in the Human Rights Act 1998, which incorporates the articles of the European Convention on Human Rights.

(HL Deb 21 November 2007 Vol 696 c827)

## 6/39

## Death Penalty

An FCO Minister wrote:

Since 1 May 1997 we have made numerous representations about the application of the death penalty. In that period, over 20 countries have abolished the death penalty for all crimes. As stated in the Foreign and Commonwealth Office's 2006 Annual Human Rights Report we and the EU have lobbied in 2005–06, among other countries, Afghanistan, Bangladesh, Belarus, Botswana, Cameroon, China, the Democratic People's Republic of Korea, India, Indonesia, Iran, Iraq, Japan, Kenya, Kuwait, Kyrgyzstan, Libya, Malawi, Papua New Guinea, Pakistan, the Palestinian Authority, the Philippines, Republic of Korea, Rwanda, Saudi Arabia, Sierra Leone, Singapore, Somalia, Sudan, Syria, Taiwan, Tajikistan, Tanzania, Trinidad and Tobago, Uganda, the US, Vietnam and Yemen. Since 1 May 1997, we have lobbied most, if not all, countries which retain the death penalty in law. We have carried this out through multi-lateral and bilateral démarches or dialogues, and through lobbying for co-sponsorship of resolutions in the Commission for Human Rights and at the United Nations General Assembly.

(HC Deb 15 January 2007 Vol 455 c822W)

## 6/40

## Death Penalty—Afghanistan

Statement by the EU Presidency on behalf of all EU Member States and Norway on the execution by the Government of Afghanistan of fifteen Afghan nationals on the 7th October 2007 Kabul, Afghanistan

It is with deep regret that the EU and Norway have learned of the execution of fifteen Afghan Nationals on the 7th October. The European Union and Norway oppose the death penalty in all cases and accordingly seeks its universal abolition, through a global moratorium on the death penalty as the first step.

The European Union Member States and Norway would like to make an urgent appeal to halt any possible further executions and to request the Government of Afghanistan to reconsider establishing a moratorium on the death penalty. Furthermore they would like to request the Government of Afghanistan to consider the accession of Afghanistan to the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) on the abolition of the death penalty.

The EU and Norway are concerned that the procedural guarantees for a fair trial were not in place given the weak state of the Afghan judicial system.

Furthermore they are concerned about the way the death penalty was carried out in secrecy. Executions under these circumstances are contrary to internationally recognised human rights norms and neglect the dignity and worth of the human person.

The EU and Norway call on the Government of Afghanistan to respect their international obligations, particularly in the field of Human Rights.

(www.fco.gov.uk/news)

**6/41**
A Minister wrote:

The Government were concerned to hear about the case of Sayed Pawez [a journalist who was convicted on insulting Islam, Ed.]. We are opposed to the death penalty for any crime. We fully support the right to freedom of expression and the right to a fair trial. We are pursuing the matter in Afghanistan through the EU and UN. The office of the UN Special Representative in Afghanistan has already called publicly for a review of the case.

(HC Dec 30 January 2007 Vol 456 c395W)

**6/42**

## Death Penalty—Iran

The FCO sent a memorandum to the FAC:

57. Iran executed more people in 2005 and 2006 than any other country in the world except China (whose population is over 15 times the size). Iran does not issue official figures and reliable data is hard to come by. But, against a worldwide decreasing trend in the use of the death penalty, Amnesty International estimates that at least 94 people were executed in Iran in 2005, and 177 in 2006. Numbers look set to grow again in 2007, as, at time of writing, over 150 people have been executed already this year.

58. The UK has repeatedly called on Iran to abolish the death penalty. In particular we object to the Iranian authorities' failure to respect even the most basic of minimum standards regarding the application of capital punishment. Many death sentences are carried out in public. We have doubts as to whether all death sentences are the result of a fair trial and whether everyone who is sentenced to death in Iran is able to exhaust all avenues of appeal available to them. The hanging of two youths aged 17 and 20 in Khorrambad (Lorestan province) on 13 May 2006 occurred barely a month after their alleged crime.

Juvenile executions

59. Iran is one of the few countries in the world that still imposes the death sentence for crimes committed before the age of 18. It was one of only two

countries in the world known to have executed child offenders in 2006. Reports suggest that between five and eight juvenile executions took place in 2005—more than in any recent year—at least two in 2006, and two so far in 2007. According to Amnesty International, over 60 juvenile offenders (under the age of 18 when their crimes were committed) remain on death row in Iran.

60. This is contrary to Iran's international commitments under the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC). The executions also run contrary to Iranian assurances that a moratorium is in place on capital punishments against minors, including the Iranian declaration to the UN Committee on the Rights of the Child in January 2005.

61. In January 2007, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions criticised Iran over the continued use of the juvenile death penalty in clear violation of its international obligations: "Between August 2004 and March 2006 I sent 12 communications, involving nine boys and six girls who had been sentenced to death in Iran for crimes committed when they were under 18... The information received is clearly credible and there is every reason to believe that the Iranian judiciary is freely ignoring the prohibition on the juvenile death penalty."

62. The UK remains committed to supporting EU action to highlight Iranian death penalty cases that fall short of EU minimum standards (including death sentences handed down for crimes committed before the age of 18). The EU has raised concerns about six juvenile execution cases already this year.

Cruel and inhuman punishment

63. Our concerns about criminal justice in Iran are not limited to the death penalty. Cruel and inhuman punishments (floggings, stoning, amputations) remain on the statute books. It is unclear how frequently such sentences are carried out. However, we have received two reports of public amputations for robbery in the province of Kermanshah in February and May 2007. These are the first confirmed cases of amputation in recent years and contravene the commitment Iran made to the EU in March 2003 to implement a moratorium on amputations. The EU has lobbied the Iranian authorities on these sentences.

64. The Iranian Judiciary confirmed that a man was stoned to death for adultery in Qazvin province on 5 July this year. Stoning sentences are still handed down by judges, but this was the first confirmed report of an execution by stoning since Iran announced a moratorium on stoning in 2002. The EU Presidency issued an immediate statement condemning the sentence and calling on Iran to respect its international and human rights commitments, and Dr Howells (Minister with responsibility for our relations with Iran) called in the Iranian Ambassador to protest. HMG and EU partners continue to lobby on a case-by-case basis, and press Iran to introduce these moratoria into law.

(FAC, Global Security: Iran HC142 (2007)

[See also HC Deb 18 July 2007 Vol 463 c407W and HC Deb 6 December 2007 Vol 468 c1430W, Ed.]

6/43

## Death Penalty—Singapore

The Foreign Secretary was asked what assessment she had made of the use of the death penalty in Singapore; and what representations she has made to the Government of Singapore on the use of the death penalty. She wrote:

The UK is opposed to the death penalty in all circumstances. We believe that the abolition of the death penalty is essential for the protection of human rights under Article 3 of the Universal Declaration of Human Rights. The Singapore Government continue to use the death penalty, though the number of executions in recent years has been much lower than in the past. There is little public opposition in Singapore to use of the death penalty.

The Singapore Government are well aware of our views. Our high commissioner in Singapore raised the issue most recently in December 2006 with the Singapore Deputy Prime Minster, who is also Minister for Law.

(HC Deb 18 January 2007 Vol 455 c1333W)

6/44

## Death Penalty—United States—Krishna Mahraj

The Foreign Secretary was asked how many times officials from her Department had (a) met and (b) made representations on behalf of Krishna Maharaj. An FCO Minister wrote:

Officials from our consulate in Orlando have met with Mr. Maharaj on several occasions since 2002 when he was re-sentenced to life imprisonment. The most recent of these visits was made by our consul on 19 January. Mr. Maharaj and his wife are in frequent contact with our consular officials in Orlando both by letter and telephone.

Since 2002, we have submitted three amicus curiae briefs to the US courts on a point of international law in Mr. Maharaj's case. Officials from the Foreign and Commonwealth Office both here and overseas are following this case very closely, and representations at official level are made at every appropriate opportunity. We continue to monitor the case in consultation with Mr. Maharaj's legal representatives in the US and UK.

(HC Deb 24 May 2007 Vol 460 c1484W)

6/45

An FCO Minister wrote:

Further to the letter sent by [an FCO Minister] of 22 May to the governor of Florida in support of Krishna Maharaj's clemency petition, our consul in Orlando attended Mr, Maharaj's clemency waiver hearing on 9 August.

The Aides to the Florida Clemency Board granted a waiver which means his clemency case could be heard by the full clemency board, including Governor Crist, as early as December. We welcome this decision and remain in close contact with Mr. Maharaj's legal team about the full consideration of his clemency plea by the Florida Clemency Board.

We continue to offer appropriate consular assistance to Mr. Maharaj and our consul in Orlando last visited him on 24 August.

(HC Deb 10 September 2007 Vol 463 c2007W)

### 6/46

## Death Penalty—Pakistan

The Foreign Secretary was asked if she would raise with the Government of Pakistan the case of Younis Masih, a Christian who has been sentenced to death under section 295C of the Pakistan penal code; and if she would urge the Pakistani authorities to ensure that he is able to access a fair appeals process and proper protection to prevent attacks from extremists while he is appealing the sentence.
An FCO Minister wrote:

We do not usually raise individual cases and have not recently made any representations to the Pakistani authorities concerning Younis Masih. However, we are aware of this case and regularly raise our concerns about the treatment of religious minorities in Pakistan both bilaterally and with our EU partners. We oppose the death penalty in all circumstances as a matter of principle.

Although we do not usually raise individual cases, we regularly raise our concerns over the situation of religious minorities with the Government of Pakistan. Most recently, in May, we again voiced our concerns over the treatment of religious minorities in Pakistan, together with our EU partners.

(HC Deb 14 June 2007 Vol 461 c1220W)

### 6/47 (See also 5/7)

## Democracy

The Secretary of State for International Development was asked what steps his Department was taking to encourage the composition of parliaments in developing countries to reflect the population of those countries in terms of (a) gender, (b) ethnicity, (c) religious belief and (d) sexuality. He wrote:

As part of its commitment to promoting good governance, DFID works to strengthen the parliaments of developing countries. What we do is different in

different countries, depending on our assessment of what the priorities are. In some places we will focus more on the legislative function of parliaments, for instance, while in others our efforts will be channelled more towards strengthening oversight of the executive.

Representation is of course a core function of parliaments everywhere, and DFID recognises that a representative parliament has a head start on this.

One of the initiatives DFID has supported recently to improve representativeness is the High Level Committee on Reservations [in Nepal] which has developed recommendations for affirmative action for women and dalits in the political structures of Nepal. Another group we have supported is the Forum des Femmes Rwandaises Parliamentaires (FFRP). The FFRP comprises all the women members of the Rwandan Parliament—and at 48.8 per cent. Rwanda has the highest female representation in the world. Our most recent support to the FFRP funded a conference on 22 and 23 February that celebrated the progress made towards gender equality in Rwanda. It also produced the "Kigali Declaration", that will add vitality to the efforts of other African countries to get more women into Parliament—following Rwanda's example.

(HC Deb 19 March 2007 Vol 458 c616W)

## 6/48

## Detention

In response to a question about Government policy on the treatment of Iranian nationals captured while fighting as insurgents against British troops in (a) Afghanistan and (b) Iraq, the Minister of Defence wrote:

In Afghanistan, the UK policy is that any individual detained by ISAF forces should be transferred to the Afghan authorities at the first opportunity and within 96 hours, or released.

In Iraq, following the detention of any individual by multi-national force Iraq, a decision will be made to either release the individual, transfer him to the Iraqi judicial system (where criminal evidence exists), or to intern him if this is deemed necessary for imperative reasons of security, as permitted under UNSCR 1723. This decision is based on an assessment of the threat posed by the individual and is not related to his nationality.

All new UK internees have their cases reviewed by the Divisional Internment Review Committee no later than 48 hours after they are apprehended, and then every 28 days thereafter. Cases are also reviewed by the Combined Review and Release Board, a joint UK-Iraqi board, every three months. Individuals held for 18 months have their cases referred to the Joint Detention Committee which is co-chaired by Prime Minister Maliki and the Commander Multi-National Force Iraq.

[See **(2006) UKMIL 16/16** and *R (on the application of Al-Jedda) v Secretary of State for Defence* [2007] UKHL 58, Ed.]

(HC Deb 2 March 2007 Vol 457 c1612W)

## 6/49

The Defence Secretary was asked:

(1) whether the requirement in paragraph 5.1 of the Memorandum of Understanding between the Government of the UK and the Government of Afghanistan on the transfer of detainees for the UK armed forces to notify the International Committee of the Red Cross and the Afghan Independent Human Rights Commission, normally within 24 hours, and if not, as soon as possible after, of when a person has been transferred to Afghan authorities had been complied with fully in respect of all the detainees concerned; and

(2) how many individuals arrested and detained in Afghanistan by UK armed forces had been transferred to the authorities of Afghanistan since the date on which the Memorandum of Understanding between the Government of the UK and the Government of Afghanistan on the transfer of detainees came into effect.

He wrote:

The Memorandum of Understanding between the Government of the UK and the Government of Afghanistan on the transfer of detainees was signed on 30 September 2006. Since then, three individuals have been held in detention by UK armed forces. One was subsequently transferred to the Afghan authorities and two were released.

Although there have been some minor procedural problems with the timely notification of the International Committee of the Red Cross and the Afghan Independent Human Rights Commission, both organisations have been informed about these detentions, and all other detentions which took place before the MoU was signed. We are working with both organisations with a view to ensuring that in future all notifications will occur in a timely manner.

[The MOU is reproduced at *www.publications.parliament.uk/pa/cm200607/cmselect/cmfaff/44/4412.htm*, Ed.]

(HC Deb 8 January 2007, Vol c77W)

## 6/50

The Foreign Secretary was asked whether the UK Government have entered into any written agreements with (a) US authorities and (b) Iraqi authorities on the conditions on which individuals arrested and detained by UK armed forces in Iraq may be transferred to (i) US authorities and (ii) Iraqi authorities. The Minister of Defence wrote:

The Government signed a Memorandum of Understanding (MOU) with the Governments of the United States and Australia governing the transfer, in accordance with the Third and Fourth Geneva Conventions of prisoners of war, of civilian internees and detainees taken during operations against Iraq in 2003. This MOU is no longer in use.

The UK contingent of the Multinational Force in Iraq signed a MOU with the Iraqi Ministry of Justice and Ministry of Interior in 2004, that governs the transfer of individuals in the custody of UK forces in Iraq to the Iraqi criminal justice system. We will make public the text of this MOU subject to obtaining the consent of the Iraqi Government as the co-signatory.

(HC Deb 21 May 2007 Vol 460 c1051W)

**6/51**
The Minister of Defence was asked whether any individuals arrested and detained by UK armed forces in Iraq and subsequently transferred to (a) US authorities and (b) Iraqi authorities might be subsequently transferred to the authority of another state, including detention in another country, without the prior written agreement of the UK. He wrote:

No individual arrested and detained by UK forces in Iraq will be transferred to US authorities without prior written agreement governing the terms and conditions of such transfer.

The Memorandum of Understanding between the UK contingent of the Multinational Force in Iraq and the Iraqi Ministries of Justice and Interior governing the transfer of individuals detained in Iraq by UK forces contains no provisions on the possible further transfer of such persons. However, the Constitution of Iraq prevents the Government of Iraq from surrendering any Iraqi national to foreign entities and authorities.

(HC Deb 9 January 2007 Vol 455 c520W)

**6/52**
The Foreign Secretary wrote:

The UK currently holds 36 detainees at the divisional internment facility at Basra air station, all of whom are Iraqi nationals.

The UK detains individuals in Iraq for imperative reasons of security under the authority of UN Security Council Resolution 1723 (2006). It is a power we use sparingly and we take our responsibilities to our detainees seriously. Where possible, we seek to release individuals or transfer their cases to the Iraqi justice system. The UK has obtained assurances from the government of Iraq to ensure that anyone transferred from UK to Iraqi custody will be treated in accordance with basic international human rights principles.

(HC Deb 15 November 2007 Vol 467 c391W)

**6/53**

## Deportation

The Home Secretary was asked what assessment he had made of the effect of the operation of the Human Rights Act 1998 on the

Government's ability to detain or deport terrorist suspects. A Minister wrote:

The Human Rights Act 1998 does not affect our ability to detain or to deport. The Human Rights Act simply incorporated our pre-existing international obligations into domestic law.

Detention has to be consistent with Articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights). In deporting someone from the United Kingdom, we have to have regard to our obligations under Article 3 of the ECHR as defined in the case law of the European Court of Human Rights.

The Government are seeking to secure a modification of the current case law through its intervention in two cases currently before the Court [*Saadi v. Italy*, ECtHRs [GC] (Judgment of 28 February 2008) Appl. no. 37201/06, upholding *Chahal v. UK* 70/1195/576/662 (1996) ECtHRs and *Ramzy v. The Netherlands*, Appl. No. 25424/05, UK intervening, pending, Ed.]

(HC Deb 20 June 2007 Vol 461 c1968W)

**6/54**

## Enforced Disappearance

An FCO Minister wrote:

The Government support the International Covenant for the Protection of All Persons from Enforced Disappearance. The UK was active throughout the negotiations to draft the convention and we supported its adoption last year at both the UN Human Rights Council and the UN General Assembly. The preliminary work necessary to identify any changes required to UK law in order to ratify the convention necessarily began when the convention was under negotiation, but it has not yet been possible to progress it further to date. Until this work is complete, we will not be able to determine the UK's position towards ratification, including whether we would need to make any reservations. At the adoption of the convention at both the UN General Assembly and the Human Rights Council, the UK made an interpretative statement clarifying our understanding of certain provisions, including what constitutes an enforced disappearance, the application of obligations under international humanitarian law and the procedures applicable to the adoption and placement of children found to have resulted from an enforced disappearance. This statement can be found at: www.fco.gov.uk/ukmisgeneva.

(HL Deb 14 November 2007 Vol 696 cWA20)

**6/55**

## European Charter for Minority Languages

An FCO Minister wrote:

The UK ratified the European Charter for Minority Languages on 27 March 2001 and the Charter entered into force for the UK on 1 July 2001. The UK recognises Welsh, Irish, Scottish-Gaelic, Ulster Scots, Manx Gaelic, Cornish and Scots under the Charter's definition of a regional or minority language.

The Charter's monitoring mechanism requires member states party to the charter to produce, a year after entry into force of the charter for the state and thereafter every three years, a periodical report detailing the policy pursued under Part II of the charter and the measures taken in application of those provisions of Part III of the charter which they have accepted. Since ratification the UK has produced two such periodical reports, the first published on 1 July 2002 and the second on 1 July 2005. The UK's third periodical report is due for publication on 1 July 2008.

The UK's first and second periodical reports can be found on the Council of Europe website at:

www.coe.int/t/e/legal_affairs/local_and_regional_democracy/regional_or_minority_languages/ 2_Monitoring/Monitoring_table.asp#TopOfPage

(HC Deb 12 November 2007 Vol 467 c38W)

**6/56**
(See also **6/14–19 and UKMIL [2006] 6/13)**

## Extraordinary Rendition

The Foreign Secretary wrote:

In his speech of 6 September 2006, President Bush acknowledged the existence of a detention programme operated by the CIA.

Prior to this speech, we were aware of the existence of a secret US detention programme only in general terms.

In 2005 the Intelligence and Security Committee (ISC) reported that the agencies had told them: "Clearly the US is holding some Al Qaida members in detention, other than at Guantanamo, but we do not know the location or terms of their detention and do not have access to them". These comments were published in the ISC's report "The Handling of Detainees by UK Intelligence Personnel in Afghanistan, Guantanamo Bay and Iraq" of March 2005, Cm 5611..

(HC Deb 18 January 2007 Vol 455 c1335)

**6/57**

## General Assembly—Individual States

An FCO Minister wrote:

The Government consider that the UN General Assembly (UNGA) has a responsibility to address situations of human rights violations in particular

countries. We believe that the most effective means of improving such situations is through a co-operative relationship between the UN human rights machinery and the Government of the relevant country. However, where the situation is of serious concern and where the Government in question refuses to co-operate or to make use of the support offered to them by the UN human rights mechanisms, it is entirely appropriate for the UNGA or the UN Human Rights Council to express concern over the situation through a resolution, if necessary without the support of the country concerned. The Government worked very actively with European Union and other partners to secure the recent adoption of resolutions by the UNGA Third Committee on the situations in Iran, Burma, Belarus and the Democratic People's Republic of Korea.

(HC Deb 6 December 2007 Vol 468 c1430W)

## 6/58

## Guantanamo Bay

An FCO Minister said:

I need to begin by asking the House to respect the wider context of this debate. Before I enter into the detail of Mr. al-Rawi's case, it is important for us all to remember the circumstances which led to Guantanamo Bay and how they have had a profound effect on the US Government's security policy, and indeed our own, over the past few years. None of us can forget that almost 3,000 people were killed during the horrific terrorist attacks of 11 September 2001 . . .

Let us not think that 9/11 was an isolated incident. The list of major terrorist attacks, preceding and subsequent, is long. They include attacks and hundreds of people killed in East Africa, Yemen, Saudi Arabia, Turkey, Indonesia, Spain, Morocco, Tunisia, Egypt, Syria, Jordan and Pakistan—and of course 52 people were killed in this city in 2005. The casualty figures would have been even higher had any of the numerous planned attacks that have been foiled since 2000 succeeded—in the hundreds, perhaps even thousands. We face a major threat from international terrorism and are likely to do so for many years to come. This is the shocking reality we face, and international co-operation to counter this global threat is of critical importance. We will continue to take steps to protect our citizens: for that I make no apologies.

Let me turn to Guantanamo Bay. The British Government's position is clear. Notwithstanding what I have said about the reasons why the US created Guantanamo Bay in the first place and the continuing threat from terrorism, we believe . . . as the Prime Minister and other colleagues have said, that Guantanamo should close . . .

we have interviewed detainees there about the threat to the UK's national security—it would have been irresponsible not to do so. However, we have also worked tirelessly to secure the release of all the UK nationals who were detained there. Five were released in March 2004 and the remaining four in January 2005. That was our understandable priority. Since then, we have pressed the US

Government hard on Guantanamo's future and the broader issues raised by the camp. The hon. Gentleman mentioned some of them this evening.

We welcome the US President's public commitment to close Guantanamo Bay as soon as practicable, and the US Government's progress to that end. I understand that nearly 800 detainees have passed through Guantanamo, of whom approximately 340 have been released, leaving about 435 detainees. Four were recently transferred back to Bahrain, Iran and Pakistan, and I know that the US Government are working hard to reduce the numbers as quickly as possible. That is a complicated task. Careful consideration should—and is—being given to how numbers at the camp can be reduced. The dilemma for the US is maintaining international security while respecting the human rights of detainees when they are released.

Our position on Guantanamo's future is principled and pragmatic, reflecting the need to balance security and liberty. We will continue to follow developments in Guantanamo Bay closely and to discuss conditions there, as well as wider detainee issues, with the US Government . . .

We are often asked about the circumstances of detainees who were formerly resident in the United Kingdom. It is a long-standing Government policy not to offer consular assistance to non-British nationals, except when a specific agreement to do so exists with another state. A long period of residence in the UK is not a substitute for British nationality. However, in 2005, [an FCO Minister] agreed exceptionally to meet, on a humanitarian basis, the families and representatives of those detainees whom we knew were formerly resident in the UK but were not British nationals, and we passed on the concerns that the families expressed to the US authorities. We continue regularly to raise humanitarian concerns about detentions at the Bay with the USA, including those about detainees who were formerly resident in the UK . . .

I would like to draw the House's attention to President Bush's speech of 6 September 2006. We welcomed a number of steps announced in this speech—in particular, the stated intention to treat all detainees in accordance with the provisions of the Geneva conventions and to grant the International Committee of the Red Cross access to 14 so-called "high value" detainees. The US intention to prosecute those key detainees is also welcome, not least to the many victims of international terrorism and their families. The Prime Minister, Foreign Secretaries and senior Government officials and lawyers have all been actively involved in Guantanamo-related matters for a long while. It is a picture of considerable and overall productive engagement.

I turn now to deal with the specific subject of this debate: Mr. al-Rawi and what we are doing to achieve his release from Guantanamo. I must begin by responding to the charge . . . that the British Government were complicit in his constituent's arrest and detention . . . Mr. al-Rawi travelled to Gambia and was arrested on arrival. I must stress absolutely and categorically that the UK did not request [his] detention . . . nor did the UK play any role in his transfer to Afghanistan or Guantanamo Bay. To suggest otherwise is, quite simply, not the case.

. . . the then Foreign Secretary agreed in March 2006 to make representations to the US Government for Mr. al-Rawi's release from Guantanamo Bay and his

return to the UK. That decision was based on the particular circumstances in Mr. al-Rawi's case. On 6 April 2006, having taken that decision, [the Foreign Secretary] wrote to the US Secretary of State to ask formally for his release and return. The US State Department replied to the British ambassador in Washington later that month and detailed discussions between our Governments have continued since.

I reiterate that we are committed to securing Mr. al-Rawi's release from Guantanamo Bay and his return to the UK. We believe that our work should be allowed to come to a successful conclusion . . .

[There were] also raised concerns about Mr. al-Rawi's health and the conditions of his detention. I stress that we continue to raise humanitarian concerns about detentions at Guantanamo Bay with the US authorities. As part of our regular exchanges with the United States, we have raised on a number of occasions issues relating to detainees who were formerly resident in the UK, including Mr. al-Rawi . . .

Following contact with Mr. al-Rawi's lawyers just before Christmas, we raised specific concerns about his conditions of detention and health with the United States Government . . . the US Government have confirmed to us that they are looking into them. We are taking full account of Mr. al-Rawi's well-being in our work to secure his release.

(HC Deb 8 January 2007 Vol 455 c123–126)

## 6/59

The Foreign Secretary was asked what representations she had made to the United States on returning Hambali (Riduan Isamuddin) from Guantanamo Bay to Indonesia to stand trial for the Bali bombing. An FCO Minister wrote:

The Government think that suspected terrorists should be brought to trial whenever possible. The US Government are fully aware of this policy.

British Government officials have conveyed to the US authorities concerns that Hambali has not yet been brought to justice. In his speech of 6 September 2006, President Bush announced the transfer of 14 so-called high-value detainees to Guantanamo Bay, including Hambali. He also said that the International Committee of the Red Cross would be granted access to them, and that they should face justice.

(HC Deb 18 January 2007 Vol 455 c1331W)

## 6/60

The Foreign Secretary wrote:

The House will be aware that, with the agreement of the Home Secretary, I wrote to US Secretary of State Condoleezza Rice on 7 August to request the release from Guantanamo Bay and return to the UK of five men who, while not UK Nationals, had been legally resident in the UK prior to their detention. These are the only individuals now at Guantanamo who have been identified as

having been given leave to enter or remain in the UK under the Immigration Acts.

The Home Secretary and I decided to seek the release of the five in light of work by the US Government to reduce the number of those detained at Guantanamo and our wish to offer practical and concrete support to those efforts. In reaching this decision we gave full consideration to the need to maintain national security and the Government's overriding responsibilities in this regard.

Detailed and constructive discussions have since taken place between the British and US Governments, considering the circumstances of each individual case. The US agreed on 10 December that three of the five men—Mr. Jamil El Banna, Mr. Omar Deghayes and Mr. Abdennour Sameur—will be returned to the UK shortly as soon as the practical arrangements can be made. The Foreign and Commonwealth Office has been in contact with the families and legal representatives of Mr. El Banna, Mr. Deghayes and Mr. Sameur to let them know of this decision.

I should add that the decision to make this request does not constitute a commitment that they may remain permanently in the UK. Their immigration status will be reviewed following their return and the same security considerations will apply to them as would apply to any other foreign national in this country. As always, all appropriate steps will be taken to protect national security.

The US Government has expressed significant additional security concerns in regard to the cases of the other two men covered by the original request—Mr. Shaker Aamer and Mr. Binyam Mohammed. They have so far declined the request for the release and return of Mr. Aamer and we are no longer in active discussions regarding his transfer to the UK. We are still discussing with the US the case of Mr. Mohammed although again the US Government is not inclined to agree to his release and return.

Moving ahead, we will continue to discuss with the US Government how best we can work with them to see the closure of the Guantanamo Bay detention facility. We will continue to encourage our allies to consider taking steps similar to our own to reduce the numbers of those detained at Guantanamo Bay, such as accepting the transfer of eligible detainees, thereby hastening the closure of the detention facility.

(HC Deb 13 December 2007 Vol 469 c56WS–57WS)

**6/61**

## Human Rights Council

(See also **6/72**)

The Foreign Secretary was asked what the UK Government's position was on the candidacy of Belarus for the 17 May elections for the UN Human Rights Council. She wrote:

We continue to have deep concerns at the deteriorating human rights situation in Belarus, including Belarus' failure to co-operate with the UN human rights

mechanisms; its failure to conduct free and fair elections, including the detention and arrest of political and civil society activists; and persistent reports of harassment and closure of non-governmental organisations, national minority groups, independent media outlets, religious groups, opposition political parties and independent trade unions.

We do not consider that countries whose human rights situations continue to be of deep concern fulfil the criteria for membership of the UN Human Rights Council (HRC).

The UN General Assembly resolution establishing the HRC in March 2006 sets out clear expectations of the Council's members, including that they "uphold the highest standards in the promotion and protection of human rights". We fully support these expectations of the Council's members. We urge all members of the General Assembly, responsible for electing the HRC membership, to take candidates' performance against these standards fully into account when casting their votes. European Union member states have publicly committed only to support those states who meet these standards, and who contribute to the promotion and protection of human rights.

(HC Deb 15 May 2007 Vol 460 c695W)

**6/62**

The Foreign Secretary was asked if she would make a statement on proposals to abolish the UN Human Rights Council envoy posts charged with reporting on (a) Belarus, (b) Cuba, (c) North Korea, (d) Burma, (e) Somalia, (f) Sudan and (g) Uzbekistan. An FCO Minister wrote:

When the UN Human Rights Council was established in March 2006, it was tasked with reviewing its tools and mechanisms, including its so-called Special Procedures (for example Special Rapporteurs and Independent Experts dedicated to specific country situations). On 18 June, the Council agreed a package of measures at the conclusion of this review. Throughout the review the UK consistently took a strong position, nationally and with the rest of the EU, in favour of maintaining all the existing country-specific and thematic Special Procedures. There was a great deal of opposition at the Council to the continuation of country-specific Special Procedures. I was profoundly disappointed that, because of this opposition, the mandates of the Special Rapporteurs on the human rights situations in Cuba and Belarus were not renewed. The situations in both those countries continue to be of deep concern and we will continue to monitor the situation in each closely. I was, however, pleased that the mandates of all the other country-specific Special Procedures (including the Special Rapporteurs on the situation of human rights in the Democratic People's Republic of Korea, Burma and Sudan, and the Independent Expert appointed by the UN Secretary-General on the situation of human rights in Somalia) were renewed.

The Council inherited an Independent Expert on the human rights situation in Uzbekistan, created through the confidential complaints procedure under the old UN Commission on Human Rights. At its fourth session (12–30

March) the UN Human Rights Council discontinued consideration of the specific file relating to Uzbekistan under its confidential complaints procedure. The confidential nature of that procedure prevents us from commenting on any details of the cases and on the position taken by the UK. We do, however, emphasise strongly our deep concern over persistent violations of human rights in Uzbekistan.

The Council also agreed on 18 June a new system of universal periodic review, which will look at every state's individual work on human rights implementation, including Cuba's and Uzbekistan's.

(HC Deb 25 June 2007 Vol 462 c222W)

## 6/63

## Indigenous Peoples: ILO Convention

An FCO Minister wrote:

The Government have no plans to sign and ratify the International Labour Organisation (ILO) Indigenous and Tribal Peoples Convention 1989 (ILO 169). The UK takes its international law obligations very seriously and as a general rule will only sign and ratify an instrument when we can ensure our full compliance with it and commit to its implementation. The UK position with regard to ILO 169 was set out in a 1989 Department for Education and Employment White Paper ("Convention on Indigenous and Tribal Peoples in Independent Countries" Command Paper Number: Cm 1078). As the White Paper noted, ILO 169 was essentially an update of the 1957 ILO Convention 107. The White Paper explained that Convention 107 could not be applied to the UK as there are no indigenous, tribal or semi-tribal people there, and so had not been ratified by the UK. The same arguments applied to ILO 169 as it did not alter the scope of Convention 107. This position still stands.

The UK is committed to the promotion and protection of the rights of indigenous peoples. On 13 September 2007, the UK voted in favour of the adoption of the UN Declaration of the Rights of Indigenous Peoples at the UN General Assembly, as we had previously done at the Human Rights Council in June 2006. The adoption of this Declaration marks a significant advance for indigenous peoples around the world.

(HC Deb 20 November 2007 Vol 467 c736W)

## 6/64

## Individual petition

The Government was asked whether it were in the interest of those within the jurisdiction of the United Kingdom to have recourse to the international complaints mechanisms under the United Nations

International Covenant on Civil and Political Rights and Convention on the Elimination of All Forms of Racial Discrimination; and, if it were not, what was the reason. A Minister wrote:

The Government remain to be convinced of the practical value to people in the United Kingdom of rights of individual petition to the United Nations. The United Nations committees that consider petitions are not courts, and they cannot award damages or produce a legal ruling on the meaning of the law, whereas the United Kingdom has strong and effective laws against discrimination under which individuals may seek remedies in the courts or employment tribunals.

(HL Deb 29 November 2007 Vol 696 cWA142)

**6/65**

An FCO Minister said:

Attention has be drawn to the optional protocols [to UN human rights treaties] on individual petitions. On women's rights, we have, as a matter of experimentation, signed up to the optional protocol to allow women to bring such cases. We have not done so more broadly because these optional protocols are not a judicial process and do not allow the awarding of damages. We believe that we can more effectively address these issues through other arrangements.

(HL Deb 10 December 2007 Vol 697 c10)

**6/66**

## Kashmir

The Foreign Secretary was asked if she would support the appointment of a special rapporteur with an ongoing mandate to publish regular and public reports on the human rights situation in Jammu and Kashmir and Azad Kashmir. An FCO minister wrote:

The UK continues to call for an end to all external support for violence in Kashmir and an improvement in the human rights situation there. But it is not for us to intervene and prescribe a solution. That is for those parties directly involved to determine through dialogue. We hope that the dialogue process between India and Pakistan will build on progress achieved to date and, in due course, lead to the resolution of all outstanding differences between the two countries, including over Kashmir.

Asked further about any representations the Foreign Secretary had received on the prosecution in civilian courts in India of members of the army and other security forces implicated in rights abuses in Jammu and Kashmir, the Minister wrote:

We have not received any such representations. Criminal prosecutions before Indian courts are a domestic matter for the Government of India and the Indian judiciary.

(HC Deb 28 June 2007 Vol 462 c844W)

**6/67**

## Overseas territories

The Foreign Secretary was asked what discussions it had had with the UN Human Rights Commission about the status of those living on Ascension Island. A Minister wrote:

The Foreign and Commonwealth Office has had no discussions with the United Nations Human Rights Commission on the status of those working and living on Ascension Island. The human rights of those currently on Ascension Island are protected by various human rights instruments which have been extended to the island, including the European Convention on Human Rights. Details of these instruments are available on the FCO website at:

www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&;c=Page&cid=1013618138395

(HC Deb 17 July 2007 Vol 463 c247W)

**6/68 (See also 1/1, 15/8, 16/69–70)**

## Responsibility to protect

An International Development Minister wrote:

The "responsibility to protect" concept, endorsed at the 2005 UN World Summit, made clear that individual states hold the primary responsibility to protect their own populations from genocide, war crimes, ethnic cleansing and crimes against humanity. The international community also confirmed its readiness to act, collectively, to prevent and stop such crimes, through the United Nations. Such action includes using appropriate diplomatic, humanitarian and other peaceful means, including sanctions. On a case by case basis, should peaceful means be inadequate and national authorities manifestly fail to protect their populations, the UN Security Council may authorise the use of force.

Since the World Summit, the UN Security Council has adopted resolutions on the Protection of Civilians in Armed Conflict and on Darfur, both of which refer to the World Summit agreement on the responsibility to protect. In addressing the situation in Darfur, we have also used diplomacy and applied political pressure; reminded the Sudanese Government of their own responsibility to the people of Darfur; worked through the Security Council to apply sanctions; referred the situation in Darfur to the International Criminal Court; and are working on UN support to the African Union Mission in Sudan.

Through the Global Conflict Prevention Pool, the UK is also supporting an NGO network to raise the profile of responsibility to protect with national governments and civil society, particularly in Africa.

The Government will continue to advocate appropriate and speedy responses—bilaterally, within the EU and UN, and at the Security Council—to protect

vulnerable populations against genocide, war crimes, crimes against humanity and ethnic cleansing.

(HC Deb 8 January 2007 Vol 455 c377W)

**6/69**

An FCO Minister wrote:

We continue to uphold strongly the value of the concept of the responsibility to protect, to which all UN member states committed themselves during the world summit of 2005. Here, for the first time, world leaders agreed that Governments have the responsibility to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity within states. The UK believes it to be a powerful tool in reminding Governments and the international community of their protection responsibilities.

The responsibility to protect is relevant to the entire international community, as all UN member states have signed up to it. In particular, the UK secured specific reference to the concept in Security Council resolutions (SCRs) relating to the situation in Sudan (SCR 1706 and SCR 1755), and in SCR 1674 on the protection of civilians in armed conflict.

The UK will continue to encourage and help states to build capacity to exercise their responsibility to protect; to assist states which are under stress before crises and conflicts break out; and to ensure that the responsibility to protect commitment is translated into a willingness to act, speedily and appropriately, in specific cases.

(HL Deb 8 October 2007 Vol 695 cWA6)

**6/70**

## Sri Lanka—European Convention on Human Rights

A Home Office Minister wrote:

The Government responded to the request from the European Court of Human Rights on 31 October 2007 stating that we do not consider that the current situation in Sri Lanka warrants the suspension of removal directions to all Sri Lankan Tamils but we will continue to suspend removal in individual cases where the European Court has issued a Rule 39 indication.

We continue to carefully assess each case on its individual circumstances taking into account relevant case law and the current situation in Sri Lanka before a decision is made to remove from the United Kingdom. [*NA. v. the United Kingdom*, no. 25904/07—2007 Activities Report www.echr.coe.int/NR/rdonlyres/96443711–4133–4043–8FB6–331AEC510FCA/0/2007_section_activity_reports.pdf, Ed.]

(HL Deb 14 November 2007 Vol 696 cWA26)

**6/71**

## Sri Lanka—Child Soldiers

An FCO Minister wrote:

We have been seriously concerned by reports that have criticised parties to the Sri Lanka conflict including the Liberation Tigers of Tamil Eelam (LTTE) and the Karuna faction for the recruitment and use of child soldiers in violation of applicable international law. We deplore this practice: there can be no excuse for failing to observe such basic human rights. The UK is a member of the UN Security Council Working Group on Children and Armed Conflict. We fully support the Working Group's conclusions of 13 June 2007, which strongly condemned the unlawful recruitment and use of child soldiers and all other violations and abuses committed against children by the LTTE and the Karuna faction and called for an immediate end to these practices. The UK also supports the Working Group's call for further steps to be taken in the coming months if parties to the conflict in Sri Lanka do not heed this call for progress to be made.

(HC Deb 29 October 2007 Vol 464 c825W)

**6/72 (See also 6/61)**

## United Nations—Human Rights Council

The FCO submitted the following written evidence to the FAC:

1. THE FCO'S ASSESSMENT OF HOW THE HUMAN RIGHTS COUNCIL IS WORKING OUT IN PRACTICE.

Since we last updated the FAC on the UN Human Rights Council (HRC), the HRC's first members have been elected (including the UK). It has met in three regular, and four special, sessions....

The General Assembly resolution establishing the Council left much of the detail of its agenda, working practices, and tools to the Council itself to develop. In addition, it provided for a new system of Universal Periodic Review to be created in the Council's first year; and for a review of the old Commission on Human Rights' Special Procedures, expert advice body and complaint procedure, also within one year. The Council therefore continues to be, to some extent, a work in progress.

[An FCO Minister] set the tone for the UK's close engagement in this process during participation at the Council's inaugural session in June 2006. (See **UKMIL [2006] 6/97**) He delivered a speech on behalf of the UK: focusing on the complex human rights challenges we all face; stressing the need for the

Human Rights Council to develop the tools to address them; and emphasising that countries must work together at the Council to find common solutions, rather than fostering divisions. In addition, he held a series of bilateral meetings with Ministerial colleagues from various different regions, in which he set out the UK's vision of the Council and exchanged ideas on how [sic] to develop it...

The HRC has made some promising progress. Unanimous decisions at its first regular sessions provided for the uninterrupted functioning of the Special Procedures, complaints procedure and other reporting mechanisms during its first year of transition and review. The extent and quality of Council dialogue with the Special Procedures has been positive. The Council considered and debated more than 40 Special Procedures' reports across a range of human rights issues at its second regular session. NGO participation was at a higher level than ever achieved at the previous Commission on Human Rights. There has been strong NGO involvement overall in the Council's work. We are also pleased by the close interaction established between the Council and the High Commissioner for Human Rights, who has briefed each regular session.

Although still developing its tools, the Council has taken some positive, concrete steps on substantive human rights issues. It agreed by consensus at its second session to keep under consideration two cases under its confidential complaints procedure (relating to Iran and Uzbekistan). It also agreed consensus resolutions welcoming progress made and encouraging further steps in the protection and promotion of human rights in Nepal and Afghanistan. These resolutions, tabled by Switzerland and the EU respectively, show the Council able to agree texts on specific countries, including with the countries concerned. This begins to put into practice early rhetoric from many delegations favouring co-operative rather than confrontational means of engaging with individual countries.

In the meantime, the Council has made steady progress on its institution-building agenda, ie: review of the mandates of the Special Procedures, expert advice system and complaints procedure; and creation of the new system of Universal Periodic Review, a mechanism to examine every state's human rights record. These are complex tasks, with a wide variety of views to be combined and reconciled. The Council is maintaining momentum on these; consensus is beginning to emerge. As with any multilateral negotiation, the most sensitive decisions will be taken at the end: some of the most difficult discussions are therefore yet to come. In the meantime, [the Minister] has instituted a programme of inviting Special Procedures and other senior UN officials to Parliament to talk about their work and increase the UK's engagement with them...

The Council has been hampered in its early stages by a lack of clarity at its regular sessions over the organisation and direction of the sessions' work. For example, the late tabling in the second session of over 47 individual resolution texts made it impossible for the session to finish its work within the allotted timeframe. To some extent this effect is inevitable, as the Council seeks to move beyond the precedents and practices of its predecessor body.

However, more problematic, and damaging to the Council's early work and credibility, has been the questionable commitment of some of its members to the successful fulfilment of its mandate. After much early talk of the need to "depoliticise" UN human rights work and increase dialogue, some regional

blocs have pushed through their own agendas at the expense of others'. This led to a disproportionate and unbalanced focus on the situation in the Middle East in July-August. Three Special Sessions were called on this in four months. It is important for the Council's credibility to discuss these issues. But it must show it can address situations and issues with equal focus across its mandate and across the world. We also want to see those discussions held transparently, constructively, and in a balanced manner.

The situation in Darfur has been a real test of members' willingness to address urgent situations of human rights violation in whatever part of the world they occur. The Council passed a resolution on 28 November expressing concern at the situation and calling for certain steps to be taken to improve it. After long negotiations, this text failed to reflect our and EU partners' wish to see reference to concrete future follow-up by the Council. After trying unsuccessfully to amend the text during the vote, EU members of the Council and 25 others (33 in all) requested the Council's fourth Special Session, to discuss Darfur. This session convened from 12–13 December. The Council agreed a short, operationally-focused decision to dispatch a high-level expert mission to assess the human rights situation in Darfur. The mission will report back to the Council's fourth session in March 2007. We welcome the dispatching of the assessment mission, and will continue to work actively to make sure that the Council follows up its recommendations effectively.

Looking ahead, we will continue to work hard to meet the challenges outlined above. Specifically, we are working with EU partners to increase the effectiveness of our interventions in the Council's debate and work. We will intensify efforts to build partnerships with those countries across the world that, like us, wish to see an effective and credible Human Rights Council. We will continue to promote open and balanced dialogue on all human rights issues, including the most sensitive. Finally, we continue to work closely with the NGO community to promote our shared goals for the Council. [The Minister] has held roundtable discussions with NGO representatives before every regular session of the Council, to discuss priorities and listen to NGOs' ideas on how best to develop the Council. These are consistently constructive exchanges, which he is committed to continuing.

## 2. WHAT USE THE GOVERNMENT HAS MADE OF UN PROCEDURES TO RAISE HUMAN RIGHTS ISSUES SINCE ITS RESPONSE TO THE COMMITTEE'S PREVIOUS REPORT.

We have continued to raise human rights issues through relevant procedures and at relevant bodies in the UN. The main focus of these efforts has inevitably been on the UN Human Rights Council and the UN General Assembly Third Committee (which deals with human rights and social development). However, human rights issues form an integral part of much of the UN's work, eg on conflict resolution and prevention, and development issues. They have therefore remained a key element in the full range of the UK's work at the UN. This has gone well beyond our activities in the bodies specifically dedicated to human rights. For example, we have also continued to raise human rights issues in the Security Council, the General Assembly plenary, the Economic and Social Council, and in other ad hoc UN fora. Full details of the UK's activities in using

UN procedures to raise human rights issues are contained in the attachment to this letter.

(FAC Report, Human Rights Report 2006, HC 269 (2007))

## 6/73

## Slavery

The International Development Secretary was asked what steps his Department was taking to tackle modern slavery. A Minister wrote:

DFID supports long-term development programmes to tackle the poverty and social exclusion that make people vulnerable to modern slavery.

The UK is also a major supporter of the International Labour Organisation (ILO) and its Special Action Programme on Forced Labour (SAP-FL). We will provide core funding of almost £2 million to SAP-FL over the next three years, in addition to support to individual country programmes.

Last month DFID published a booklet, "Breaking the Chains: Eliminating slavery, ending poverty" [www.dfid.gov.uk/pubs/files/slavery-brochure.pdf, Ed.]. It highlights the link between the fight against slavery and poverty and some of the work the UK is supporting through the ILO and other organisations.

(HC Deb 19 March 2007 Vol 458 c617W)

## 6/74

## Terrorism

A Home Office Minister said:

. . . when we consider whether new counterterrorism measures are compatible with human rights, we take into account all relevant case law. That includes any decisions of the European Court of Human Rights where these are assessed as appropriate to the measures under consideration. We do not believe that this approach inhibits the introduction in the United Kingdom of counterterrorism measures.

(HL Deb 10 July 2007 Vol 693 c1277)

## 6/75

## Torture

An FCO Minister was asked what the Government's position was about information which it knew had been obtained by torture. He said:

If we received information about a situation in which our civilians could be put at risk, we would have an obligation to take into account the information that had been passed to us. I will be blunt: these are difficult issues. I may or may not be the Minister who has to deal with them, but if I were and I received information from whatever source that led me to a risk assessment that death and injury might result, in this or any other country, I would be extremely irresponsible if I did not act on it; so I would act on it. [Q.67]

(FAC Report, Human Rights Report 2006, HC 269 (2007))

**6/76**
An FCO Minister wrote:

We take all allegations of mistreatment of British nationals abroad very seriously and unreservedly condemn the use of torture. There are no longer any British nationals detained in Guantanamo Bay. However, we did pursue all credible allegations of abuse regarding those British detainees who were detained there and subsequently released in 2004 and 2005. We pressed the US to examine the allegations. We also raised concerns about issues including isolation, lack of access to daylight and lack of exercise with respect to the British detainees, and secured a number of improvements to their physical conditions of detention.

(HC Deb 2 July 2007 Vol 462 c895W)

**6/77**
The Minister of Defence was asked what definition of (a) torture and (b) abuse he uses in the context of the activities of British armed forces in Iraq; and what account he took of the advice of the Attorney General in formulating this definition. He wrote:

The definition of torture derives from section 134 of the Criminal Justice Act 1988 which makes it an offence for a public official to commit torture. Article 1 of the United Nations Convention Against Torture outlines what is considered torture for the purposes of the convention. We are also guided by, among other sources, judgments of the European Court of Human Rights and those of our own domestic courts.

(HC Deb 9 July 2007 Vol 462 c1285W)

**6/78**
The Foreign Secretary wrote:

Torture is one of the most abhorrent violations of human rights and human dignity, and its use is absolutely prohibited under international law. We unreservedly condemn the use of torture and have made it an important part of our foreign policy to pursue its eradication world-wide. Where we are helping other countries to develop their own counter-terrorism capability, we ensure our training or other assistance promotes human rights compliance.

The Government, including the Intelligence and Security Agencies, never use torture for any purpose, nor would we instigate others to do so. Our rejection of the use of torture is well known by our partners and our intelligence agencies routinely seek assurances from foreign liaison services on humane treatment of detainees.

(HC 3 December 2007 Vol 468 c1064W)

### 6/79

## Trafficking

The Home Secretary said:

The Government are committed to tackling all forms of gender-based violence through our national action plans, including those for domestic violence, sexual violence and trafficking. I fully support the multiple aims of the European Convention on Human Trafficking and we participated actively in the negotiations for it. I believe that the signing of the convention and the protection framework it imposes for victims of trafficking remain a primary goal for the Government...

I have wanted to make sure in my considerations that the Convention is absolutely compatible with our enforcement of managed immigration into this country. However, I repeat that I believe that the signing of the convention and the protection framework that it imposes for dealing with victims of trafficking remains a primary goal for the Government.

(HC Deb 15 January 2007 Vol 455 c541)

### 6/80

The Government were asked how many trafficked children, given leave to remain in the United Kingdom, have been deported on reaching the age of 18 years in each of the past three years; whether efforts were made to ascertain their subsequent well-being; and, if so, with what result.
A Minister wrote:

The Immigration and Nationality Directorate (IND) does not hold central records of the number of trafficked children given leave to remain in the United Kingdom (UK) and who have been repatriated/removed on reaching the age of 18.

However the UK operates a system whereby each case is considered on its own individual merits, and it is recognised that some individuals who may have experienced exploitation at the hands of traffickers will need time to recover and reflect on their position and this is why IND will only take a decision to pursue the repatriation of an individual where it is deemed appropriate to do so. In reaching such a decision consideration will be given to our obligations under the immigration laws and European Convention on Human Rights and the unique circumstances of each case including any outstanding applications or appeals.

(HL Deb 31 January 2007 Vol 689 c56WA)

**6/81**

## Western Sahara

An FCO Minister wrote:

The UK is concerned about the welfare of the people of Western Sahara. We have set out our concerns about human rights and the humanitarian situation in the region in the Foreign and Commonwealth Office's 2006 Annual Human Rights Report, which is available at:

www.fco.gov.uk.

We have raised human rights issues with Morocco. We continue to support ongoing confidence building measures for the region, such as establishing a regular telephone and mail service between Tindouf and the territory, and family visits between the territory and the camps.

The UK remains concerned that the issue of the status of Western Sahara remains unresolved, with consequent problems for the people of the region. The UN Security Council unanimously adopted resolution 1783 on 31 October, which renewed the mandate of the UN Mission for the Referendum in Western Sahara until 30 April 2008. The resolution also calls upon the parties to continue negotiations under the auspices of the UN Secretary-General without preconditions and in good faith. The UK fully supports these negotiations, with a view to achieving a just, lasting and mutually acceptable political solution, which will provide for the self-determination of the people of Western Sahara.

(HC Deb 26 November 2007 Vol 468 c229W)

**6/82**

## Zimbabwe

The Foreign Secretary was asked what recent discussions she had had with the United Nations on democracy in Zimbabwe. An FCO Minister wrote:

The Government's concern relating to human rights abuses, governance and democracy in Zimbabwe were most recently raised this week at the fifth session of the UN Human Rights Council in Geneva. The EU and UK asked a number of questions of the UN special rapporteurs on the rights to food and housing concerning the impact of the denial of both for the human and political rights of ordinary Zimbabweans. In March, 50 UN member states supported a statement at the Human Rights Council by the EU presidency, on behalf of all EU member states, expressing concern at the situation in Zimbabwe. The UK also continues to raise these concerns in dialogue with the UN High Commissioner for

Human Rights, Louise Arbour, and to press for her and other UN rapporteurs to have access to Zimbabwe. Other recent discussions with the UN have taken place with senior officials in the Department for Humanitarian Affairs, following on from the briefing in March to the UN Security Council on the humanitarian situation in Zimbabwe which was given by the Office of the Commissioner for Humanitarian Affairs at the UK's request. Our embassy in Harare is in regular discussion with the UN Development Programme Office regarding human rights, democracy and good governance.

(HC Deb 14 June 2007 Vol 461 c1221W)

## **Part Six: IX.** *The Position of the Individual (Including the Corporation) in International Law—Crimes under international law*

### 6/83
Text of Protocol between the Crown Prosecution Service (CPS) and the Metropolitan Police

War Crimes and Crimes Against Humanity

The Crimes against Humanity Unit of SO15 in the Metropolitan Police (SO15) and the Counter Terrorism Division of the Crown Prosecution Service (CTD) have agreed the following in relation to allegations of War Crimes and/or Crimes against Humanity.

Other than in urgent cases, SO15 will forward a report and relevant enclosures to CTD who will provide initial advice within 28 days. This advice will address jurisdiction, immunity and any potential offences disclosed. Once initial advice is given, SO15 will decide whether or not to pursue a full investigation. Thereafter CTD will advise in the usual manner.

In some cases, complaints are made to SO15 by individuals, solicitors or organisations, pending the arrival of an individual suspect expected to visit England and Wales. In these urgent referrals, SO15 will request the complainant to provide:

- Details of the individual concerned including his position of authority, if relevant
- Details of when he is arriving into the jurisdiction, and by what means
- Copies of the evidence against that individual.

Provided the above documentation is received in sufficient time for it to receive proper consideration, SO15 will seek the advice of CTD on jurisdiction, immunity and any potential offences disclosed. If there is no jurisdiction or the suspect has immunity, SO15 will inform the complainant. If there are potential justiciable offences, SO15 will decide whether or not to carry out an investigation.

If a decision to investigate is made, the complainant will be informed that SO15 are willing to take over the investigation. It should be made clear that from that

point all investigative decisions will be made by SO15. In those circumstances, any decision on prosecution will be made independently by CTD in accordance with the Code for Crown Prosecutors. The decision whether or not to arrest a suspect when he/she arrives in the UK will be one for SO15.

If the decision is not to investigate, SO15 will inform the complainant or his/her solicitor.

If there is insufficient information upon which to make an initial decision on jurisdiction, immunity or any potential offences, SO15 will write and request further information from the complainant. It will be stressed to the complainant that if this information is not provided in sufficient time for it to be given proper consideration before a suspect's arrival in the UK, neither SO15 nor CTD can consider the matter further and the letter at Annex 1 will be sent to the complainant or his/her solicitor.

This letter explains the roles and responsibilities in a private prosecution and what might happen at a later stage if a private prosecutor asks the DPP to exercise his right to take the case over.

(www.cps.gov.uk/publications/agencies/war_crimes.html)

## 6/84

The Home Secretary was asked:

(1) what discussions she had had with her French and Belgian counterparts on the search for and prosecution of suspected Rwandan genocidaires residing in those countries;

(2) what steps she was taking to encourage other EU Governments to arrest suspected Rwandan genocidaires residing in their countries;

and

(3) what discussions she has had with EU counterparts about procedures for extradition to Rwanda of suspected Rwandan genocidaires residing in Europe.

She wrote:

It is for each member state to determine, in accordance with its own laws, what action might be appropriate in particular cases. Regular discussions, however, are held with EU counterparts, both at ministerial and official level, about a range of judicial cooperation issues including, from time to time, about bringing to justice alleged genocidaires from Rwanda. No one fleeing prosecution in that country should expect to find safe haven or to enjoy impunity within the EU. That is why the Government have entered into special extradition arrangements with Rwanda in respect of four cases currently before the courts.

(See *Brown et al v Governor of Belmarsh Prison et al* [2007] EWHC 498 (Admin)—There is an MOU with respect to each applicant, to which the judgment refers without specifying their details. Ed.]

(HC Deb 9 October 2007 Vol 464 c477W)

## 6/85 (See also 14/5–6)

## Special Court for Sierra Leone

An FCO Minister said on introducing the second reading of the International Tribunals (Sierra Leone) Bill:

Sierra Leone are preparing to go to the polls to elect the leaders who will take the next steps on that path of recovery. The UK is providing support for that process, and we will work closely with those leaders as they face the difficult challenges ahead. However, part of the future of Sierra Leone is in coming to terms with the past, and ensuring that those alleged to have committed the shocking crimes of the country's civil war are held to account. In turn, taking such action sends a message to those who would commit such crimes in future, that if they do so, they will answer for it.

With those aims, the Government of Sierra Leone and the United Nations negotiated an agreement back in 2002 to establish the Special Court for Sierra Leone. The Special Court is an international criminal tribunal of a hybrid nature, in that it combines elements of Sierra Leonean and international law, and draws on the skills of Sierra Leonean and international staff. The United Kingdom has been one of the Special Court's strongest supporters since its inception. That has meant ensuring that the court has the resources that it needs to do its work. To that end, we recently made a further payment of £2 million towards meeting the costs of the court, bringing our total contribution since 2002 to £12 million.

Our support for international justice goes beyond the financial. As my right hon. Friend the Secretary of State for Foreign and Commonwealth Affairs said in June last year, if we want to live in a just world, we must take responsibility for creating and fostering it. In practice, that means that we and other states must provide practical assistance to the different international criminal tribunals as they take forward their important work. We live up to that challenge.

For example, we co-operate in the exchange of information with the international criminal tribunals, we take witnesses into our witness relocation system, and we imprison some of those convicted by the tribunals in the UK prison system. The legislative basis for doing that is the International Criminal Court Act 2001, which provides, among other things, for our entering into sentence enforcement agreements with the International Criminal Court and other international criminal tribunals established by resolution of the UN Security Council, such as those for former Yugoslavia and Rwanda.

The Minister was asked whether or not the issue of arrest warrants by international criminal courts might inhibit political settlements. He said:

I would have to look at that assertion on a case-by-case basis. The hon. Gentleman mentions northern Uganda . . . I am sure that he would not like anyone in Uganda or its neighbouring countries to sense a degree of impunity regarding the crimes that they have committed and continue to commit. We would have to look into that matter very carefully and on a case-by-case basis,

as I said, but I take his point. It can be a very sensitive issue, which has to be considered very carefully.

. . . we have imprisoned some of those convicted by tribunals in the UK prison system. The legislative basis for doing so is the International Criminal Court Act 2001, which makes provision, among other things, for our entering into sentence enforcement agreements with the International Criminal Court and also with other international criminal tribunals established by resolution of the UN Security Council, such as those for former Yugoslavia and Rwanda.

It was only after the coming into force of the International Criminal Court Act 2001 that the Special Court for Sierra Leone was established. It is because the court was a new model of tribunal—a hybrid, as I mentioned—established with the full agreement and participation of the Government of Sierra Leone, that a UN Security Council resolution was not required to bring it into being. None the less, the Special Court enjoys full support from the international community. Indeed, the UN Security Council indicated its support by passing a resolution that authorised the UN Secretary-General to negotiate the founding agreement with the Government of Sierra Leone. That is not, however, sufficient to provide an adequate basis for our entering into a sentence enforcement agreement under the terms of the ICC legislation as it stands. The short, two-clause Bill before us will therefore extend the International Criminal Court Act's provision on sentence enforcement to the Special Court for Sierra Leone.

Let me briefly explain why we are taking this important step in the case of the Special Court for Sierra Leone. First, we do so because it is another demonstration of the UK's commitment to international justice—the same commitment apparent in our steadfast support of the tribunals for former Yugoslavia and Rwanda, and the same commitment that has since led us to help establish the permanent International Criminal Court and to take a lead as one its strongest supporters, in principle and in practice. I am pleased to note that the ICC is now playing a vital role in breaking down impunity for the shocking crimes taking place in Darfur, in northern Uganda, as we have heard, and elsewhere.

Secondly, we are moving this forward because of the UK's particular commitment to peace, security and development in Sierra Leone. When we made that intervention in May 2000, we also made a commitment to see it through and finish the job. Our support for the Special Court is an important part of that. Through the actions that we are taking, we also safeguard the investment—military, political and financial—that the United Kingdom has made in Sierra Leone.

Thirdly—I come now to the reason for our approaching the Bill in expeditious fashion today—we do so to give effect to the commitment that we gave to imprison former President Taylor if he should be convicted at the trial, which began last week in The Hague. Let me speak for a few moments about that commitment and its role in making the trial possible.

Former President Taylor was transferred to the detention facility of the Special Court for Sierra Leone in Freetown on 29 March last year, having been indicted for alleged crimes against humanity and war crimes. Within a short period of time, considerable security concerns arose about former President Taylor's

presence in Freetown. There were fears that his supporters might seek to free him, with terrible consequences for the stability of the region. Owing to those fears, President Kabbah of Sierra Leone and President Johnson-Sirleaf of Liberia proposed that former President Taylor's trial should take place away from the court's headquarters in Freetown.

The Government of the Netherlands agreed to allow the Special Court to sit in The Hague to hear former President Taylor's trial and the International Criminal Court agreed to allow the court to use its facilities for the trial, but the Dutch insisted that, should former President Taylor be convicted, he must serve his sentence in another state. The UN Secretary-General, in the light of the security concerns and on the advice of UN staff operating on the ground, added his call to that of the regional governments and requested that the United Kingdom agree to make the necessary commitment to the Dutch.

I should emphasise that the proposal to transfer the location of former President Taylor's trial was considered long and hard. We and others were and remain instinctively supportive of the principle that, where possible, a trial should be conducted locally, where it is most accessible and most visible to those who have been affected. However, the security threat was significant and the requests from Kofi Annan, from Presidents Kabbah and Johnson-Sirleaf and from the ECOWAS—Economic Community of West African States—grouping of states were impossible to ignore.

On 15 June last year, we announced that my right hon. Friend the Foreign Secretary had agreed that, subject to parliamentary legislative approval, the United Kingdom would allow former President Taylor—if convicted and should the circumstances require it—to enter the UK to serve any sentence imposed by the Special Court for Sierra Leone.

The Minister was asked to confirm that it was the government's intention that only Taylor should serve his sentence in the UK. He said:

Yes, I can put that on the record without any hesitation. It is important to recognise that the other trials, which seem to be proceeding very well in Freetown, are at a rather different level from that of Charles Taylor. In that sense, Charles Taylor is a very special prisoner. That is why he is being tried in The Hague and why he could be imprisoned here. We would certainly never rule out a request from the International Criminal Court or from the Sierra Leone authorities regarding someone else whom we might consider imprisoning, but that would have to be a matter for careful consideration. We certainly do not envisage that happening at this time.

Former President Taylor's transfer to The Hague was subsequently authorised by the President of the Special Court for Sierra Leone and confirmed by United Nations Security Council resolution 1688. Just five days after the announcement of the UK's commitment, former President Taylor was transferred to The Hague. A real threat to peace and security in Sierra Leone and the wider region had been overcome, and the trial which has now begun had been made possible.

Let me stress again that the Bill and any subsequent signing of a sentence enforcement agreement represent a contingency arrangement. Imprisonment

in the United Kingdom would take place only if former President Taylor were convicted, if the Special Court requested that the United Kingdom imprison him, and if the United Kingdom agreed to do so. I should also stress that the Bill, and any sentence enforcement agreement signed as a result of its provisions, will not apply specifically to former President Taylor . . .

The Bill, which comprises only two clauses, simply establishes the legal basis under which the United Kingdom may sign a sentence enforcement agreement with the Special Court. None the less, I can confirm that the request that was made to us and the political undertaking that we have given relate only to imprisoning former President Taylor, should that be necessary. We have not received a request in respect of any other individual on trial before the Special Court for Sierra Leone. Indeed, our expectation is that any other individuals convicted by the court will serve their sentences elsewhere.

. . . The territorial extent of the Bill is limited to England and Wales . . . It follows, therefore, that any sentence of imprisonment would be served in a prison in England or Wales.

I cannot say how long the trial of former President Taylor will last. The reality is that the wheels of international justice have so far turned relatively slowly. None the less, it is possible that the trial might come to a speedy conclusion. That is a factor beyond our control, but it could happen. Our objective is to ensure that, if we are called on to honour our commitment, we are ready to do so as soon as that becomes necessary.

The Bill is a further expression of the United Kingdom's commitment to international justice. It is evidence of our determination to finish the job that we started in Sierra Leone, and it is a clear signal to those who would commit the most serious crimes known to humanity that justice will be done. I commend the Bill to the House.

(HC Deb 13 June 2007 Vol 461 c784–788)

**6/86**

The Minister concluded the debate saying:

I fully expect former President Taylor to receive a fair trial. The Special Court for Sierra Leone has been established in accordance with international norms as they relate to all aspects of trial proceedings . . . the funding for Taylor's defence is a matter for Taylor, his lawyers and the court. It is of course essential that the defence is adequately resourced to ensure that Taylor is well represented and that the trial is fair and seen to be fair. Ultimately, those are decisions for the court. The United Kingdom is absolutely committed to ensuring that overall the court has the resources to carry out its vital work in accordance with accepted international norms.

[I was] asked an important question about asylum applications subsequent to any release of former President Taylor. Clearly any decision would be made in the light of the circumstances at the time, but if Taylor were convicted by the Special Court, served a sentence in the United Kingdom and was then released, I expect that he would leave the United Kingdom or face removal. Under current

immigration law it is open to the Home Secretary to order the deportation of any non-British citizen whose removal from the United Kingdom is deemed to be conducive to the public good. Any asylum claim would be considered in accordance with the refugee convention, which contains provisions to refuse asylum to those involved in genocide, crimes against humanity or war crimes . . .

Where a convicted criminal is transferred to the UK to serve a sentence, it is Home Office policy to refuse that individual leave to enter, but to grant temporary admission for the duration of the sentence. That ensures that residency rights and benefits do not accrue to the individual as a result of imprisonment in the UK. That point needs making.

[I was] asked about the Cassese report. I remind him that Judge Cassese came in at our instigation and our representation. The UK was represented on the court's management team in New York that commissioned the report by Judge Cassese, the independent expert. We welcome the report and its recommendations. The management committee is supervising the implementation of the recommendations in consultation with the court . . . the report rightly draws attention to the need for long-term financial security for the court. The recent United Kingdom contribution of £2 million is another step forward. We are pressing management committee partners and other states to make further contributions . . . the present management committee partners include, but not exclusively, the United States, the United Kingdom, the Dutch, Canada, Sierra Leone, Nigeria and the United Nations Office of Legal Affairs. We are pressing hard to ensure that adequate funding comes forward.

I was asked . . . about what happens when the Special Court winds up. In the event that the court has ceased to exist in its current form owing to the completion of its trial load, judicial responsibility will pass to a designated successor body. Discussion has already taken place about an international successor body to take on the residual functions of the Yugoslavia, Rwanda and Sierra Leone tribunals once their work is mostly complete

I was asked . . . whether the trial would be too remote from ordinary Sierra Leoneans. We thought long and hard about that. It is essential that, despite the physical distance, the Special Court's proceedings in The Hague are accessible and relevant to the people of Sierra Leone. After all, it is in their name that justice is being done . . .

Sierra Leone has been working hard to achieve Kimberley process certification. It remains a fragile region and the UK is working hard with Sierra Leone to ensure that progress is maintained, including in preventing conflict diamonds from entering Sierra Leone from Côte d'Ivoire.

. . . our attention [was drawn] to the curse of ad hockery . . . we have to get the structure and system of international law properly organised and funded. The international community must tackle that project with much greater urgency and determination than it has shown until now . . . that should be one of the centrepieces of the reform of the secretariat and of the operation of the United Nations.

. . . international law is much the poorer if it does not have a chapter that is effective, robust and able to try international criminals—not in an ad hoc way but in an organised way. I could not agree more.

(HC Deb 13 June 2007 Vol 461 c809–812)
[The Bill Became the International Tribunals (Sierra Leone) Act 2007, Ed.]

**6/87**

## Hissene Habre

The Foreign Secretary was asked what discussions she had had with (a) the Government of Senegal and (b) her EU counterparts on the trial of the former president of Chad, Hissene Habre, and potential EU assistance in that trial. An FCO Minister wrote:

The UK has regular consultations with EU colleagues on the progress of Hissene Habre's trial, most recently in the Africa Working Group on 28 February. We will continue, with the EU, to discuss and review the development of the trial.

Our ambassador in Dakar made representations to the Government of Senegal in October 2006 to urge them to pass the required legislation to enable the trial of Hissene Habre to be held in Senegal with minimum delay. We welcome the passing of the necessary legislation by the Sengalese National Assembly on 31 January 2007 to permit a trial to take place in Senegal and urge the Government of Senegal to expedite the process.

(HC Deb 7 March 2007 Vol 457 c1999W)

**6/88**

## Saddam Hussein

An FCO Minister was asked by the FAC whether it is the view of the British Government that Saddam [Hussein's] trial fulfilled the "accepted norms of justice". The Minister said:

He was prosecuted under the procedures prescribed by Iraqi law. The trial was open and held with independent monitors and the media present. He never once gave that to any citizen of his country. I acknowledge that there are criticisms of the trial process, and they were raised with the Iraqi authorities not just by ourselves, but by others too. It was the Iraqi high tribunal's first case. We should remember that it was carried out in a climate in which senior officials, including judges, were under physical and mortal threat.

In general, I have to say that he was prosecuted properly under the procedures of Iraqi law. I am hoping that in the coming years, the legal system will continue to improve, both in its prosecuting and defence standards and in dealing with outcomes such as jail sentences and other things. In the final analysis, we made it quite clear, when he was given the death penalty, that the Government oppose the death penalty in all circumstances, including for him. We made it clear that

that was the case. We do not support the death penalty even for those found guilty of crimes against humanity. [Q.71]

(FAC Report, Human Rights Report 2006, HC 269 (2007))

## 6/89

It was put to the Minister:

After we defeated Germany, we did not let the new German Government try Hess and the rest of them—an international tribunal was set up. When we captured war criminals in the Balkans, we did not hand them back even to the democratically elected Governments for them to be tried. They were tried in The Hague. As you said earlier, we are seeking to catch two more war criminals, but they will not be handed back to any kind of democratic Government. They will be tried by an international tribunal. Would it not have been better for Saddam and the others to have been tried by an international tribunal?

He replied:

International tribunals hear cases only where local justice is either unwilling or unable to do so. That was not the case in Iraq. Iraqis were willing to do it and had a legal system set up and established that fulfilled international norms. They tried him and he was found guilty of appalling crimes. [Q.72]

(FAC Report, Human Rights Report 2006, HC 269 (2007))

## 6/90

The FAC put to an FCO Minister a newspaper report which said:

"warlords in the Afghan parliament have granted themselves an amnesty from human rights charges in a move that has shocked the country's Western backers . . . The rule states that anyone who fought against the Soviet Army in the 1980s cannot be prosecuted . . . and anyone who described an MP as a warlord would risk prosecution."

He was than asked for the Government's position. He said:

It is important that . . . we redouble our efforts to ensure the agreed strategy for transitional justice, which is to work up into 2008 and was set out in the national action plan for peace, reconciliation and justice—that was done in collaboration with the Afghan Government and the United Nations and was adopted in December 2005—is committed to and seen through.

What we also need to make sure is seen through is the justice process—including vetting, truth telling, prosecutions and reconciliation processes—to deal with war crimes and gross human rights violations committed during the conflict in Afghanistan. None of us is resiling from any of those issues, irrespective of this decision, which, as I said, is not only extremely unhelpful, but sends the wrong messages altogether. [Q.74]

(FAC Report, Human Rights Report 2006, HC 269 (2007))

**6/91**
An FCO Minister wrote:

The International Convention for the Suppression of Acts of Nuclear Terrorism entered into force on 7 July. The UK signed the Convention on 14 September 2005. The legislation required to implement the Convention is now in place in the UK, and the Government are currently preparing the necessary documents to be laid before Parliament prior to ratification. The Convention imposes an obligation on States Parties to report to the UN Secretary-General the final outcome of criminal proceedings undertaken in respect of the offences set out in the Convention. States Parties will also be expected to report to the committees of the UN Security Council that monitor implementation of States' counter-terrorism and non-proliferation obligations, on the implementation of their obligations under the Convention in a more general sense. While the Overseas Territories will not be included at the time of the UK's ratification, there remains the possibility of extending the Convention to the Overseas Territories following consultation with them and the passing of any necessary legislation in each Territory. With our international partners, the UK has strongly encouraged all States to sign and ratify the Convention. Most recently, in a joint statement on counter-terrorism issued at the Heiligendamm Summit on 8 June, the leaders of the G8 called on all States to ratify the Convention. [As of May 2008, the UK had not ratified the Convention, Ed.]

(HC Deb 16 July 2007 Vol 463 c29W)

## Part Seven: Organs of the State and Their Status

### Part Seven: I. *The state and its organs—heads of state*

**7/1**
The FCO produced the following summary of its own written submissions, the submissions of the court-appointed advocate in the case and those of the Appellant in *Mrs A v Avia Amir and Others, HM The Sultan of Brunei (intervening)* [2007] EWCA Civ 712—The case involved certain questions of the privileges and immunities of a serving Head of State.

Question A: Is it a matter of discretion or obligation for the Court to give effect to Article 29 [of the Vienna Convention on Diplomatic Relations] in such a case?

FCO Written Submissions

4. The Court is obliged to treat a foreign head of State with "due respect" and to take "all appropriate steps to prevent any attack on his [. . . . . ] dignity."(see paragraph 3 above). It is submitted, however, that the use of the term "appropriate" allows the Court a margin of appreciation in determining what measures may be appropriate in each case. In this connection, the Foreign and Commonwealth Office would refer the Court to the negotiating history of Article 29 as set out in paragraphs 80 and 81 of the Written Submissions of the Advocate. This issue is

addressed in more detail below in considering what steps may be thought to be "appropriate" in terms of Article 29.

Submissions of the Advocate to the Court

The negotiating history shows that the inclusion of the word "appropriate" was deliberate, and intended to qualify the duty on the State . . . The International Law Commission's draft articles, which were the basic text before the Conference which drew up the Vienna Convention on Diplomatic Relations, referred to "all reasonable steps". A proposal simply to delete the word "reasonable" was adopted, whereupon the British delegate explained that: "removal of the word "reasonable" would give the article unlimited scope, and impose an impossible task on receiving States."

The Conference thereupon decided to introduce the word "appropriate." It is not considered that there is any significant difference between the expressions "all reasonable steps" and "all appropriate steps".

* * *

Question B: Does Article 29 of the Vienna Convention on Diplomatic Relations 1961 (as applied by the Diplomatic Privileges Act 1964 and section 20 of the State Immunity Act 1978) endure for the protection of a serving foreign Head of State *ratione personae*, ie without regard to whether the affected interest touches his personal life or his public functions?

FCO Written Submissions

5. It is submitted that Article 29 applies to a serving foreign Head of State *ratione personae*, that is without any distinction between his or her personal or public acts. Such application is in accordance with well established principles of international law by which the functions of certain categories of State officials are recognised as so important to the proper maintenance of international relations that they require protection and immunity in respect of both official and private acts. Such categories include Heads of State and diplomatic agents. As the Advocate to the Court has indicated, the immunity *ratione personae* of Heads of State under international law is expressly acknowledged in Article 3.2 of the 2004 United Nations Convention on the Jurisdictional Immunities of States and their Property.

Submissions of the Advocate to the Court

8. It is submitted that article 29 of the Vienna Convention on Diplomatic Relations scheduled to the Diplomatic Privileges Act 1964 applies, by virtue of section 20 of the State Immunity Act 1978, to a serving foreign Head of State *ratione personae*, that is, without distinction between his personal or public acts. This is in accordance with the principle that serving heads of State enjoy privileges and immunities *ratione personae* (by contrast with former Heads of State, who are only entitled to immunity *ratione materiae*, i.e. for their official acts). See, for example, article 3.2 of the 2004 United Nations Convention on Jurisdictional Immunities of States and their Property, which provides: "The

present Convention is without prejudice to privileges and immunities accorded under international law to heads of State *ratione personae*."

* * *

Question C: What modifications (if any) under section 20 of the 1978 Act are necessary or appropriate in the application of the terms of Article 29 to a serving Head of State as opposed to a serving Ambassador?

FCO Written Submissions

6. The Foreign and Commonwealth Office has nothing to add to the submissions of the Advocate to the Court and Counsel for the Appellant on this point.

Submissions of the Advocate to the Court

11. It is submitted that the necessary modifications are, first, that the reference in article 29 to 'a diplomatic agent' should be read as a reference to 'a Head of State'; and second, that the reference to 'the receiving State' should be read as a reference to 'a foreign State', that is any State other than the State of which the person concerned is Head. With these modifications, article 29 would read:

"The person of a Head of State shall be inviolable. He shall not be liable to any form of arrest or detention. A foreign State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom and dignity."

12. The first modification needs no explanation. As to the second, the notion of "the receiving State" is not relevant in respect of a Head of State. Unlike a diplomatic agent (Ambassador, etc.), a Head of State is not accredited to a particular State or States. And, as Lord Slynn explained in *R v Bow Street Metropolitan Stipendiary Magistrate ex p. Pinochet (No. 1)* [2000] AC 61 at 72F to 73B, the reference in article 39.1 of the Vienna Convention (the commencement of privileges and immunities) to "the moment he enters the territory of the receiving State on proceeding to take up his post" should be read, in its application to a Head of State, as the time when he becomes Head of State.

Submissions by the Appellant

4. The Appellant is once again content to adopt—so far as they go—the submissions of the Advocate to the Court on this question. The substitution of the reference to 'Head of State' for 'diplomatic agent' is already implicit in the statutory provision itself, and the further substitution of 'foreign State' for 'receiving State' necessarily follows from the generally accepted understanding that (without prejudice to what the precise content of those duties may be) the duties owed under international law and comity to a serving Head of State are not dependent on the physical presence of the Head of State in the territory of another State. That this was Parliament's intention in enacting the State Immunity Act is established by the speeches in *Pinochet (No. 3)*, notably those of Lord Browne-Wilkinson (at p. 203C–D) and Lord Goff of Chievely (at p. 209F–210C).

5. The Appellant submits however in addition that the application of the terms of article 29 (so modified) must take account of the particular status and position of the Head of State, which is not functionally identical to that of his Ambassador (or that of diplomatic agents more generally). The time factor and

space factor aside, a serving Head of State may be entitled to more extensive courtesies and privileges than an Ambassador, those owed to the Ambassador being only the a fortiori minimum (see Sir Arthur Watts, Hague Lectures (Hague Academy, Receuil des Cours, Vol. 247 (1994-III)) at p. 40).

* * *

Question D: What should be understood in the terms of Article 29, by an "attack" on the Head of State's "dignity"?

FCO Written Submissions

8. The Preamble to the Vienna Convention on Diplomatic Relations states that the purpose of privileges and immunities is "not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States." In his Skeleton Argument at paragraph 12 and 13, Counsel for the Appellant takes issue with the Advocate to the Court's submissions which seek to limit the specific treatment owed to a Head of State to that strictly necessary for the effective exercise of his functions. The Foreign and Commonwealth Office submit that there is a proper analogy between the "dignity" of a diplomatic mission, as referred to in Article 22 of the Vienna Convention, and the dignity of an individual under Article 29, but, for the reasons advanced by Counsel for the Appellant, would agree that the concept may not be identical in its application in both cases.

Submissions by the Appellant

12. In the second place, the Appellant submits that the analogy with the functional immunity of a diplomatic mission (on which the Advocate to the Court principally relies) is wholly misplaced:-

there is a statutory definition setting out in detail what the functions are of a diplomatic mission (article 3 of the Convention), but none either in the Convention or elsewhere of the 'functions' of a Head of State;

the functions of a diplomatic mission are ex hypothesi designed to be carried out in the territory of a particular foreign State; exactly the converse is true of a Head of State;

nor is there any legitimate analogy between criticism of a government, and specifically of its policies, and insult or injury to a Head of State in his person (see further paragraph 28(a) below);

in actual practice, there is an exceedingly wide variation between the duties and functions conferred on the Head of State by the constitutional dispensations of different States, ranging from virtual dictatorships, through executive Presidencies and constitutional monarchies, to the largely or entirely ceremonial; but even a Head of State who was a mere ceremonial figurehead with no executive duties of any kind would be entitled to claim the same immunities, privileges and other courtesies as any other Head of State.

13. For all of these reasons, the Appellant submits that it makes no logical sense to conceive of the immunities, privileges and courtesies due to a foreign Head of State as having as their essential purpose to protect the 'functioning' of the Head of State in the territory of States other than his own. On the contrary, they

are marks of the respect due to the Head of State simply in virtue of his status as such, in accordance with the principle of 'sovereign equality' (cf. Article 2(1) of the Charter of the United Nations). This is especially true of the Head of State's 'dignity'.

* * *

Question E: In terms of article 29, what steps might be thought to be appropriate to be taken to "prevent" an attack on the dignity of a Third Party Head of State?

FCO Written Submissions

16. State practice and the limited caselaw on this issue support an interpretation of Article 29 which permits a margin of appreciation for States in deciding what steps are "appropriate". In doing so, it is clear that States must strike a balance between the principles governing the protection of diplomats and diplomatic missions and well established rights such as those pertaining to free speech and assembly. (see the *Magno* case referred to in paragraph (10) above) and *Colombani and Others v France* . . . which is also cited in the Written Submissions of the Advocate to the Court, paragraphs 83–84). In cases involving political demonstrations outside diplomatic missions, the United Kingdom Government takes the view that existing legal powers enable this balance to be struck effectively and have been content to leave the management of such situations to the police. It has stated:

"The police are the best judges in each case of the controls required: how to preserve the peace and dignity of a mission is essentially a matter of sensible policing practices rather than a question of law." (Government Report on Review of the Vienna Convention on Diplomatic Relations and Reply to "The Abuse of Diplomatic Immunities and Privileges", April 1985, Cmnd 9497, p17, paragraph 39(e))

Submissions of the Advocate to the Court

83. In *Colombani and others v France* (Application No. 51279/99, judgment of 25 June 2002) . . . the European Court of Human Rights held that a French Law of 1881, which made it an offence "publicly to insult a foreign head of State", infringed article 10 of the Convention (freedom of expression). The case was brought by the editor-in-chief of Le Monde and a journalist, who had been convicted under the Law for insulting the King of Morocco. The Court took the view that, at least in the context of article 10 (freedom of expression), special protection for Heads of State cannot be justified under the European Convention. Paragraphs 68 and 69 of the Chamber judgment of 25 September 2002 read as follows:

"68. The Court notes that the effect of a prosecution under section 36 of the Act of 29 July 1881 is to confer a special legal status on heads of State, shielding them from criticism solely on account of their function or status, irrespective of whether the criticism is warranted. That, in its view, amounts to conferring on foreign heads of State a special privilege that cannot be reconciled with modern practice and political conceptions. Whatever the obvious interest which every State has in maintaining friendly relations based on trust with the leaders of other States, such a privilege exceeds what is necessary for that objective to be attained.

69. Accordingly, the offence of insulting a foreign head of State is liable to inhibit freedom of expression without meeting any "pressing social need" capable of justifying such a restriction. It is the special protection afforded foreign heads of State by section 36 that undermines freedom of expression, not their right to use the standard procedure available to everyone to complain if their honour or reputation has been attacked or they are subjected to insulting remarks.''

84. The *Colombani* case concerned restrictions on the freedom of expression under article 10, not limits on the right to a public hearing under article 6. There is no reference in the judgment to the special protection due to a foreign Head of State under international law. Nevertheless, the case strongly suggests that the Strasbourg Court would not lightly accept that greater protection should be given to the dignity of a Head of State than to ordinary members of the public, at least where a legal system provides adequate safeguards for the latter. It is submitted that the same principle should be applied in the context of publicity of proceedings under article 6.

(Text supplied by FCO)

## **Part Seven: IV.** *The state and its organs—diplomatic missions and their members*

### 7/2

The Foreign Secretary was asked what arrangements were in place in Madagascar for the representation of the interests of (a) British exporters and (b) British nationals. An FCO Minister wrote:

UK consular and commercial interests in Madagascar are represented through our High Commission in Port Louis, Mauritius.

We continue to push for swift accreditation from the Government of Madagascar for our High Commissioner in Mauritius to be non-resident ambassador to Madagascar and for our appointed honorary consul in Antananarivo. Until that authority has been granted to our honorary consul in Antananarivo, our high commission in Port Louis is dealing with all consular inquiries. A British honorary consul has been appointed in Toamasina, and has the necessary authority from the Government of Madagascar to act as the first point of contact for British nationals requiring consular assistance in the Toamasina region. The French embassy in Antananarivo has agreed to provide support for British nationals in the event of a serious consular incident in Madagascar.

(HC Deb 8 January 2007 Vol 455 c355W)

### 7/3

The Foreign Secretary was asked how much income tax or money in lieu of income tax was collected in respect of (a) UK citizens and (b) non-UK citizens who were locally engaged staff in the UK's embassy in Italy in

each of the last 10 years for which figures are available; what value of these deductions was (i) remitted to the Italian tax authorities, (ii) remitted to the UK's Inland Revenue, (iii) retained by the UK's embassy in Italy and (iv) remitted to London and retained by her Department in each year. An FCO Minister wrote:

The Italy-UK Double Taxation Agreement 1988 exempts those staff employed on Government service who are British but not Italian from local income tax. Our embassy in Rome remitted to the Italian authorities the amounts shown as follows on behalf of their non-UK local staff from 1999–2006. No figures are available before 1999. Staff without local liability for income tax in the host country, including some UK and third country nationals, have their salaries abated. When salaries are abated no monies are remitted to either Italian or UK authorities, including the Foreign and Commonwealth Office, instead the salaries are determined on a net basis.

(HC Deb 10 May 2007 Vol 460 c396W)

**7/4** (See also **5/9–11, 19/21–22**)
The Foreign Secretary was asked what assessment she had made of the Russian Government's adherence to the 1961 Vienna Convention on Diplomatic Relations. An FCO Minister wrote:

The Government urge Russia, and all states, to uphold the 1961 Vienna Convention on Diplomatic Relations. We have been deeply concerned about the threat to the Estonian embassy in Moscow following a dispute over the relocation of a war memorial in Tallinn. We therefore fully support the EU presidency statement of 2 May and the NATO statement of 3 May which expressed grave concern over the safety of the Estonian embassy and its staff in Russia, asked Russia to respect the Vienna Convention and urged Russia to address the dispute through dialogue.

(HC Deb 15 May 2007 Vol 460 c700W)

**7/5**
The Foreign Secretary was asked in which European Union countries the UK did not remit to the local tax authorities income tax, or sums in lieu of income tax, collected in respect of locally engaged British embassy staff; in which EU countries there were different arrangements for those locally engaged staff who were (a) UK citizens, (b) citizens of the host EU country and (c) citizens of a third country; and what the reasons were for such differences. An FCO Minister wrote:

Consistent with global diplomatic practice, Foreign and Commonwealth Office (FCO) policy is that to the extent compatible with local law, local staff should take responsibility for their own income tax arrangements. The differences in arrangements between FCO missions are determined by local tax regulations, which vary from country to country. The following table [not reproduced, Ed.] summarises the current position in FCO missions in the EU.

Staff without income tax liability in the host country, including some UK and third country nationals, have their salaries abated. The aim is that staff with and without liability to pay income tax should receive comparable take home pay.

(HC Deb 10 May 2007 Vol 460 c387W)

**7/6**
The Foreign Secretary wrote:

There were 5,484 outstanding parking and other minor traffic violation fines incurred by diplomatic missions and international organisations in the United Kingdom recorded during the year 1 January 2006 to 31 December 2006. These totalled £506,475. In April this year the Foreign and Commonwealth Office wrote to all diplomatic missions and international organisations concerned giving them the opportunity either to pay their outstanding fines or appeal against them if they considered that the fines had been issued incorrectly. As a result of subsequent payments totalling £22,713 and formal appeals lodged, there remains a total of 4,859 (£448,965) unpaid fines for 2006(1). The table below details those diplomatic missions and International Organisations that have outstanding fines totalling £1,000 or more.

[There follows a list by mission and amount, Ed.]

The number of outstanding fines incurred by diplomatic missions in the United Kingdom for non-payment of the London congestion charge since its introduction in February 2003 until 3 April 2007 was 74,198. The table below shows the 10 diplomatic missions with the highest value of outstanding fines.

| Mission | Number of Outstanding Fines | Value £ |
|---|---|---|
| 1. USA | 15150 | 1,484,765 |
| 2. Nigeria | 6949 | 682,370 |
| 3. Sudan | 5633 | 545,990 |
| 4. Japan | 4119 | 386,150 |
| 5. Tanzania | 3119 | 298,940 |
| 6. Kenya | 3099 | 292,830 |
| 7. South Africa | 2773 | 267,290 |
| 8. Sierra Leone | 2619 | 252,310 |
| 9. Germany | 2515 | 223,950 |
| 10. Zimbabwe | 1641 | 157,430 |

(HC Deb 20 June 2007 Vol 461 c92–93WS)

**7/7**
The Foreign Secretary wrote:

The majority of diplomatic missions in the United Kingdom pay the national non-domestic rates requested from them. They are obliged to pay only 6 per cent. of the total national non-domestic rates value, which represents payment for specific services such as street cleaning, lighting, maintenance and fire services. The total amount outstanding from all diplomatic missions is approximately £821,000.00. However, as at 31 March 2007, the missions listed below owed over £10,000 in national non-domestic rates. Twelve additional diplomatic missions, who owe £10,000 or more in respect of national non-domestic rates, have made arrangements with the Valuation Office Agency to clear their outstanding debts and have not been included in this list.

[There then followed a list of States and amounts not paid, Ed.]

(HC Deb 20 June 2007 Vol 461 c94WS)

## 7/8

The Foreign Secretary wrote:

In 2006, 15 serious offences allegedly committed by people entitled to diplomatic immunity were drawn to the attention of the Foreign and Commonwealth Office. "Serious Offences" are defined as offences that would, in certain circumstances, carry a penalty of 12 months or more imprisonment. Some 24,000 people are entitled to diplomatic immunity in the United Kingdom.

The table below lists those foreign missions whose diplomats allegedly committed serious offences and the type of offence from 2002–2006.

[There follow annual lists by offence and mission, Ed.]

(HC Deb 20 June 2007 Vol 461 c94–97WS)

## 7/9

The Foreign Secretary was asked how many notifiable offences were committed by foreign diplomats based in London in 2006, broken down by (a) offence and (b) country of diplomatic status. An FCO Minister wrote:

We were notified by the police of 126 alleged criminal offences committed in 2006 by the approximately 24,000 individuals entitled to diplomatic immunity in the UK. 15 of these alleged offences were serious offences that would, in certain circumstances, have carried a penalty of 12 months or more imprisonment . . . the Foreign Secretary provided details of these alleged serious offences in her written ministerial statement of 20 June 2007, Official Report, columns 94–96WS. The following table lists the other alleged offences not included in the Foreign Secretary's statement:

[There follows a detailed list by offence and by mission, Ed.]

(HC Deb 25 June 2007 Vol 462 cs192–193W)

**7/10**
The Foreign Secretary was asked what assessment she had made of (a) the extent and nature of the recent harassment of guests to the United Kingdom embassy in Iran and (b) the extent to which the Iranian authorities assisted in minimising the harassment and controlling the demonstrators. An FCO Minister wrote:

There was a large demonstration outside our embassy in Tehran before and during Her Majesty the Queen's Birthday Party reception on 14 June. The demonstrators blocked access to the embassy for some hours and harassed and intimidated guests on their way into the reception. There were some instances of physical violence. Harassment continued as guests left the party and we are aware of a number of instances of guests being questioned and detained on departure.

The Permanent Under-Secretary at the Foreign and Commonwealth Office summoned the Iranian ambassador on 19 June to register our dismay that the authorities had failed to prevent this harassment from taking place. Our embassy in Tehran has done likewise with the Iranian authorities.

(HC Deb 26 June 2007 Vol 462 c664W)

**Part Seven: VII.** *The state and its organs—trade and information offices, trade delegations etc*

**7/11**
In a statement, the Foreign Secretary said:

The Russian authorities announced yesterday that they planned to shut down the British Council's offices in St Petersburg and Yekaterinburg on 1 January 2008.

Russia's threatened actions are illegal. The British Council's presence in Russia is entirely consistent with international law, including the Vienna Conventions. Its presence and activities are also specifically sanctioned by a 1994 UK/Russia Agreement on Co-operation in Education, Science and Culture, signed by Russia, and which binds both the UK and Russia. The British Council is the designated agent of the British Government for the implementation of the agreement. For the past nine years, the UK has been keen to conclude a further Cultural Centres Agreement with Russia. Pending such an agreement being reached, the 1994 Agreement remains in force.

For Russia to carry out its threat would therefore constitute a serious attack against the legitimate cultural agent of the British Government would show a disregard for the rule of law and would only damage Russia's reputation around the world.

Damage will also be done to EU-Russia cultural co-operation. We are discussing with partners (including the EU and the G7), the implications of Russia's

threat. I am grateful to the European Commission for expressing its concern to Russia about the situation facing the British Council.

Overall, Russia's threats set back bilateral and multilateral efforts to improve cultural links, severely affect large numbers of Russians who benefit from the British Council's presence, and damage Russia's reputation around the world. We are urging the Russian authorities to reconsider. At the same time we are working closely with the British Council to ensure the welfare of their staff.

(HC Deb 13 December 2007 Vol 469 c56WS)

**7/12**
The Foreign Secretary was asked by the FAC about the Russian decision to order the closure of certain British Council offices in Russia. He said:

Today, a Foreign Ministry spokesman in Moscow announced that Russia has ordered the closure of British Council offices in St. Petersburg and Ekaterinburg from 1 January 2008.

That is a very serious and illegal measure. The 1963 Vienna convention on consular relations and the 1994 UK-Russia agreement on culture confer legal status on the Council's activities throughout Russia.(Q.604)

(FAC, Foreign Policy Aspects of the Lisbon Treaty, HC120-II (2007))

**7/13**
The Foreign Secretary was asked:

(1) what assessment she had made of the activities of the Russian authorities towards the work of the British Council in Russia.

(2) whether she had raised the treatment of the British Council in Russia with her Russian counterpart.

(3) what assessment she had made of the progress towards the conclusion of a new Cultural Centres Agreement with Russia.

(4) what discussions she has had with her European Union counterparts on the (a) treatment of the British Council in Russia and (b) progress towards the conclusion of a new Cultural Centres Agreement and what the outcome was of those discussions.

An FCO Minister wrote:

The British Council has been present in Russia for many years,, during which it has enjoyed the support of federal ministries, local authorities and officials for activities in the fields of education, language training, scientific co-operation, culture and the arts. Hundreds of thousands of people across Russia have been able to benefit from the activities of the British Council network . . .

More recently the British Council in Russia has experienced a number of legal. [sic], administrative and practical difficulties. The British Council has sought to

comply with the demands of the authorities, for example in respect of taxation and other regulations, despite difficulties caused by the lack of clear legal status, Most recently a series of tax inspections in Moscow and across the network was launched and the British Council are providing information requested by the inspectors.

We have pressed the Russians to resolve uncertainties about the legal status of the British Council in Russia by concluding a new Cultural Centres Agreement, taking the place of a 1994 Agreement on Co-operation in the Fields of Education, Science and Culture. The absence of an updated Agreement is causing difficulties for some regional British Council centres established in co-operation with local partners and authorities. A text was agreed at official level with Russia in 2001. In March 2006, Russia submitted a revised text. Productive negotiations with the Russian Foreign Ministry in January brought the text of a new Cultural Centres Agreement very close to conclusion. However, the Russian authorities have been reluctant to guarantee consent, under the terms of the Agreement, for the British Council to establish centres (which already exist as their current network of offices), outside Moscow. We await the Russian authorities' reply to our outstanding proposals for finalising the text, which we hope can lead to a quick and satisfactory outcome.

These issues are raised frequently with the Russian authorities at both Ministerial and official levels. Our Embassy in Moscow keeps EU colleagues informed of developments in the course of regular meetings in Moscow.

(HC Deb 25 June 2007 Vol 462 cs214W–215W)

## Part Eight: Jurisdiction of the State

**Part Eight: I.A.** *Jurisdiction of the State—bases of jurisdiction—territorial principle See* **19/23**

**Part Eight: I.E.** *Jurisdiction of the state—bases of jurisdiction—other bases*

**8/1**

The Foreign Secretary was asked about representations the Government had made to the US authorities on the impact on UK tourists and businesses of the expansion of extra-territorial financial measures against Cuba. An FCO Minister wrote:

The European Commission has responsibility within the European Community for dealing with extraterritorial measures taken by third countries against EU member states. Council regulation EC2271/96 (the 'EU blocking statute') was introduced by the EU in 1996 to offer protection to EU individuals and companies against certain specific extraterritorial legislation, including the US Helms/Burton Act which applies sanctions against Cuba.

My officials are in discussion with the European Commission in relation to recent cases of US extraterritoriality in the context of UK trade with Cuba, and the Commission is considering how best to take these issues forward.

(HC Deb 2 May 2007 Vol 459 c1666W)

**Part Eight: II.C** *Jurisdiction of the State—types of jurisdiction—jurisdiction to enforce*

**8/2**
(See also **19/24**)

On 25 January 2007, the Attorney-General published an agreement with the Attorney-General of the United States about the handling of criminal cases where there was concurrent jurisdiction.

GUIDANCE FOR HANDLING CRIMINAL CASES WITH CONCURRENT JURISDICTION BETWEEN THE UNITED KINGDOM AND THE UNITED STATES OF AMERICA

1. Investigation and prosecution agencies in the United Kingdom and the United States of America are committed to working together to combat crime. It is appreciated that there is a need to enhance the exchange of information in criminal cases involving concurrent jurisdiction. Early contact between prosecutors, after discussing the cases with prosecutors, is intended to enable them to agree on strategies for the handling of criminal investigations and proceedings in particular cases. Such liaison will help to avoid potential difficulties later in the case. In particular, early contact will be valuable in cases which are already subject of proceedings in the other jurisdiction.

2. This document provides guidance for addressing the most serious, sensitive or complex criminal cases where it is apparent to prosecutors that there are issues to be decided that arise from concurrent jurisdiction. In deciding whether contact should be made with the other country regarding such a case, the prosecutor should apply the following test: does it appear that there is a real possibility that a prosecutor in the other country may have an interest in prosecuting the ease? Such a case would usually have significant links with the other country.

3. As a matter of fundamental principle any decision on issues arising from concurrent jurisdiction should be and be seen to be fair and objective. Each case is unique and should be considered on its own facts and merits.

4. This guidance follows a step-by-step approach to determining issues arising in cases with concurrent jurisdiction. Firstly, there should be early sharing of information between prosecutors in the jurisdictions with an interest in the case. Second, prosecutors should consult on cases and the issues arising from concurrent jurisdiction. Third, where prosecutors in the jurisdiction with an interest in the case have been unable to reach agreement en issues arising from concurrent jurisdiction, the offices of their Attorneys General or Lord Advocate, as appropriate, should take the lead with the aim of resolving those issues

Information

5. In the most serious, sensitive or complex cases where issues of concurrent jurisdiction arise, investigators and prosecutors, in the UK and US, should consult closely together from the outset of investigations, consistent with the procedures established by their agencies. Each jurisdiction intends to make its best efforts to ensure that there are arrangements in place requiring investigators, in such cases, to draw issues arising from concurrent jurisdiction to the immediate attention of prosecutors. The aim of such a cooperative approach is to agree to at co-ordinated strategy in relation to the particular case that respects the individual jurisdictions but recognises the benefits of co-operation in these areas.

...

9. In particularly sensitive cases, involving for example classified information, it may be appropriate for the sharing of information and the consultation to take place between the heads of prosecuting divisions in the UK and US or between the offices of the Attorneys General or Lord Advocate as appropriate.

10. Discussions between UK and US prosecutors should take place with the aim of developing a case strategy on issues arising from concurrent jurisdiction. The information shared between the UK and US should include the facts of the case, key evidence, representations on jurisdictional issues, and, as appropriate, any other consideration which will enable the prosecutors to develop a case strategy and resolve issues arising from concurrent jurisdiction.

11. The information shared in accordance with this guidance is provided in order that prosecutors in the UK and US may reach decisions on issues arising from concurrent jurisdiction. The information should not be disclosed to other countries without permission of the originating state.

Consultation

12. The procedure set out in this guidance is intended to preserve and strengthen existing channels of communication between prosecutors in the UK and US. This guidance is intended to enable each country's prosecutors to consult closely together on issues arising from concurrent jurisdiction and ensure, where appropriate that each Attorney General and the Lord Advocate are consulted on such issues.

13. This guidance does not create any rights on the part of a third party to object to or otherwise seek review of a decision by UK or US authorities regarding the investigation or prosecution of a case or issues related thereto.

14. The aim of consultation, having shared the information set out at paragraph 10, will be to enable each country's prosecutors to decide on the issues arising from concurrent jurisdiction through bilateral discussion, including, but not limited to:

    a. where and how investigations may be most effectively pursued:

    b. where and how prosecutions should be initiated, continued or discontinued; or

c. whether and how aspects of the case should be pursued in the different jurisdictions

It is of course for the prosecuting authority, having applied the guidance, to decide that a case should properly be prosecuted in its country, where that is in accordance with the law and the public interest.

...

16. The offices of the Attorneys General and Lord Advocate should provide such additional domestic guidance to their own agencies and prosecutors as may be necessary to ensure that their offices are advised at an early stage of serious, sensitive, or complex cases involving issues arising from concurrent jurisdiction.

17. Early contact with the offices of the Attorneys General or Lord Advocate, as appropriate, is intended to ensure that the Attorneys General, or Lord Advocate, can be consulted on these cases before final decisions are taken by the prosecutors on Issues arising from concurrent jurisdiction. In such cases it may be necessary for the offices of the Attorneys General or Lord Advocate to make early contact to discuss issues arising from concurrent jurisdiction.

Monitoring

18. The offices of the Attorneys General and Lord Advocate intend to review the implementation of this guidance on an annual basis.

| | |
|---|---|
| The Rt Hon Lord Goldsmith QC | Alberto R. Gonzales |
| Majesty's Attorney General | Attorney General of the United States of America |

(www.attorneygeneral.gov.uk/)

## Part Nine: State Territory

**Part Nine: I.A.1.** *State territory—territory—elements of territory—land, international waters, rivers, lakes and land-locked seas (see also parts ten and eleven)*

**9/1**
On 27 March 2007, the Secretary-General of the United Nations, as depositary, received a communication from the government of Argentina, as follows:

The Argentine Republic objects to the extension of the territorial application to the Kyoto Protocol to the United Nations Framework Convention on Climate Change of 11 December 1997 with respect to the Malvinas Islands, which was notified by the United Kingdom of Great Britain and Northern Ireland to the Depositary of the Convention on 7 March 2007.

The Argentine Republic reaffirms its sovereignty over the Malvinas Islands, the South Georgia and South Sandwich Islands and the surrounding maritime spaces, which are an integral part of its national territory, and recalls that the General Assembly of the United Nations adopted resolutions 2065 (XX), 3160 (XXVIII), 31/49, 37/9, 38/12, 39/6, 40/21, 41/40, 42/19 and 43/25, which recognise the existence of a dispute over sovereignty and request the Governments of the Argentine Republic and the United Kingdom of Great Britain and Northern Ireland to initiate negotiations with a view to finding the means to resolve peacefully and definitively the pending problems between both countries, including all aspects on the future of the Malvinas Islands, in accordance with the Charter of the United Nations.

[A similar communication was made by Argentina on the same day with respect to the extension of the United Nations Framework Convention on Climate Change Rio de Janeiro 04 June, 1992 -14 June, 1992 (028/1995 Cm 2833) to the Falklands etc and with respect to the United Nations Convention against Transnational Organised Crime of 15 November 2000., Ed.]

(Treaty Series No. 29 (2007) Second Supplementary List of Ratifications, Accessions, Withdrawals, etc., for 2007 Cm 7267)

**9/2**

Argentina made the following statement with its ratification of the Agreement on the Conservation of Albatrosses and Petrels Canberra 19 June, 2001 TS 038/2004 Cm 6333

Statement [Translation Original: Spanish ]

NESTOR KIRCHNER, PRESIDENT OF THE ARGENTINE NATION

WHEREAS:

The AGREEMENT ON THE CONSERVATION OF ALBATROSSES AND PETRELS, done at Canberra—AUSTRALIA—on 19 June 2001 has been approved under Law N° 26017.

ACCORDINGLY:

I ratify, in the name and on behalf of the Argentine Government, the aforementioned Agreement, and make the following STATEMENT:

"The ARGENTINE REPUBLIC rejects the extension of the territorial application of the Agreement on the Conservation of Albatrosses and Petrels, done at Canberra on 19 June 2001 and which entered into force on 01 February 2004, to the Malvinas, South Georgia and South Sandwich Islands, notified by the UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND to the Secretariat of the Agreement in ratifying the said instrument on 25 March 2004, reiterating the statement to the same effect made on the occasion of the First Meeting of the Parties to the Agreement (Hobart, Australia, 10 to 12 November 2004).

(Treaty Series No. 34 (2006) FOURTH SUPPLEMENTARY LIST OF RATIFICATIONS, ACCESSIONS, WITHDRAWALS, ETC., FOR 2006 Cm 7159)

## 9/3

The ARGENTINE REPUBLIC reasserts its sovereignty over the Malvinas, South Georgia and South Sandwich Islands and surrounding maritime spaces as an integral part of its territory and notes that the United Nations General Assembly has adopted Resolutions 2065 (XX), 3160 (XXVIII), 31/49, 37/9, 38/12, 39/6, 40/21, 41/40, 42/19 and 43/25 acknowledging the existence of the sovereignty dispute and calling on the Governments of the ARGENTINE REPUBLIC and the UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND to establish negotiations with a view to finding the means to settle peacefully and definitively the outstanding differences between the two countries including all matters relating to the future of the Malvinas Islands in accordance with the United Nations Charter.

The ARGENTINE REPUBLIC, without prejudice to the provisions of Article IV of the Antarctic Treaty, likewise rejects the extension of the Agreement to the so-called "British Antarctic Territory", and reasserts its legitimate rights of sovereignty over the Argentine Antarctic Sector, comprised between the meridians of 25 and 74 degrees west longitude and the parallel of 60 degrees south latitude and the South Pole, which is an integral part of the Argentine national territory."

(Treaty Series No. 34 (2006) FOURTH SUPPLEMENTARY LIST OF RATIFICATIONS, ACCESSIONS, WITHDRAWALS, ETC., FOR 2006 Cm 7159)

## 9/4

Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction Paris 13 Jan., 1993 -15 Jan., 1993 045/1997 Cm 3727

On 27 April 2006 the Secretary-General of the United Nations, as depositary, received from the government of the United Kingdom of Great Britain and Northern Ireland a communication, as follows

"In accordance with instructions received from my Government, I have the honour to refer to the communication dated 30 November 2005 from the Government of Argentina to the United Nations relating to the extension of the Convention on the Prohibition of the Development,

Production, Stockpiling and use of Chemical Weapons and their Destruction, to the Falkland Islands, South Georgia and the South Sandwich Islands, and the British Antarctic Territory.

The Government of the United Kingdom of Great Britain and Northern Ireland are fully entitled to extend the Convention on the Prohibition of the Development, Production, Stockpiling and use of Chemical Weapons and on their Destruction to the Falkland Islands, South Georgia and the South Sandwich Islands, and the British Antarctic Territory.

The Government of the United Kingdom of Great Britain and Northern Ireland have no doubts about the sovereignty of the United Kingdom over the Falkland Islands, South Georgia and the South Sandwich Islands, and the

British Antarctic Territory, and their surrounding maritime areas, and reject the claim by the Government of Argentina to sovereignty over those islands and areas and that the Falkland Islands and South Georgia and the South Sandwich Islands are under illegal occupation by the United Kingdom."

(UN Doc A/60/830, 28 April 2006)

**9/5**
The British Government sent the following note to the Government of Norway about Spitzbergen (Svalbard) concerning the exercise of maritime jurisdiction in the area through Norway's title to Spitzbergen (Svalbard).

Her Britannic Majesty's Embassy present their compliments to The Royal Norwegian Ministry of Foreign Affairs and have the honour to refer to the Treaty concerning the Archipelago of Spitzbergen (Svalbard), done at Paris on 9 February 1920.

In the light of recent activity by the Norwegian authorities in the area north of the northern coastline of Norway, the United Kingdom considers that it is timely to restate its position concerning the application of the Treaty of Paris to the maritime zones designated around Svalbard.

The United Kingdom considers that the Svalbard archipelago, including Bear Island, generates its own maritime zones, separate from those generated by other Norwegian territory, in accordance with the United Nations Convention on the Law of the Sea. It follows therefore that there is a continental shelf and an exclusive economic zone which pertain to Svalbard.

Second, the United Kingdom considers that maritime zones generated by Svalbard are subject to the provisions of the Treaty of Paris, in particular Article 7, which requires that Svalbard should be open on a footing of equality to all parties to the Treaty and Article 8, which inter alia specifies the tax regime which applies to the exploitation of minerals in Svalbard.

The United Kingdom expects that the Norwegian authorities will fully comply with the obligations of Norway under the Treaty of Paris, as set out above.

11 March 2006
(Text supplied by FCO)

## Part Ten: International Watercourses

**Part Ten: I.C.** *International Watercourses—Rivers and lakes—Uses for purposes other than navigation*

**10/1**
A Minister wrote:

The UK has no immediate plans to accede to the 1997 United Nations (UN) Convention on the Law of Non-Navigational Uses of International

Watercourses. Only 16 countries have ratified the Convention, whereas 35 countries are required for the Convention to enter into force. The Department for International Development (DFID) is currently reviewing the international development benefits of accession, and as part of this is seeking views from foreign Governments, NGOs and academics.

DFID is supporting transboundary water processes in the Middle East, and in Africa through the Nile Basin Initiative. These demonstrate the value of practical approaches to transboundary cooperation on water that yield significant benefits. In neither case is accession to the Convention considered necessary for our support of these processes.

(HC Deb 5 December 2007 Vol 469 c1259W)

**10/2**
An FCO Minister said:

...the Convention [on the Law of Non-navigational Uses of International Watercourses] seemed extremely important at the time. The UK did not accede to it because of difficulties around the waters of Northern Ireland versus the Republic, which have subsequently been well resolved through EU arrangements. That means that we have no direct waterways of our own to be affected. However, that does not prevent us using the principles of the Convention in parts of the world such as the Nile basin, where we are providing assistance to countries that share common water fronts.

(HL Deb 11 December 2007 Vol 697 c112W)

## Part Eleven: Seas and Vessels

### Part Eleven: II. *Seas and vessels—territorial sea, including overflight*

**11/1**
The Foreign Secretary said:

I would like to make a statement about the current situation regarding the 15 British service personnel detained by Iranian forces on Friday of last week, and say that the Government are doing all they can to ensure that they are released immediately

I would like to begin by explaining the facts of what happened last Friday and the actions we have taken since, and to share with the House some of the details about the location of the incident on which the Ministry of Defence briefed this morning. At approximately 0630 GMT on 23 March, 15 British naval personnel from HMS Cornwall were engaged in a routine boarding operation of a merchant vessel in Iraqi territorial waters in support of Security Council resolution 1723 and of the Government of Iraq. They were then seized by Iranian naval vessels.

HMS Cornwall was conducting routine maritime security operations as part of a multinational force coalition taskforce operating under a United Nations

mandate at the request of the Iraqi Government. The taskforce's mission was to protect Iraqi oil terminals and to prevent smuggling. The boarding party had completed a successful inspection of a merchant ship 1.7 nautical miles inside Iraqi waters when they and their two boats were surrounded by six Iranian vessels and escorted into Iranian territorial waters.

On hearing this news, I immediately consulted the Prime Minister and the Secretary State for Defence, and asked my permanent under-secretary to summon the Iranian ambassador to the Foreign and Commonwealth Office. We set out our three demands to the ambassador: information on the whereabouts of our people; consular access to them; and to be told the arrangements for their immediate release. Cobra met that afternoon, as it has done every day since. On 24 March my colleague the Parliamentary Under-Secretary of State, Lord Triesman, held a further meeting with the ambassador to repeat our demands. He has had several such meetings since that date.

At that first meeting the Iranian ambassador gave us, on behalf of his Government, the co-ordinates of the site where that Government claimed that our personnel had been detained. They were not, of course, where we believed that the incident took place but we took delivery of them as the statement of events of the Government of Iran. On examination, the co-ordinates supplied by Iran are themselves in Iraqi waters.

On Sunday 25 March, I spoke to Minister Mottaki, the Iranian Foreign Minister, as I did again yesterday. In my first conversation, I pointed out that not only did the co-ordinates for the incident as relayed by HMS Cornwall show that the incident took place 1.7 nautical miles inside Iraqi waters, but that the grid co-ordinates for the incidents that the Iranian authorities had provided to our embassy on Friday 23 March and to Lord Triesman on Saturday 24 March also showed that the incident had taken place in Iraqi waters. I suggested to the Iranian Foreign Minister that it appeared that the whole affair might have been a misunderstanding which could be resolved by immediate release.

In Iran, our ambassador, Geoffrey Adams, has met senior Iranian officials on a daily basis to press for immediate answers to our questions. He has left the Iranian authorities in no doubt that there is no justification for the Iranians to have taken the British Navy personnel into custody. He has provided the grid co-ordinates of the incident which clearly showed that our personnel were in Iraqi waters and made it clear that we expect their immediate and safe return. I should tell the House that we have no doubt either about the facts or about the legitimacy of our requirements.

When our ambassador and my colleague Lord Triesman followed up with the Iranian authorities on Monday 26 March, we were provided with new, and—I quote—"corrected" grid co-ordinates by the Iranian side, which now showed the incident as having taken place in Iranian waters. As I made clear to Foreign Minister Mottaki when I spoke to him yesterday, we find it impossible to believe, given the seriousness of the incident, that the Iranians could have made such a mistake with the original co-ordinates, which, after all, they gave us over several days.

There has inevitably been much international interest in the situation, particularly given our personnel's role in a multinational force operating under a UN

mandate. I have spoken to a number of international partners, including the American Secretary of State Rice, the Turkish Prime Minister Erdogan and the Saudi Foreign Minister, Prince Saud. We have also been keeping other key international partners informed, and I am pleased to be able to tell the House that many of them have chosen to lobby the Iranians or to make statements of support. I am particularly grateful to my colleague Hoshyar Zebari, the Iraqi Foreign Minister, who has confirmed publicly that the incident took place in Iraqi waters, and called for the personnel, who are acting in Iraq's interests, to be released.

The Iranians have assured us that all our personnel are being treated well. We will hold them to that commitment and continue to press for immediate release. They have also assured us that there is no linkage between this issue and other issues—bilateral, regional or international—which I welcome. However, I regret to say that the Iranian authorities have so far failed to meet any of our demands or to respond to our desire to resolve this issue quickly and quietly through behind-the-scenes diplomacy.

That is why we have today chosen to respond to parliamentary and public demand for more information about the original incident, and to get on the public record both our and the Iranian accounts, to demonstrate the clarity of our position and the force of the Prime Minister's words on Sunday 25 March when he said:

"there is no doubt at all that these people were taken from a boat in Iraqi waters. It is simply not true that they went into Iranian territorial waters, and I hope the Iranian Government understands how fundamental an issue this is for us. We have certainly sent the message back to them very clearly indeed. They should not be under any doubt at all about how seriously we regard this act, which is unjustified and wrong."

The House might also be aware that, even if the Iranian Government mistakenly believed that our vessels had been in Iranian waters, under international law warships have sovereign immunity in the territorial sea of other states. The very most that Iran would have been entitled to do, if it considered that our boats were breaching the rules on innocent passage, would have been to require the ship to leave its territorial waters immediately.

We will continue to pursue vigorously our diplomatic efforts with the Iranians to press for the immediate release of our personnel and equipment. As Members of the House will appreciate, with sensitive issues such as these . . . getting the balance right between private, but robust, diplomacy and meeting the House's and the public's justified demand for reliable information is a difficult judgment . . .

As the Prime Minister indicated yesterday, however, we are now in a new phase of diplomatic activity. That is why the Ministry of Defence has today released details of the incident, and why I have concluded that we need to focus all our bilateral efforts during this phase on the resolution of the issue. We will, therefore, be imposing a freeze on all other official bilateral business with Iran until the situation is resolved. We will keep other aspects of our policy towards Iran under close review and continue to proceed carefully. But no one should be in any doubt about the seriousness with which we regard these events.

(HC Deb 28 March 2007 Vol 458 c1499–1501)

**11/2**
The FCO submitted the following written evidence to the FAC:

Detention of Royal Navy personnel in Iran: Foreign and Commonwealth Office response

STRATEGY AND ACTIONS

2. As the Foreign Secretary said in her statement of 28 March, we initially pursued a policy of quiet but robust diplomacy . . . ,

4. During the initial period we deliberately kept our public statements low key to give the Iranians room for manoeuvre and give force to our argument that the whole incident was a misunderstanding which could be resolved by immediately releasing the personnel, while aiming to build the diplomatic pressure incrementally.

5. When it became apparent that this strategy was not having the necessary effect on the Iranians, we decided to ratchet up the pressure by going public with the facts, and increasing diplomatic activity through third parties and international institutions. This was done through an MOD-led media brief . . . on the morning of 28 March on the facts surrounding the incident, highlighting our evidence that the incident took place in Iraqi waters, that the Iranians had initially provided co-ordinates also placing the incident in Iraqi waters, and that once this was pointed out to them they changed their account of where the incident took place. The Foreign Secretary set out the facts surrounding the seizure in her statement to Parliament that afternoon, [see **11/1** above Ed.] during which she announced a "freeze on all other official bilateral business with Iran until this situation is resolved", which focussed minds in Tehran.

8. In the first indication that the Iranian system had agreed a position the Iranians eventually handed over a note verbale on Thursday 29 March setting out their position. It stated that this was not the first incident of its kind, protested against the UK's "illegal action" in violating Iran's territorial waters, and highlighted the British Government's responsibility for the consequences of this "violation" and demanded "that necessary guarantees should be given that such kinds of action will not be repeated." We responded to this note on 30 March: recalling our explanation of events; reiterating that the personnel involved were operating as part of the Mutli-National Force (Iraq) at the request of the Iraqi government under UN mandate and bore no hostile intent; and proposing discussions with the relevant Iranian authorities for a full resolution of this matter, which would include arrangements for the immediate release of the British personnel, and mechanisms to avoid further repetition. Our note did not contain any admission that the personnel had been in Iranian waters, as the Iranian media subsequently claimed, nor did it include any apology. We then took a decision to moderate our public statements to maximise the prospects for an early diplomatic solution.

9. On Tuesday 3 April the Ministry of Foreign Affairs in Tehran informed our Ambassador in Tehran and the Iranian Ambassador informed Lord Triesman

that President Ahmadinejad would be giving a press conference the following day, which had previously been postponed. They told us that we should say nothing before then, not overreact to what he said and that we would subsequently be granted consular access . . .

10. President Ahmadinejad held a press conference as expected on 4 April. He promised that the personnel would be released without charge after the conference, as "a gift from the Iranian nation to the British people." They were taken to meet Ahmadinejad at the end of the conference. The Ministry of Foreign Affairs at this stage told the Embassy that it would be given consular access later in the day and informed the Embassy that the personnel would be treated as guests of the Ministry and would be put up in a government guest house overnight. The Ambassador was finally granted consular access late that evening.

11. The detainees were released from Iranian custody on the morning of 5 April at Tehran's Mehrabad Airport, from where they took a BA/BMed flight to Heathrow, accompanied by members of the Embassy, who had arranged the flight with BMed well in advance of the release. On arrival they were taken by air to Chivenor to be debriefed and reunited with their families.

12. Bilateral meetings in London and Tehran throughout the crisis were vital to gauge where the Iranians stood, and to pass our key messages directly into the Iranian system. These were reinforced both by our public messages and through lobbying third parties, which we assess had great impact on the Iranians. At each meeting before President Ahmadinejad announced the release of the detainees on 4 April, the UK side demanded: information on where the personnel were being detained; immediate consular access for British Embassy officials; and the immediate release of the personnel and their equipment. At every meeting the Iranians emphasised that they were making no direct linkage to other specific issues, bilateral, regional or international. We took the same position. As the Prime Minister said afterwards, the release was secured through the dual track of bilateral dialogue and international pressure "without any deals, without any negotiation."

(FAC, Foreign Policy Aspects of the Detention of Naval Personnel by the Islamic Republic of Iran. HC880 (2007))

**11/3**

In his response to the FAC Report, the Foreign Secretary said:

[The FAC] conclude that there is evidence to suggest that the map of the Shatt al-Arab waterway provided by the Government was less clear than it ought to have been. The Government was fortunate that it was not in Iran's interests to contest the accuracy of the map. We recommend that, in its response to this Report, the Government state why it chose to mark the boundary as a purely 'territorial water boundary' rather than including aspects of the 'land boundary' agreed to in 1975. (Paragraph 32)

He responded:

4. The map was a simplification, designed to clarify a complex situation for presentation to the media and public. The Government believes that the graphic

provided a reasonable depiction of the agreed Algiers 1975 "land" boundary that applies within the Shatt al-Arab, and a median line boundary depicted on UK Admiralty Fleet Charts, as issued to the Royal Navy, in a way that could be used for televisual and similar media purposes. The Government acknowledges that there are differences between the status of the "land" boundary and the maritime territorial limits. The general term "territorial water boundary" was used on the graphic to avoid making the situation more complex for the media. It was not intended to undermine the formal status of the land boundary which applies in this part of the Gulf, nor to imply that there is a de jure maritime boundary. It was unfortunate, however, that this annotation was placed against an area of the Gulf where the land boundary applies. The Government's objective has always been to ensure that the merchant vessel was shown in its correct position in Iraqi waters. The Government notes that the views expressed in the Committee's Report do not challenge this.

[The FAC] conclude that Iran deserves strong censure for its illegal and provocative seizure of a group of lightly armed British personnel who posed no threat to its interests or security. We further conclude that it is a matter of urgency that systems are established to ensure that a repeat situation cannot occur. We recommend that, in its response to this Report, the Government set out what steps have been taken in this regard. (Paragraph 65)

15. The then Foreign Secretary made clear to the Iranian Foreign Minister on 3 May our strong concern about the detention of the 15 Royal Navy personnel. We have also discussed with the Iranian authorities steps to ensure that no further incident of this kind takes place. Our Ambassador in Tehran raised this with the Iranian Ministry of Foreign Affairs on 1 and 9 May.

(Foreign Policy Aspects of the Detention of Naval Personnel by the Islamic Republic of Iran: Response of the Secretary of State for Foreign and Commonwealth Affairs, Cm7211 (2007))

**11/4**
(See also **5/46–47**)
The FCO wrote to the FAC on 7 September 2007:

Thank you for your letter of 20 July, forwarding a request from the Foreign Affairs Committee into the detention of the Ocean Alert in international waters off Gibraltar in July…

As requested, I attach a memorandum on the Ocean Alert incident, including a full explanation of the application of international law to the waters off Gibraltar; responsibility of the British and/or Gibraltar authorities for the activities of Ocean Alert while it was operating from Gibraltar and for the removal of artefacts recovered from the seabed apparently to the United States by air from Gibraltar; and confirmation of whether the Odyssey vessels had the use of a RN berth or other RN facilities in Gibraltar.

MEMORANDUM ON THE OCEAN ALERT INCIDENT

Application of International Law to the Waters off Gibraltar

The Ocean Alert, a Panamanian-registered vessel belonging to the US company Odyssey Marine Exploration, was detained by Spain's Guardia Civil at a point 3.5 miles south of Gibraltar on 12 July, in waters which the United Kingdom considers to be high seas. Accordingly, in our view, the detention should only have taken place with the consent of the flag State. This was the basis for our protest to the Spanish authorities.

Under the terms of the 1982 United Nations Convention on the Law of the Sea (UNCLOS—ratified by the UK in 1997), coastal States are entitled, but not required, to claim territorial sea up to a maximum breadth of twelve nautical miles. Where the coasts of two States are opposite or adjacent—as is the case around Gibraltar—neither is entitled, unless they agree otherwise, to extend its territorial sea beyond the median line. The British Government considers a limit of three nautical miles to be sufficient in the case of Gibraltar. Under UNCLOS, the nine miles beyond that limit are high seas, and cannot be claimed by another State; it was in this area that the Ocean Alert was detained.

Spain maintains that the Treaty of Utrecht of 1713, which granted sovereignty over Gibraltar to Britain, ceded only the town and castle, together with the Rock's fortifications and its port. Spain therefore disputes our claim that, as a result of later developments in international law, including particularly UNCLOS, Gibraltar generates its own territorial waters.

We categorically reject the Spanish view, and we do not allow Spain's assertion that Gibraltar has no territorial waters to go unchallenged.

This was most recently explained to the House of Commons in an answer to a written Parliamentary Question tabled by the Honourable Member for Romford, Andrew Rosindell, on 2 March (Official Record, Column 1625W). (**5/46**)

A map of our interpretation of the status of the waters is attached. [The map is not attached to the published document, Ed.]

Responsibility of the British and/or Gibraltar authorities for the activities of Ocean Alert while it was operating from Gibraltar and for the removal of artefacts recovered from the seabed apparently to the United States by air from Gibraltar

Odyssey Marine Exploration is a private US company specialising in deep-ocean shipwreck exploration.

Since 2004, they have had a contract with the Disposal Services Agency of the MOD to identify and excavate the possible wreck of The Sussex, a British military ship which sank in a storm off Gibraltar in 1691 with the loss of her crew and valuable cargo. Work on this project has been delayed due to Spanish objections. After nine years of intervention and delay, Spain finally agreed in March this year to allow the project to proceed as long as two Spanish experts were on board Odyssey's vessels. However, there were further delays as the Andalucian Government failed to nominate its two experts.

While waiting in Gibraltar for work on The Sussex to proceed, Odyssey worked on other projects in the Mediterranean and Atlantic. On 10 April and 16 May they sent consignments from a wreck they named Black Swan to the USA via

chartered flights from Gibraltar. Odyssey told us that this wreck lay about 180 miles off the coast of Portugal, in the high seas outside Spanish or Gibraltar waters. Both consignments were given export licenses by the Government of Gibraltar, in accordance with Gibraltar law. These consignments, containing gold and silver coins, are now the subject of a court case in Florida between Odyssey and the Spanish Government.

The Spanish Ministry of Foreign Affairs has been particularly critical of the MOD's role. The MOD has no authority regarding Gibraltar Customs procedures, as the Government of Gibraltar is responsible for its own Customs controls. The MOD is obliged to honour its contract with Odyssey unless a legal or operational security issue exists to prevent it from doing so.

Neither the British or Gibraltar authorities were responsible for the activities of Odyssey in relation to the Black Swan.

Confirmation of whether the Odyssey vessels had the use of a RN berth or other RN facilities in Gibraltar.

Odyssey have had a commercial contract with the MOD (Defence Estates, Gibraltar) since December 2005 to use the MOD berths and facilities within the military part of Gibraltar harbour. Such an agreement is not unique.

Two of the company's vessels, the Ocean Alert and the Odyssey Explorer, have operated out of Gibraltar throughout this period.

(FAC, Overseas Territories, HC147 (2007))

**11/5**
A Defence Minister wrote:

The UN Convention of the Law of the Sea (1982) allows right of innocent passage to all warships through territorial waters provided it is not prejudicial to peace, good order or security of the coastal state. Submarines and other underwater vehicles are required to navigate on the surface and to show their flag. It is normal international practice to seek diplomatic clearance before warships enter or transit territorial waters.

In September the Russian destroyer Severomorsk was invited to enter UK waters to participate in a memorial ceremony. HMS Lancaster hosted Severomorsk while in UK territorial waters.

(HL Deb 15 October 2007 Vol 695 cWA33)

**11/6**
The Foreign Secretary was asked if he would take steps to ensure that the gold onboard the sunken warship, the *Sussex*, was not claimed by the Spanish government. An FCO Minister wrote:

The wreck in question [found off the coast of Gibraltar] has not yet been confirmed to be that of the Sussex and its cargo has also still to be identified. If the sunken vessel is identified as the Sussex, the Government of Spain has informed

us that it will respect international laws of sovereign immunity and lay no claim to the wreck. We also understand that Spain has no intention of investigating the wreck site.

(HC Deb 25 October 2007 Vol 465 c592W)

**Part Eleven: VII.** *Seas and vessels—continental shelf*

**11/8**

The Foreign Secretary was asked what recent discussions he had had with countries with a territorial interest in the Arctic on potential claims. An FCO Minister wrote:

[We have] not had any discussions with countries with a territorial interest in the Arctic on the subject of potential claims which they may make in the region. States parties to the UN Convention on the Law of the Sea may be entitled to claim an extended continental shelf beyond their territorial waters, subject to certain geological conditions, as defined in the Convention.

(HC Deb 25 October 2007 Vol 465 c587W)

**11/9**

The Foreign Secretary was asked to list the maritime areas where the UK has plans to stake territorial claims. An FCO Minister wrote:

The UK has so far made one claim to the UN Commission on the Limits of the Continental Shelf (CLCS) for the extension of the continental shelf under Article 76 of the UN Convention of the Law of the Sea. We are also considering lodging up to four more claims before the right to do so expires in May 2009.

The UK has submitted a claim, jointly with France, Ireland and Spain, for an area of the Bay of Biscay, and this is currently under consideration by the CLCS. The UK is also considering the potential submission of claims for the areas around the Ascension Islands, off the British Antarctic Territory, around the Falkland Islands and South Georgia, and in the Hatton/Rockall area.

(HC Deb 25 October 2007 Vol 465 c587W)

**Part Eleven: VIII.D.** *Seas and vessels—high seas—piracy*

**11/10**

The Minister of Defence was asked what assistance the UK was (a) sending and (b) planning to send to aid the United States' efforts to end piracy off the coast of Somalia in the Gulf of Aden and the Indian Ocean. A Defence Minister wrote:

The UK currently has forces deployed as part of the Coalition Naval Task Force which operates in the Arabian sea and Indian ocean, including off the coast of

Somalia. These assets are deployed on a range of maritime security tasks, and could respond to incidents of piracy should they arise.

(HC Deb 20 June 2007 Vol 461 c1808W)

**Part Eleven: VIII.E.** *Seas and vessels—high seas—conservation of living resources*

(See also **11/17–20)**

**11/11**

The Secretary for the Environment was asked what action his Department was taking with the International Whaling Commission to stop the commercial farming of threatened fin whales in Icelandic waters. A Minister wrote:

In the immediate wake of Iceland's announcement to target fin whales, DEFRA issued a press statement condemning the action and summoned the Icelandic ambassador in London to explain the decision. On 1 November 2006, the UK ambassador to Reykjavik led a diplomatic démarche of 25 countries (including Australia, Germany and the US) together with the European Commission, which called upon the Government of Iceland to reconsider its decision to resume commercial whaling, arguing that the action was unjustified and unnecessary.

It is clear that the strength of opposition to Iceland's actions has surprised the Icelandic Government, and there is a healthy debate in the Icelandic press about the wisdom of the Government's decision. Icelandic companies engaged in significant trade with the UK and other EU countries have suggested that the potential gains from commercial whaling are minimal, compared to the damage that might be done to Icelandic trade in other goods and services.

(HC Deb 27 February 2007 Vol 457 c1176W)

**11/12**

The Foreign Secretary wrote:

Since the last meeting of the International Whaling Commission (IWC) in June 2006, Foreign and Commonwealth Office (FCO) posts in Bulgaria, Croatia, Cyprus, Estonia, Greece, Latvia, Lithuania, Macedonia, Montenegro and Serbia have made representations to host Governments, encouraging them to join the IWC and vote in favour of maintaining the world-wide moratorium on commercial whaling.

. . . the Minister for Europe raised the matter with the Foreign Minister of Andorra in October 2006.

The FCO has distributed copies of the Department for Environment, Food and Rural Affairs publication 'Protecting Whales—A Global Responsibility' to 57 countries, including all potential EU candidates.

Croatia and Cyprus have now joined the IWC. Estonia, Greece, Latvia and Romania have committed themselves to joining as soon as domestic legislative procedures allow.

(HC Deb 12 March 2007 Vol 458 c83W)

**11/13**
The Secretary of State for Environment was asked what the Government's policy was on fish imports from (a) Norway and (b) Iceland; and what account was taken of those countries' policies on whaling in formulating this policy. An Environment Minister wrote:

Fisheries agreements with third countries, including those on imports, are negotiated by the European Commission on behalf of all member sates. Neither the Council of Ministers nor the Commission exercises Community competence over whaling issues and there is no common EU line on whaling matters. Not all EU member states are even members of the International Whaling Commission. As such, negotiations with third countries on fisheries and trade matters are unaffected by those countries' stance on whaling. While the European Commission joined the recent demarche against Iceland over its resumption of commercial whaling, it did so on its own behalf, rather than on behalf of member states.

The Minister went on:

The Foreign Secretary has recently jointly written to a dozen EU and Accession States encouraging them to join the International Whaling Commission. A new publication, 'Protecting Whales —A Global Responsibility' [www.defra.gov.uk/marine/pdf/whales.protecting-whales.pdf, Ed.] endorsed by the Prime Minister and Sir David Attenborough has also been sent to these countries encouraging them to join the effort to protect all cetacean species. UK embassies and Ministers across Government will continue to lobby on this issue in the run-up to the next annual meeting of the IWC in Alaska in May. However, not all of those who are willing to join the IWC will be able to complete the necessary parliamentary processes in time to secure voting rights at the 2007 meeting.

(HC Deb 19 March 2007 Vol 458 c595W)

**11/14**
An FCO Minister wrote:

The UK plays a prominent role in building and maintaining the coalition of anti-whaling countries within the International Whaling Commission (IWC).

In advance of the 2007 Annual Meeting in Anchorage, the UK and its like-minded allies recruited a further six countries into the IWC with the result that the pro-whaling majority in that organisation was overturned.

In a further response to UK lobbying efforts, several other countries have indicated willingness to support our opposition to Japanese whaling and to join the IWC in time for next year's annual meeting. British embassies and missions will

shortly deliver to certain governments an updated version of the Department for Environment, Food and Rural Affairs publication "Protecting Whales—A Global Responsibility" [www.defra.gov.uk/marine/pdf/whales/protecting-whales.pdf, Ed.] as part of a lobbying campaign to encourage more countries to join the IWC, to strengthen further the global opposition to commercial whaling.

(HC Deb 20 November 2007 Vol 467 c740W)

**11/15**
In answer to a question about "carbon capture", a Minister said:

The United Kingdom has already taken the lead in proposing amendments to the London Convention on the Prevention of Marine Pollution by the Dumping of Waste and other matters. As a result, the London Convention has been amended to allow carbon dioxide to be stored in the sub sea bed, including in the North Sea. The Government have also taken action by setting up a joint taskforce with Norway to establish the underlying principles on which such carbon capture and storage can take place. As I said, we have already instructed engineers to advise us and they are due to report to the Government next month so that we can take forward detailed work in relation to the suggestions about funding...

(HC Deb 27 February 2007 Vol 457 c748)

**11/16** (See also **11/23**)
In a debate on the MSC Napoli, a Transport Minister said:

[I was] asked about arrangements for compensation...Claims for property and environmental damage caused by the Napoli are governed by the liability provisions set out in the 1995 Act in respect of damage, and the international convention on limitation of liability for maritime claims 1996—commonly known as LLMC—in respect of cost recovery. Section 154 of the 1995 Act provides strict liability on the shipowner for oil pollution damage caused outside the ship by the contamination, for the cost of preventing or minimising the damage, and for any damage caused by the preventive measures taken—for example, the removal of heavy fuel oil from the bunker tanks and preventive measures taken to minimise the threat of pollution. The proper mechanism to recover costs associated with a liability, where one is established, is the LLMC, which entered into force in May 2004. It established a framework of rules and duties on shipowners, including the right of shipowners to limit their liability according to the tonnage of the ship. In the case of the MSC Napoli, the limitation amount will be approximately £14.5 million.

There is no right of direct action against the insurer in the case of the Napoli, so claimants must submit their claims in court. I am led to believe that the owner of the Napoli has agreed to establish a limitation fund in the UK. Claims for damages must be submitted through the courts. Claimants who believe that they have eligible claims may submit such claims for the judgment of the court, but such claims may include those for property damage, as well as for clean-up and cargo. It is for all claimants to determine, after taking appropriate legal advice, whether they have a legitimate claim to pursue, and for the courts to decide whether to accept those claims.

The allocation of money from the limitation fund among the various claimants is a complex legal matter that has occupied the Admiralty court on numerous occasions. As a general rule, claims subject to limitation under article 2 of the International Convention on Limitation of Liability for Maritime Claims do not preclude claims presented by the property owners. However, all claimants will be treated in proportion to their established claims. If the amount of money claimed from the limitation fund were to exceed the amount in the fund, all claims would be paid on a pro rata basis. Ultimately, that is a matter for the administrator of the limitation fund and the courts to determine.

The House might also be interested to know that the UK has ratified the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001. It is expected that the Convention will enter into force some time during 2008. It provides a strict liability and compulsory insurance requirement, including the right of direct action against the insurer. That means that claimants need not prove fault and that eligible claims need not go before the courts before settlement. Another developing International Maritime Organisation instrument pertinent to the Napoli case is the wreck removal convention. The Department is actively engaged in the negotiations on that, which will come to fruition at a diplomatic conference in May this year. The instrument will provide similar compulsory insurance and direct action provisions to those contained in the bunkers convention . . .

In the wake of such an incident, it is understandable that questions will be asked about the cause from an early stage. There has been much speculation whether the Napoli was seaworthy following her earlier beaching in 2001. Ships are required to undergo periodic surveys of their condition in much the same way as motor cars. Ships are also subject to inspection when calling at UK and other ports. Ships that are found to have major defects can be detained in port until the defects have been rectified. However, it would not be appropriate to speculate on the causes of the Napoli's structural failure at this time. A full investigation will be carried out by the marine accident investigation branch. That investigation will not take the form of a public inquiry. Lengthy and costly formal public hearings are considered an inappropriate way of conducting modern accident investigation.

(HC Deb 28 February 2007 Vol 457 c286–287WH)

## **Part Eleven: XIV.** *Seas and vessels—marine scientific research*

### **11/17**

(See also **11/11**)

The Government was asked what steps it planned to take (a) to reduce and (b) to bring to an end (i) commercial and (ii) scientific whaling. An Environment Minister wrote:

The UK will continue to protest at the highest diplomatic level against Norway and Iceland's commercial whaling activities which, though legal, are not in

keeping with the spirit of the International Whaling Commission (IWC). We will continue our efforts, along with other countries, to urge these countries to reconsider their position and end this unjustified and unnecessary practice. Indeed, in November 2006, the UK led a diplomatic demarche of 25 countries together with the European Commission in condemning the Icelandic Government's decision to resume commercial whaling.

The UK Government have regularly criticised Japanese and Icelandic scientific whaling programmes as being of little scientific value and urged both countries to terminate them forthwith. In December last year, the British ambassador to Japan took part in a 27-country demarche to both the Japanese Ministry of Foreign Affairs and the Japanese Fisheries Agency to protest against Japan's programme of lethal special permit ("scientific") whaling in the Southern Ocean.

In order to help recruit more conservation-minded countries to the IWC, we have produced a new publication, "Protecting Whales—A Global Responsibility", endorsed by the Prime Minister and by Sir David Attenborough, which has been sent to 57 countries, both anti and pro-whaling, encouraging them to join the effort to protect all cetacean species.

DEFRA officials ensure that Foreign and Commonwealth Office posts in the relevant capitals are briefed, and engage in discussion with their counterparts on whaling at every appropriate opportunity. This ensures that countries are in no doubt of the importance that the UK attaches to whale conservation. This is particularly important as we approach the next IWC meeting to be held in Anchorage, Alaska in May.

(HC Deb 27 February 2007 Vol 457 c1176W)

## 11/18

An Environment Minister wrote:

The UK, together with a majority of members of the International Whaling Commission (IWC), has consistently criticised Japan for its lethal whaling operations, authorised under special permits (so called 'scientific' whaling) and urged Japan to desist from these operations forthwith.

Like most IWC members, we do not believe that lethal scientific research can be justified: there are perfectly adequate non-lethal alternatives which could secure the information required by the IWC for stock assessment and management purposes. The whale meat and other products from this so-called 'scientific' whaling are sold domestically in Japanese markets and restaurants. These whaling operations severely hamper international efforts to conserve and protect whales, and clearly demonstrate that these programmes are driven by commercial, rather than scientific considerations.

Japan's proposal to kill 50 humpback whales, a species that remains on the World Conservation Union's (IUCN) List of Threatened Species, is nothing less than outrageous. We will continue to make our opposition to whaling known to Japan at every appropriate opportunity, and argue that Japanese action undermines the credibility of the IWC as an effective organisation for the conservation of whale stocks worldwide.

Whaling is not an issue on which the European Union (EU) exercises competence. As such, it is not generally a subject for discussion at meetings of EU Ministers.

At official level, we do have regular contact with other like-minded countries, including those EU countries who are, like the UK, parties to the International Convention on the Regulation of Whaling and thus members of the IWC.

(HC Deb 22 November 2007 Vol 467 c1060W–1061W)

**11/19**
An FCO Minister wrote:

The UK believes that any scientific whaling should be confined to non-lethal research, and should be undertaken only if relevant proposals have been approved by the Scientific Committee of the International Whaling Commission (IWC).

The right of member states to issue permits for the killing of whales for scientific purposes is enshrined in article VIII of the 1946 International Convention for the Regulation of Whaling, the IWC's parent treaty. However, 'Scientific purposes' are not defined by the Convention. Furthermore, we doubt that the authors of the Convention anticipated that parties would undertake research on the scale now practised by Japan.

Contrary to Japan's claims, its research programmes have not met with universal support or acclaim from the IWC Scientific Committee. That committee has not endorsed this research and has expressed many reservations.

Japan says its scientific whaling programmes are essential to understand better whale populations and the ecosystems in which they reside. They state that a range of information is needed for the management and conservation of whales, such as population, age structure, growth rates, reproductive rates, feeding—and that this can only be obtained through lethal research.

The UK has consistently voiced its opposition to Japanese scientific whaling. Like most IWC members, the UK does not believe that scientific research can justify the large-scale killing of whales. In our view, Japan's research programmes are deeply flawed.

(HC Deb 3 December 2007 Vol 468 c1066W)

**11/20**
An FCO Minister wrote:

The UK takes every appropriate opportunity to condemn all lethal whaling operations carried out under the guise of 'scientific' research. Japan carries out this research legally under the International Convention on the Regulation of Whaling (ICRW), the parent treaty of the International Whaling Commission (IWC).

The UK believes the IWC is the internationally recognised body for the management and conservation of whale stocks and any amendment to the ICRW would

need to be ratified by all parties. The UK sees no advantage in pressing for the termination or renegotiation of the 1948 International Whaling Convention, as this is the legal instrument by which a general moratorium on commercial whaling has been upheld since 1986. In addition, Japan is unlikely to sign up to a new convention that restricts her current 'scientific' whaling.

(HC Deb 10 December 2007 Vol 469 c165W)



**Part Eleven: XVIII.A.1(b)** *Seas and vessels—vessels—legal regimes—public vessels other than warships*

**11/21**

The Minister of Transport was asked a number of questions about the shipping of radioactive material. A Transport Minister replied.

1.What the required response time was in the event of an (a) incident and (b) terrorist attack involving a transport ship carrying plutonium-based MOX fuel in European Union waters.

Reply: Ships carrying MOX fuel are required to have a shipboard emergency plan which would be activated immediately in the event that an incident occurred. Emergency support is available 24 hours a day, 365 days a year.

An immediate response to a terrorist attack would be provided by the onboard escort team, comprising authorised firearms officers of the Civil Nuclear Constabulary.

2. What account was taken of whether a ship in the Nuclear Decommissioning Authority nuclear transport fleet possesses the best available technology when decisions are being taken on which ship will undertake shipments of MOX plutonium-based nuclear fuel in European Union waters.

Reply: Ships used to transport MOX fuel are classified as INF class 2 or 3. These ships are designed and built to the highest standards and are certified according to national and international agreements.

The choice of particular ship is a matter for the operator.

3. What assessment he had made of the merits of requiring an escort for transport ships used to transport plutonium-based MOX fuel in European Union waters.

Reply: All shipments of MOX fuel in UK flagged vessels are escorted by members of the Civil Nuclear Constabulary's (CNC) Marine Escort Group, comprising authorised firearms officers who have been trained to a high standard by the Royal Navy.

Ships flagged to other nations may also transport MOX fuel. Approval of arrangements for such movements are the responsibility of that State's competent authorities.

(HC Deb 17 May 2007 Vol 460 c841W-842W)

**Part Eleven: XVIII.A.1(c)** *Seas and vessels—vessels—legal regimes—warships*

**11/22**
The FCO Legal Advisers provided the following opinion for a case in Canada about the wrecks of HMS *Fantome* and HMS *Tilbury* which lie off the coast of Nova Scotia**.** [*Le Chameau Exploration Ltd v. Nova Scotia* (Attorney General), 2007 NSSC 386, Ed.]

SOVEREIGN IMMUNITY IN RESPECT OF WARSHIPS

Warships have sovereign immunity whether in the coastal waters of another State or on the high seas. This is a long established principle of the international law of the sea.

That this is the case on the high seas and in the exclusive economic zone is evident from Article 96 of the UN Convention on the Law of the Sea.

Warships on the high seas have complete immunity from the jurisdiction of any other State than the flag State.[1]

That this is the case within territorial waters is evident from Article 32 UNCLOS:

With such exceptions as are contained in subsection A and in articles 30 and 31, nothing in this Convention affects the immunities of warships and other government ships operated for non-commercial purposes.

Within the territorial sea, therefore, the exceptions to the rule of otherwise complete immunity from the jurisdiction of any other State than the flag State are as follows[2]:

non-compliance by warships with the laws and regulations of the coastal State (subsection A and Article 30): the sole remedy for the coastal State is to require a non-compliant warship to leave its territorial waters immediately responsibility of the flag State for damage caused by a warship (Article 31)

The practical consequences of sovereign immunity in the domestic sphere have clearly been set out in the leading textbook on international law.

A warship with all persons and goods on board, remains under the jurisdiction of her flag-state even during her stay in foreign waters. No legal proceedings can be taken against her either for recovery of possession, or for damages for collision, or for a salvage reward, or for any other cause [footnotes omitted].[3]

[1] By virtue of Article 58(2) UNCLOS, this provision also applies to the exclusive economic zone.
[2] The legal context and applicable regime might be different if a situation of armed conflict arose.
[3] *Oppenheim's International Law* (9th ed., 1992), Jennings and Watts (eds.), p.1168, §563.

A convenient and authoritative modern definition of "warship" is stated in Article 29 of the UN Convention on the Law of the Sea (UNCLOS):

For the purposes of this Convention, "warship" means a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline.

There is no question that active warships enjoy these immunities. But wrecked warships also have the benefit of sovereign immunity unless expressly abandoned.

While there is a multilateral convention which purports to deal with wrecks, the UNESCO Convention on Underwater Cultural Heritage signed at Paris on 2 November 2001, it has not yet entered into force and neither the United Kingdom nor Canada are parties. In any event, nor does that Convention affect the pre-existing customary international law position on sovereign immunity, as made explicit by Article 2(8):

Consistent with state practice and international law, including the United Nations Convention on the Law of the Sea, nothing in this convention shall be interpreted as modifying the rules of international law and state practice pertaining to sovereign immunities, nor any state's rights with respect to its state vessels and aircraft.

The position therefore is governed by customary international law which, as is well known, is made up of State practice (evidence of what States do) and *opinio juris (*evidence of what States think).

In the view of the HM Government, customary international law indicates that sovereign immunity in warships is lost only by:

belligerent conquest (by capture or surrender before sinking during an armed conflict);

international agreement; or

express act of abandonment

In the case of HMS Fantome and HMS Tilbury, there is no question of sovereign immunity lapsing due to belligerent conquest. Neither vessel was lost during hostilities and so no issue of capture or surrender arises.

Obviously, no international agreement has been concluded between the United Kingdom and Canada in respect of either vessel.

There has also been no express act of abandonment by the United Kingdom. It is the position of the United Kingdom that an express act of abandonment is necessary in order for a State to be unable to claim sovereign immunity in respect of a vessel that once enjoyed its benefits. This approach is clearly backed by the United States of America who have made a public explanation of their position.[4] Other States also have indicated their support for this approach and

a number of major maritime powers voted against the UNESCO Convention for this reason.[5]

Since the position of the wrecks became known, the United Kingdom has consistently stated that it considers the wreck sites to be subject to sovereign immunity. The Canadian Department of Foreign Affairs and International Trade have kindly transmitted some of these statements to the relevant authorities, in Nova Scotia and elsewhere. In stating this position, the United Kingdom has also indicated that its ultimate purposes in doing so are, firstly, to try to ensure the site is dealt with in accordance with the highest international archaeological and cultural standards, and also to attempt the protection and respect of what, in the case of the HMS Tilbury is a war grave where over one hundred sailors perished at sea.

Further and in the alternative, there has been no tacit or implied act of abandonment by the United Kingdom. As soon as the wreck sites became known, the United Kingdom registered its concerns. Tacit or implied abandonment has to be read as referring to actions in respect of a particular wreck or wrecks. If lapse of time or failure to conduct a search for the wreck is taken as tacit or implied abandonment, then for sovereign immunity to have any meaning the United Kingdom—and other historical maritime powers including Canada—will need to engage in long and expensive searches throughout the globe for their lost warships. No other States does this, and no State thinks it is necessary. So there is no support in State practice or *opinio juris* for such a broad interpretation of tacit abandonment (although the United Kingdom continues to believe that express abandonment is necessary for sovereign immunity to be properly waived). Tacit or implied abandonment can only mean inaction, apathy or demonstrated indifference to a particular wreck or wrecks once the site or sites have been located.

Sovereign immunity applies to the site of a wreck. Although this could be spread over a wide area, unless and until other wrecks in the vicinity are identified and located in the same site, it is reasonable to maintain a presumption that debris found on that site belongs an identified wreck subject to sovereign immunity. Of course, this presumption is rebuttable by evidence, but the United Kingdom holds the view that to permit the gathering of evidence without ensuring the maintenance of the highest archaeological and cultural standards would defeat the purpose of its claim to sovereign immunity in these cases. In other words, there is little point in digging up the wrecks to prove they are subject to sovereign immunity when the goal in such a claim was to protect them in situ—which is what most maritime nations believe to be the appropriate action in this case. The days of asset-strippers and treasure hunters belong to a different era.

Notwithstanding the United Kingdom's maintenance of its legal position in accordance with international law and international rules of comity, the United Kingdom has repeatedly offered to negotiate with both the Nova Scotian authorities (with whom fruitful contact has been established) and also the potential salvors. This would not amount to a waiver of sovereign immunity, but could

[4] "Sunken warships and military aircraft", Marine Policy, Vol. 20, No. pp.351–354, 1996, a Note stating official policy of the US Government by Captain J. Ashley Roach.

[5] Among those voting against were Chile, France, Germany, Greece, Hungary, The Netherlands, Sweden and the United Kingdom.

form the basis for discussions based on a common approach to protect the wreck sites in accordance with the highest archaeological and cultural standards so that the historical and cultural significance of these wrecks can be appreciated by all the people of Canada and the United Kingdom. There are too many examples of bilateral agreements concerning the protection of wrecks to helpfully list, but working towards the conclusion of such agreements is the common international practice in this field and the ultimate goal of the United Kingdom.

(Text supplied by FCO)

**11/23**
The Minister of Defence was asked (1) what the Government's policy is on the wreckage of the *Sussex* lying off the coast of Gibraltar since 1694; (2) what progress has been made in salvaging the wreck of the *Sussex* which sank in 1694 off the coast of Gibraltar. A Defence Minister wrote:

Given that the excavation involves what is believed to be a Royal Navy shipwreck, the Ministry of Defence has retained ownership of the project and is closely monitoring its progress. Some preliminary work has been conducted at the site including a survey of the area. Operations are currently suspended pending the resolution of certain outstanding heritage issues between Odyssey Marine Exploration and the Spanish authorities.

(HC Deb 7 March 2007 Vol 457 c1985W)

**Part Eleven: XVIII.A.3** *Seas and vessels vessels—legal regimes—merchant ships*

**11/24** (See also **11/6**)
A Transport Minister said about the stranding of the MSC Napoli:

During severe weather conditions on the morning of 18 January, the MSC Napoli, a UK-registered vessel, suffered flooding in her engine room on the French side of the English Channel. The MSC Napoli's master took the decision that the danger to the vessel was sufficient to order the crew to abandon the ship. All the crew were successfully rescued by UK helicopter from royal naval air station Culdrose. The marine accident investigation branch is carrying out a full investigation into the causes of the structural damage.

The English Channel is a zone of joint responsibility between France and the UK as regards maritime pollution incidents. There is an Anglo-French joint maritime contingency plan, which is usually referred to as the Mancheplan. The French and English authorities were faced with a large container ship known to be carrying a cargo that included potentially hazardous materials and to have more than 3,500 tonnes of fuel oil on board. Particular account had to be taken of the strong advice from environmental experts that the ship's cargo and oil would need to be recovered and should not be left to sink in deep water. The effects of sinking in deep water would have been serious long-term environmental damage. In the first instance, there would be the strong possibility of a large release of oil and

spreading of the cargo caused by the trauma of the vessel striking the seabed. In any case, the oil would have escaped and found its way on to many beaches on both sides of the English Channel for many years, whereas in shallow waters the hydrocarbons and other pollutants could be recovered as soon as possible.

In line with the Mancheplan, French authorities led the initial response to the incident, liaising closely throughout with the UK Secretary of State's representative for maritime salvage and intervention—commonly known as SOSREP. French tugs arrived on the scene promptly. A French Government intervention team went on board the vessel. Having made an on-scene assessment of its condition, experts concluded that its state was such that it was unlikely to survive prolonged exposure to severe weather conditions. To prevent a serious marine pollution incident, the French and UK authorities decided that the vessel should be towed to a place of refuge where she could be dealt with in a controlled manner. The need for a place of refuge and its location are always driven by the circumstances of an incident, including the weather, the size and condition of the vessel and the potential threat posed by the vessel and its cargo. Taking all those factors into account, the French authorities were unable to identify a suitable place of refuge on the French coast within about 200 miles.

All other options were on the UK south coast from Falmouth to Portland . . . There was no safe option to enter any south coast port.

An anchorage with good shelter from south-west winds was needed. The most suitable option was Portland because it affords shelter combined with good access to port facilities and, later, the potential for moving the ship into the inner harbour. It also meant that the vessel could be towed in a direction that minimised the stress on its hull. A tow was attached on the evening of 18 January. However, in the early hours of 20 January, the cracks on both sides of the ship worsened and the stern of the ship started settling lower in the water. It became clear that the MSC Napoli would not reach Portland. The priority was to keep the vessel intact, as there was real concern that it might start to break up.

That concern was urgent and a decision had to be taken without delay. In accordance with the UK's national contingency plan, environmental groups and local authorities were consulted. Moreover, through forward planning, which is an integral part of the UK system, SOSREP had the necessary knowledge about the suitability of locations as a place of refuge for this vessel. SOSREP decided that the only viable option was to beach the ship in shallow water, where there was a greater chance of successful salvage, and decided to turn the vessel towards an identified beaching site in the shelter of Lyme bay. SOSREP regularly updated me throughout the incident . . .

The MSC Napoli was carrying approximately 2,300 containers, of which 157 contained potentially hazardous materials, including perfume, pesticides and batteries. The contents of all containers have now been identified. Altogether, 103 containers were lost overboard, 57 of which were washed ashore, and we are searching for the other 46. Sampling of sediments and marine wildlife in the area began on Tuesday. As of Tuesday, 900 live oiled birds had been handed to the RSPCA, while 700 had been found dead.

Salvors were engaged at a very early stage in the incident. It was necessary for some work vessels and equipment to be brought from Rotterdam and these were

despatched at the earliest possible opportunity. Work on removing the Napoli's bunker oil is continuing apace. About 2,600 tonnes of bunker fuel have been removed. The salvors are averaging 20 tonnes per hour and we expect to have removed most of the remaining fuel by the end of Sunday.

The process of removing containers from the MSC Napoli is also underway. As more containers are removed, the stress on the ship's hull decreases, as does the risk of break-up. A crane barge is removing containers and passing them to a container barge that can take them ashore. Every precaution is being taken to ensure safety. It is expected that the removal of all the cargo will take between five to eight months to complete . . .

SOSREP is continuing to lead the response to the incident. Our thanks are due to that representative and all those working with him to bring the incident to the safest and swiftest conclusion practicable with the minimum possible impact on the environment. SOSREP's decision in respect of a place of refuge and the salvage operation was entirely transparent and thoroughly professional.

It is worth recording that the European Commision's senior maritime official, Fotis Karamitsos, last week endorsed our SOSREP system, which he regards as a model for other EU states. He supported SOSREP's decision to beach the MSC Napoli rather than tow it to port as originally planned, because it

"diminished the risk of catastrophe".

I receive daily reports on the situation from SOSREP. I am reassured that the national contingency plan has enabled us to take prompt and appropriate action. I am pleased to see the co-operation between SOSREP and all the parties concerned, including the French authorities. This incident has once again demonstrated why the UK's SOSREP arrangement is so much admired by our international colleagues.

[The oil and cargo were successfully removed from the Napoli. The damage which it had suffered was such that it was necessary to break it into large parts which were taken to Belfast for disposal in July and August 2007, Ed.]

(HC Deb 1 February 2007 Vol 456 c376–378)

**11/25**

A Transport Minister wrote:

In accordance with the Anglo-French Joint Maritime Contingency Plan (Mancheplan), HM Coastguard had been monitoring the situation involving the MSC Napoli together with the French search and rescue (SAR) authorities from the outset of the incident. Co-ordination of the incident was passed to the Maritime Rescue Co-ordination Centre at Falmouth from the French co-ordination at CROSS Corsen at approximately 16:10 on 19 January 2007 when the MSC Napoli passed over the UK/French median line. At this point the ship was approximately 60 nautical miles from Portland and Cherbourg. Taking all the environmental and safety factors into account, the French authorities were unable to identify a suitable place of refuge on the French coast within about 200 nautical miles.

A salvage contract was agreed at 14:45 on 19 January 2007, when the ship was still in French waters and approximately 110 nautical miles from Portland and Cherbourg.

(HC Deb 5 February 2007 Vol 456 c 682W)

**11/26**
The Secretary of State for Transport was asked what assessment she had made of the implications for a ship calling at a port which does not meet the 2004 International Ships and Ports Facility Security Code. A Minister wrote:

The Code requires that a ship's own Security Plan sets out the procedures to be followed when it is calling at a port facility that does not meet the Code. A ship may make provision for its own security or where appropriate a master of a ship may request a "Declaration of Security". This is a standard form that addresses the security requirements that are to be shared between a port facility and a ship and states the responsibility for each. The Code also requires ships to keep records of their last 10 ports of call prior to arrival in a destination, including details of how security was maintained at ports not meeting the Code. If the ship has at all times met the provisions of the Code there should be no significant implications for the ship.

(HC Deb 19 November 2007 Vol 467 c462W)

## Part Twelve: Airspace, Outer Space and Antarctica

**12/1**

### Part Twelve: I.A. *Airspace, Outer Space and Antarctica—Airspace—Status*

The Minister of Defence was asked what assessment he had made of the likely impact on military aviation operations by British and US forces of the EU proposal to treat all airspace above 25,000 feet as European airspace. A Defence Minister wrote:

The EC initiative to establish a European upper flight information region encompassing all airspace above 28,500 feet is not expected have any impact on military aviation operations by British and US forces based in the UK.

(HC Deb 18 January 2007 Vol 455 c1260W)

### Part Twelve: I.B. *Airspace, Outer Space and Antarctica—Airspace—Uses*

**12/2** (See also **5/47**)

The Government were asked what steps they were taking to increase safety at Gibraltar airport, given the increased traffic being created by more airlines flying there. An FCO Minister wrote:

Aviation safety and security relating to civil operations at Gibraltar Airport are governed by the pertinent rules and regulations of the International Civil Aviation Organisation. The safeguarding of the aerodrome is regulated by the Government, with the assistance of Air Safety Support International, which makes regular visits to Gibraltar to ensure that the relevant standards are met. Gibraltar Airport has considerable capacity to expand and the increased traffic that is envisaged will not affect the capacity of the airfield to continue to meet its international obligations.

Additional safety measures are planned following the Cordoba ministerial statement on Gibraltar Airport, including the introduction of new final approach paths to the airport in order to enhance operational safety conditions.

(HL Deb 8 January 2007 Vol 688 cWA10)

**12/3**
The Minister of Defence was asked whether any special agreements or other arrangements under the provisions of Article 3 of the Convention on International Civil Aviation have been made in relation to overflight through the UK, its overseas territories and bases by US state aircraft. A Defence Minister wrote:

The UK has bilateral arrangements with over 30 countries, including the United States, under which routine flights by military aircraft are cleared to overfly and land in the UK without seeking prior permission. All foreign and Commonwealth military aircraft transporting VIPs or carrying dangerous air cargo need to seek advance clearance.

(HC Deb 1 March 2007 Vol 457 c1531W)

**12/4**
The Minister of Defence was asked, pursuant to his answer of 1 March 2007 . . . on rendition, whether the bilateral arrangements mentioned apply to state aircraft acting in a civilian capacity. A Defence Minister wrote:

The Department's bilateral arrangements cover routine flights by military aircraft from the relevant countries transiting UK airspace and landing in the UK. They also apply to other state aircraft landing at UK military airfields on routine business. These arrangements do not provide any form of immunity from customs and immigration procedures, national or international law, or regulations covering safe use of UK airspace. Action would be taken by the appropriate authority with MOD support should illegal activity be detected.

(HC Deb 25 April 2007 Vol 459 c1119W)

**12/5**
An FCO Minister wrote:

On 12 September 2001, the North Atlantic Council invoked article 5 of the Washington Treaty. Following that decision NATO allies agreed to grant blanket overflight clearance to US and other allies' military flights subject to national procedures. This remains the case. Decisions of this type remain in force unless revoked by the North Atlantic Council.

Under UK procedures all flights through UK airspace must comply with UK law. We have also made clear that we expect to be consulted on any request to render a detainee through UK territory or airspace.

(HC Deb 26 July 2007 Vol 463 c1474W)

**12/6**
The Minister of Defence was asked, pursuant to the answer of 21 May 2007, Official Report, column 1052W, on rendition, on which 14 dates aircraft HZ-124 landed at RAF Brize Norton between 1 July 2006 and 21 May 2007; and what the total amount is of the fees paid by the owner of HZ-124 to his Department for using RAF Brize Norton since 1 July 2006. He said:

It is not the practice of the Government to make public details of travel arrangements by foreign governments. The fees for the use of RAF Brize Norton by aircraft HZ-124 since 1 July 2006 were waived in accordance with the regulations in Chapter 7, Annex F of Joint Service Publication 360, which govern the waiver of charges for the use of military airfields by British and foreign civil and military aircraft.

The hon. Member may also wish to note that my answer of the 21 May 2007, Official Report, column 1053W, was incorrect and should have read:

Since 1 July 2006, aircraft HZ 124 has landed 15 times at RAF Brize Norton. The aircraft operated in accordance with the MOD regulations for civil aircraft use of military airfields. The regulations also cover the applicability and level of landing, housing, parking and insurance fees charges. The regulations have been adhered to for each flight.

[HZ-124 is an airbus belonging to Saudi Arabia, Ed.]
(HC Deb 29 June 2007 Vol 462 c881WA)

**Part Twelve: II.B**. *Airspace, Outer Space and Antarctica—Outer space and celestial bodies—Uses*

**12/7**
The Government were asked what diplomatic response they have made to the use by China of a ballistic missile to disable a Chinese satellite. An FCO Minister wrote:

On 18 January officials from our embassy in Beijing made representations to the Chinese Ministry of Foreign Affairs about the missile test, expressing concern

about the lack of international consultation before the test was conducted and the possible impact of debris from the test on other objects in space.

The Government have also expressed concern that the development of this technology and the manner in which this test was conducted is inconsistent with the spirit of China's statements to the UN and other bodies on the military use of space. As part of our regular bilateral dialogue on international issues, we will continue to work to encourage China to play a constructive role in the international community.

(HL Deb 31 January 2007 Vol 689 c66WA)

**12/8**
The Trade and Industry Secretary was asked if he would undertake research into the economic threat to UK companies who use commercial satellites for transacting business of increases in space clutter.
A Minister wrote:

The Government have not directly funded such a study and have no immediate plans to do so. However, the potential risk is increasingly well known and Government and industry are involved in mitigation practices and the development of relevant international standards.

In licensing UK space activities, a safety assessment is carried out for each application and this includes a study of the debris mitigation measures put in place by the applicant for the launch and end of life of the satellite, plus measures taken to minimise debris in the event of an accident to the craft.

BNSC is also developing a database of relevant good practice and standards to support keeping space open for business. This will be used to improve further the safety assessment and be made available to licence applicants.

(HC Deb 2 March 2007 Vol 457 c1589W)

**Part Twelve: III.C.** *Airspace, Outer Space and Antarctica—Antarctica—Protection of the Environment*

**12/9**
The Foreign Secretary was asked what steps the Government were taking to assist international conservation efforts with regard to Antarctic krill. An FCO Minister wrote:

The UK, led by the Foreign and Commonwealth Office and supported by scientists from the British Antarctic Survey and Imperial College, plays a leading role in the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) which pioneered an ecosystem-based approach to fisheries management. CCAMLR recognises that krill play a central role in the Antarctic food web. It has therefore taken a number of significant steps, including imposing

strict precautionary catch limits to avoid large catches of krill that could compromise the availability of food in key foraging areas of Antarctic fauna

(HC Deb 25 June 2007 Vol 462 c204W)

## Part Thirteen: International Responsibility

## Part Fourteen: Peaceful Settlement of Disputes

### Part Fourteen: II.D. *Peaceful settlement of disputes—means of settlement—mediation*

**14/1**
An FCO Minister wrote:

We are in constant contact with [Eritrea and Ethiopia], including at ministerial level, on this issue. We have urged them to implement UN Security Council Resolution (UNSCR) 1767 (adopted on 30 July 2007) including to "show maximum restraint and refrain from any threat or use of force against each other" (paragraph 2 of UNSCR 1640 (2005) reiterated in UNSCR 1767 (2007)).

We continue to urge both Eritrea and Ethiopia to behave in accordance with international law; specifically, to implement the Eritrea Ethiopia Boundary Commission's decision and to demarcate their common frontier. We continue to press Eritrea to lift its restrictions on the UN Mission to Ethiopia and Eritrea to allow it to fulfil its mandate and to withdraw from the temporary security zone.

I met the Foreign Ministers of both Eritrea and Ethiopia in the margins of the UN General Assembly in New York in September and urged them to find a peaceful way forward.

We are also working with the UN, EU, the US and other international partners in order to prevent any renewal of fighting.

(HL Deb 29 October 2007 Vol 695 cWA147)

### Part Fourteen: II.G.2. *Peaceful settlement of disputes—means of settlement—judicial settlement—courts and tribunals other than the International Court of Justice*

**14/2**

**International Criminal Court**
An FCO Minister was asked by the FAC what the Government was doing about reports that the Government of Uganda was pressing the

ICC to drop the charges against Joseph Kony in return for his agreeing to a peace settlement. He said

We are pretty firm about the role of the International Criminal Court ('ICC') in this matter and I will explain why. You cannot offer impunity to a group of individuals who have carried out mass murder, rape, violence of all sorts and would continue to do so were it not that they knew with some certainty that they would face a court for their crimes against humanity.

A fragile process has been in place in Uganda, supported by the international community, and it has been making progress. Sadly, a few weeks ago out of the blue, those who have been in charge of most of the violence took a decision not to withdraw from the talks but to carry on the talks only if they took place in a different location. But that was a pretext, of course, just to delay the talks and discussions.

There is already in place an amnesty for those who have fought from the bush who are not the authors of the terrible crimes that took place. That offer is there still and it continues to be utilised. Alongside this attempt to get the process back in place, which is ongoing, there is a great deal of humanitarian work and effort, to which we are a serious partner, to deal with those who are in displaced persons camps. At the moment there are still over a million people in displaced persons camps, although at one point it was almost 2 million people. A humanitarian aid programme for those who are in the displaced persons camps is trying, with the local community, to put together a process of stability to allow the local community to have a great deal more freedom in the area without the fear of retribution.

I give you the absolute assurance that we are doing everything that we can to encourage African Union involvement. The role of the UN is important, as is the role of the negotiators. Remember that these cases from Uganda are the first cases ever put before the International Criminal Court and if there was impunity in those cases it would simply send the signal that you can disengage from conflict for a short period, have the cases dropped and return to conflict if you do not get what you want. That is not a signal that anybody should be sending out.

There is not a crisis in the International Criminal Court; it is in its early stages of development. It already has one person facing trial, six arrest warrants have been issued and another three investigations are under way, so we continue to support it. That includes investigations in Darfur; there has been a unprecedented referral passed by the Security Council. In establishing itself well, the ICC has got UK support. It is a central pillar of international justice. [Q.62]

(FAC Report, Human Rights Report 2006, HC 269 (2007))

**14/3**
An FCO Minister wrote:

The Government support international efforts to develop a peaceful and sustainable democracy in Somaliland. The UK provides around £8 million of assistance to Somaliland, including supporting governance, democratisation, health, education

and reconciliation in Somaliland. We also encourage the Somaliland authorities to engage in constructive dialogue with the transitional federal government to agree a mutually acceptable solution regarding their future relationship.

The International Criminal Court (ICC) is an independent, permanent court that tries people accused of genocide, crimes against humanity and war crimes. It is a court of last resort and will not act if a case is investigated by a national judicial system, unless the proceedings are not genuine. As Somalia is not a state party to the Rome Statute of the ICC, cases would have to be referred to the ICC by the UN Security Council.

(HL 11 December 2007 Vol 697 cWA46-WA47)

**14/4**
An FCO Minister wrote:

Under the terms of the Rome Statute of the International Criminal Court no proposal to amend the Statute may be made until July 2009 at the earliest. If a proposal is made, the Government will give it full consideration in the light of circumstances at the time.

The Government's view, as we continue to state in the Special Working Group, is that any proposal in relation to the crime of aggression must reflect the primary responsibility of the UN Security Council for the maintenance of peace and security as enshrined in the UN Charter.

(HC Deb 10 December 2007 Vol 469 c156W)

**14/5**
(See also **6/85-87**)

**Special Court for Sierra Leone**
AGREEMENT WITH SPECIAL COURT FOR SIERRA LEONE (10/07/07)

After signing the sentence enforcement agreement with the Registrar of the Special Court for Sierra Leone, today, Lord Malloch-Brown, Minister for Africa at the Foreign and Commonwealth Office said:

Signing this agreement enables the UK to give effect to our commitment to imprison former Liberian President Charles Taylor if he is convicted by the Special Court and demonstrates again our strong support for the Court.

I pay tribute to the Court's work in bringing to justice those accused of crimes against humanity and war crimes during Sierra Leone's civil war. This is making a major contribution to the cause of international justice and is an essential part of the process of restoring and maintaining stability in Sierra Leone.

We must all continue to make clear that there can be no impunity for those who would commit these most serious crimes. I therefore urge the international community to maintain its support, financial and otherwise, for the Court so that it can continue this important work.

(www.fco.gov.uk/news)

**14/5**
In a press release issued on the day the agreement was signed, the FCO said:

In response to requests from the SCSL and the Government of Liberia, the Security Council unanimously concurred that the continuing presence of Charles Taylor in Sierra Leone, for trial or imprisonment, was a threat to that country's stability and passed Resolution 1688 that enabled him to be tried by the SCSL in the premises of the International Criminal Court in The Hague. The UK helped to facilitate this by passing the International Tribunals (Sierra Leone) Act into law this year which will enable the Court to sentence Charles Taylor to imprisonment in the UK if he is convicted. The last stage of this process is the signature of the Sentencing Agreement today.

[See also International Tribunals (Sierra Leone) Act 2007, which adds a new section to the International Criminal Court Act 2001 to facilitate the arrangements made under the Agreement in the law of England and Wales, Ed. See also **6/85**, **6/86**].

(The Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Special Court for Sierra Leone on the Enforcement of Sentences of the Special Court of Sierra Leone, UKTS No.21, Cm7208, [The Agreement entered into force on 9 August 2007], Ed.)

(www.fco.gov.uk/news)

## International Criminal Tribunal for Yugoslavia

**14/6**
An FCO Minister wrote:

Co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY) is a legal requirement under UN Security Council Resolutions 1244 and 1534. The International Court of Justice also ruled on 26 February that Serbia had breached its obligation to punish the perpetrators by failing to transfer individuals accused of genocide, including Ratko Mladic, to the ICTY.

The EU has made clear that EU membership is open to all the countries of the western Balkans once they meet the established criteria. In Serbia's case, full co-operation with the ICTY is a key condition. Serbia is currently negotiating a stabilisation and association agreement (SAA) with the EU. This is seen as the first step along the road to EU membership and will cover political dialogue, support for political and economic reform, aid and trade relations. Conclusion of the SAA will require full co-operation with ICTY. The UK regularly raises ICTY co-operation with the Serb authorities. When . . . the then Minister for Europe visited Belgrade on 7 February he discussed this issue with both President Tadic and Prime Minister Kostunica.

(HL Deb 23 July 2007 Vol 694 cWA68)

## 14/7 (See also 5/43)

**Special Tribunal for Lebanon**

In a statement, the Foreign Secretary said:

The UK continues to be deeply concerned by the political instability resulting from the absence of a President in Lebanon. President Lahoud's term of office expired on 23 November. The ongoing political divisions over who should succeed him remain a source of instability. We have been urging all sides to come together in the spirit of compromise to choose a President who can lead the country forward. We support them in their efforts to do so and hope they will be able to resolve the political crisis as rapidly as possible.

Despite the ongoing uncertainty, progress continues towards the establishment of the Special Tribunal for Lebanon. On 30 May 2007, the Security Council adopted Security Council Resolution 1757, establishing the Tribunal. The Tribunal will try those accused of killing the former Lebanese Prime Minister, Rafiq Hariri, who was assassinated on 14 February 2005 along with 21 others in a car bomb in central Beirut. This attack was part of a campaign of targeted political attacks against anti-Syrian MPs and political activists in Lebanon. The most recent of these was the assassination of MP Antoine Ghanem on 19 September. Mr. Ghanem was killed along with two bodyguards and four other civilians in a car bomb explosion in east Beirut which also injured more than 70 other innocent civilians.

The UK has been, and remains, firmly committed to the pursuit of justice for Rafiq Hariri's murder and the sequence of assassinations that followed it. The UK worked closely with UN partners to establish the UN Independent International Investigation Commission (UNIIIC) into Mr Hariri's assassination. We were also co-sponsors of UN Security Council Resolution 1757 establishing the Special Tribunal. As part of our continued commitment, and in response to the UN Secretary-General's call for contributions, I am pleased to announce that the UK will be contributing £500,000 ($1 million) to the Tribunal.

The success of the UN-led investigation process and of the Tribunal remain vital for the stability of Lebanon. It is essential that justice is done to send a clear message that political assassinations will not be tolerated. The UK will continue to offer its strong support to the UN and the Lebanese Government as they take this important work forward.

(HC Deb 10 December 2007 Vol 496 c6WS–7WS)

## **Part Fourteen: II.H.1.** *Peaceful settlement of disputes—means of settlement—settlement within international organisations—United Nations*

## 14/8

The Foreign Secretary was asked what her estimate was of the outstanding amount of interest accrued by delays in the payment by the UN

Compensation Commission of compensation relating to the detention of UK nationals in Iraq during the first Gulf war. An FCO Minister wrote:

A decision was taken at the 55th session of the UN Compensation Commission (UNCC) Governing Council in March 2005 that interest would not be paid by the UNCC to claimants on top of their principal awards. This decision was made for a variety of reasons, including the fact that assumptions made about the capacity of the Compensation Fund (its revenue generated from Iraqi petroleum export earnings) did not materialise which resulted in inadequate funds being available, and the estimated projection that payment of all principal awards would not be completed until 2045.

The decision was taken against the background of the need for Iraqi oil proceeds to be used towards reconstruction of Iraq. Payment of interest would place an additional and unacceptable financial burden on the Iraqi people.

No outstanding interest therefore accrued in the period between determination and payment of awards.

A letter was sent by the Foreign and Commonwealth Office to all UK claimants in March 2005 explaining the decision taken on the question of interest by the Governing Council.

In answer to a further question asking how many payments to UK nationals from the UN Compensation Commission relating to detention in Iraq during the first Gulf war had been subject to delay; and what the average length of this delay was, the Minister wrote:

Individuals claims had to be filed with the UN Compensation Commission (UNCC) by 1 January 1995; corporate and government claims by 1 January 1996. 5,000 UK claimants duly received awards from the UNCC totalling US$ 428 million.

The Foreign and Commonwealth Office was initially unable to locate 47 of the successful UK claimants on the basis of information provided by the UNCC. However, following renewed efforts in 2006, we subsequently located 26 of the 47 and are currently in the process of finalising the payment of their outstanding awards.

To calculate the average time between the lodging of the 5,000 UK claims and the payments (made in instalments) could not be done without incurring disproportionate cost.

(HC Deb 24 May 2007 Vol 460 c1482W)

**14/9**

The Foreign Secretary was asked a number of questions about the UN Compensation Commission, to which an FCO Minister replied.

1. What measures does the UN expect to be undertaken to recover monies overpaid to claimants.

Reply: The Governing Council of the UN Compensation Commission has asked that "best efforts" be made by all concerned governments to seek to recover relevant overpayments from affected claimants and for governments to report back before the next Governing Council in June.

2. How much compensation was paid to claimants; and how much was overpayment.

Reply: Nearly 5,000 UK claimants have so far received disbursements of varying amounts totalling US$428 million from the UN Compensation Commission (UNCC) through the Government.

The UNCC has identified the sum of US$391,000 as the total amount of overpayment to UK claimants. To provide the information requested for each claimant would require the permission of each individual company and institution concerned. It is therefore not possible to provide such information without incurring disproportionate cost.

3. What part the UK played in discussions on the consensus in the UN Compensation Commission Governing Council on the best efforts approach.

Reply: The UK, as one of the permanent members of the Governing Council, played a full role in discussions and supported the decisions taken by general consensus in response to the UN Compensation Commission's investigation of duplicate and overpaid claims, including the adoption of a "best efforts" approach for concerned governments to seek the recovery of overpayments from affected claimants.

4. When did the UN Compensation Commission make the decision to request recovery of overpayments; and what representations did the UK make when it was informed of the decision.

Reply: The UN Compensation Commission (UNCC) Governing Council, at its 61st session in November 2006, adopted 22,000 corrections to awards identified during its investigation into duplicate claims and decided to request governments concerned to seek recovery of relevant overpayments from affected claimants. The same "best efforts" approach has been adopted for all corrections adopted by the UNCC in response to its investigation.

As one of the permanent members of the Governing Council the UK supported the general consensus to adopt a "best efforts" approach to the recovery of overpayments.

5. Whether the Government would be responsible for repaying any overpayment not recovered from individuals.

Reply: No. The Government are required to use their best efforts to contact and seek to recoup overpaid amounts totalling US$391,000 from 113 affected UK claimants.

(HC Deb 10 May 2007 Vol 460 c394W–395W)

## Part Fifteen: Coercive Measures short of the Use of Force

### Part Fifteen: I.A. *Coercive measures short of the use of force—unilateral measures—retorsion*

**15/1**

Answering questions about sanctions against Zimbabwe, an FCO Minister said:

> . . . the Government expect that targeted measures against Zimbabwe will be renewed in February. Since their rollover last February, the situation in the country has only worsened: peaceful demonstrations have been violently disrupted, the economy continues to be grossly mismanaged and the opposition and independent media remain suppressed. Until democracy, the rule of law and full human rights are restored in Zimbabwe, it is right that Mugabe and his regime should continue to be isolated by the international community.
>
> [It] is absolutely right to say that when talking of sanctions we are talking of a travel ban, not of economic sanctions. We will certainly make that clear to our colleagues in the African Union. Indeed, the travel ban has been strengthened four times since 2002, to include others who have supported the Government of Zimbabwe's efforts to suppress the people . . .
>
> . . . it would indeed be irresponsible if the European Union were to renege on its sanctions now. I am confident that it will not, but I am sure that Her Majesty's Government will continue to make the very strong case in favour of sanctions. In respect of aid being given to Zimbabwe, of course we must maintain that aid, but it should be balanced by sanctions, and we must ensure that the people of Zimbabwe are not harmed in any way.
>
> I can ensure that the Government will do their utmost to minimise the loopholes. It is extraordinary that such loopholes exist, but they do. The EU Zimbabwe travel ban contains standard exemptions that enable travel to the EU by banned Zimbabweans in a few, narrowly defined cases. We do our utmost to ensure that they are narrowly defined, because to see people such as Grace Mugabe stomping up and down the streets of the Côte d'Azur is an affront to humanity.
>
> [It] is absolutely right that the sanctions must hit the regime and not the poor people of Zimbabwe, who have to suffer continual atrocities. However, the EU sanctions put real pressure on the regime. They ensure that Mugabe remains isolated—hence his attempts to seek financial lifelines from China and Iran to buy time. It is important to point out that the targeted sanctions have the support of the democratic opposition and the NGO community in Zimbabwe. Mugabe and his regime detest the restrictions on their movement.

(HL Deb 8 January 2007 Vol 688 c7–11)

**Part Fifteen: II.A.** *Coercive measures short of the use of force—collective measures—United Nations*

**15/2**
**Proscribed Organisations**

The Home Secretary was asked to list the UK-based organisations which are listed as proscribed terrorist organisations under international agreements to which the UK is a party. A Home Office Minister wrote:

Both the EU and the UN maintain lists of terrorist organisations. Member states are obliged to apply financial sanctions (such as asset freezes) on the organisations on these lists.

The EU list can be accessed at the following website:

http://ec.europa.eu/comm/external_relations/cfsp/sanctions/list/consol-list.htm

The New Consolidated List of Individuals and Entities Belonging to or Associated with the Taliban and the Al-Quaida Organisation, as established and maintained by the United Nations 1267 committee, can be accessed at the following website:

http://www.un.org/Docs/sc/committees/1267/1267ListEng.htm

(HC Deb 18 January 2007 Vol 455 c1299W)

**15/3**

In reply to a number of questions about Darfur, an FCO Minister wrote:

We have pressed the Government of Sudan to act on its obligations under UN Security Council Resolution (UNSCR) 1706 (2006). This requires implementation of an effective ceasefire and of the Darfur Peace Agreement, including its provisions for the disarmament of the Janjaweed/armed militias; and a renewed political process between the Government of Sudan and the rebel groups.

The Foreign Secretary condemned the most recent Government of Sudan bombing raids in North Darfur, between 19 and 21 April, which resulted in a number of civilian injuries and deaths.

To maintain pressure on the Government of Sudan to implement their commitments to the international community, we are currently discussing the elements of a new UNSCR with international partners and the UN.

We utterly condemn the recent bombings in North Darfur by the Sudanese Government. They are in direct violation of UN Security Council Resolution 1591 and demonstrate a lack of commitment to the peace process.

The Sudanese Government must commit to an immediate ceasefire. If they do not, we will be forced to press for tougher measures. We are considering all options, including measures to allow better monitoring of the illegal use of aircraft in Darfur.

We are very concerned by reports that the Government of Sudan are operating aircraft with UN markings in Darfur. The Sudanese Government resumed

bombing villages in Darfur last week, resulting in a number of civilian injuries and deaths. We condemn these attacks, which show little regard for human life.

We continue to discuss the case for further sanctions in the UN.

We are aware of the steps taken by the US Administration to block transfers by US commercial banks of oil payments to the Government of Sudan. We are keeping the situation in Sudan under close review. If the Sudanese Government do not co-operate with the international community, we are prepared to consider further sanctions. We are discussing the elements of a new UN Security Council Resolution with international partners, which would include further targeted sanctions against individuals engaged in violence or responsible for authorising it; an extension of the arms embargo to cover the whole of Sudan; and, measures to allow better monitoring of the illegal use of aircraft in Darfur.

(HC Deb 2 May 2007 Vol 459 c1717W–1718W)

## 15/4

The Chancellor of the Exchequer was asked what powers were available to enforce (a) UN and (b) EU sanctions on export of goods with military applications to Sudan; what reports he has received of the export of such goods by (i) Dallex Trade and (ii) Land Rover to Sudan. A Treasury Minister wrote:

HM Revenue and Customs (HMRC) is the enforcement authority for export licensing controls on military goods. An exporter attempting to export military goods from the UK to any destination without a valid export licence is committing an offence under Section 68 of the Customs and Excise Management Act (CEMA) 1979. The provisions of CEMA provide HMRC officers with wide ranging enforcement powers to investigate offences and to seize unlicensed goods. Should an investigation reveal sufficient evidence of an offence then the case will be referred to the Revenue and Customs Prosecutions Office (RCPO). The RCPO will then consider whether to commence criminal proceedings.

EU and UN arms embargoes prohibit the export of military goods to Sudan. Military goods are defined as all goods listed in Part 1 of Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003. Non-military goods which may have a military application are not subject to export licensing controls and therefore HMRC enforcement powers do not apply.

Section 18 of the Commissioners for Revenue and Customs Act 2005 provides that HMRC may not disclose information held in connection with a function of HMRC unless there is lawful authority. HMRC is therefore unable to disclose information in relation to specific campaigns.

(HC Deb 16 May 2007 Vol 460 c757W)

## 15/5

**Iran**

The Foreign Secretary was asked what sanctions were in place against Iran in relation to nuclear proliferation. An FCO Minister wrote:

United Nations Security Council Resolution (UNSCR) 1737, adopted unanimously on 23 December 2006, imposes a number of sanctions on Iran under article 41 of chapter VII of the UN Charter. These are proportionate and targeted at Iran's sensitive nuclear and missile activities. All states have a legal obligation to comply. In general terms, the measures include:

a prohibition on supplying certain nuclear and missile related items to Iran and on providing related assistance;

a prohibition on the export from Iran of such items and their procurement from Iran;

monitoring of the travel of certain individuals engaged in or providing support for Iran's proliferation sensitive activities;

limits on International Atomic Energy Agency (IAEA) technical co-operation with Iran;

freezing of the assets of persons and entities designated in the resolution's annex as well as those subsequently identified by the Security Council or the Sanctions Committee; and

a call on states to prevent specialised teaching or training of Iranian nationals, which would contribute to Iran's proliferation sensitive nuclear activities.

The implementation of measures will be suspended if, and for as long as, Iran suspends uranium enrichment related and reprocessing activities, as verified by the IAEA. A copy of the resolution is available on the UN website at:

www.un.org/Docs/sc/unsc_resolutions06.htm.

EU Foreign Ministers discussed the resolution on 22 January and agreed that:

to ensure effective implementation of measures in UNSCR 1737 while remaining consistent with EU policy, and recalling the EU policy not to sell arms to Iran . . . the EU should prevent the export to and import from Iran of the goods on the NSG (Nuclear Suppliers Group) and MTCR (Missile Technology Control Regime) lists; ban transactions with and freeze the assets of individuals and entities covered by the criteria in UNSCR 1737; ban travel to the EU of the individuals covered by these criteria; and take measures to prevent Iranian nationals from studying proliferation sensitive subjects within the EU.

On 12 February, EU Foreign Ministers gave political endorsement to a Common Position giving effect to this decision; we expect the Common Position and a related EC Regulation to be adopted shortly.

We have also taken steps at a national level to implement UNSCR 1737, including through the adoption of the Iran (Financial Sanctions) Order 2007, which came into force on 9 February. The order is available at:

http://www.opsi.gov.uk/si/si2007/20070281.htm.

On 20 February, the UK submitted a report to the President of the Security Council setting out in detail all the steps we have taken to implement UNSCR 1737.

(HC Deb 2 March 2007 Vol 457 c1613W)

**15/6**

In a written statement, a Treasury Minister said:

The Government are strongly supportive of international efforts to tackle the proliferation of weapons of mass destruction and to prevent the abuse of financial systems. My written ministerial statement of 7 February 2007, Official Report, column 37WS informed Parliament that the Government were seeking the agreement of the Privy Council for the adoption of an Order in Council concerned with giving effect to the financial sanctions against Iran's nuclear programme as required by UNSCR 1737. The Iran (Financial Sanctions) Order 2007 was laid before Parliament on 8 February and came into force on 9 February.

On 19 April, the European Union adopted EC Regulation No 423/2007. This regulation implements at a Community level the sanctions against Iran agreed under UNSCR 1737. It also establishes an autonomous EU financial sanctions list against entities and individuals associated with Iran's nuclear and ballistic missile programmes. The regulation came into force on 20 April and is directly applicable in the UK. Council decision 2007/242/EC establishing the autonomous EU financial sanctions list came into force on 24 April.

In order to enforce the financial sanctions elements of EC Regulation No 423/2007, the Government are today laying before the Parliament the "Iran (European Community Financial Sanctions) Regulations 2007". These establish prohibitions, offences and penalties with regard to persons who are on the autonomous EU financial sanctions list in relation to Iran. The "Iran (Financial Sanctions) Order 2007" continues to apply with regard to persons who are on the UN financial sanctions list in relation to Iran.

As set out in the explanatory memorandum to the regulations, it is necessary that the regulations come into force as soon as possible in order to minimise the risk of asset flight. For this reason, the Government consider it necessary to waive the usual convention that there should be at least a 21 day period between regulations being laid and coming into force. Accordingly, the regulations will come into force tomorrow.

(HC Deb 3 May 2007 Vol 459 c42WS)

**15/7**

**Kimberley Processs**

An FCO Minister wrote:

The UK is fully committed to implementing the Kimberley Process Certification Scheme (KPCS). The body responsible for this, the Government Diamond

Office (GDO), is a department of the Foreign and Commonwealth Office (FCO), and works closely with HM Revenue and Customs, the UK diamond industry and civil society groups to ensure effective implementation of the provisions of the KPCS document.

The UK is supportive of the current European Union Chairmanship of the KPCS, which began on 1 January. The FCO has provided funds for the European Commission to second additional staff for the duration of the Chairmanship. An official from the GDO has taken part in a review visit to Romania and formed part of the recent review mission to Ghana, as part of wider efforts to ensure full compliance of the KPCS among all participants in order to eradicate the trade in conflict diamonds. A GDO official will be taking part in the forthcoming review visit to Bulgaria.

The UK supported the recent lifting of UN sanctions on the diamond trade in Liberia, following an inspection from the Kimberley Process Expert Mission which confirmed that Liberia had the necessary systems in place in order to ensure compliance with the KPCS.

(HC Deb 25 June 2007 Vol 462 c186W)

**15/8**
(See also **1/1, 6/68–70, 16/13**)

## Sanctions—General

The Foreign Secretary wrote:

The UK is already playing a leading role alongside international partners in ensuring that the international community can become more effective in preventing the breakdown of states and societies. Effective measures will require international consensus on the challenges and the backing of the international community. That is why the UK is pressing the UN and other bodies to deliver the 2005 World Summit commitment to the creation of a single Early Warning System and to operationalise the concept of Responsibility to Protect also endorsed at that World Summit . . . the Prime Minister set out the clear challenge to the international community to deliver its commitments by improving procedures to prevent conflict. Specifically, the UN Security Council needs to act earlier, and there needs to be more use of targeted sanctions and international criminal court actions. The UK will continue to work with international partners on specific mechanisms to deliver existing international commitments.

(HC Deb 13 December 2007 Vol 469 c829W)

**15/9**
An FCO Minister said:

The Government is committed to informing Parliament annually of the sanctions regimes which the United Kingdom implements. Currently the United Kingdom implements United Nations sanctions in relation to al-Qaeda and the

Taliban, Cote d'Ivoire, the Democratic Republic of the Congo, the Democratic Peoples' Republic of Korea, Iran, Iraq, Lebanon, Liberia, Rwanda, Sierra Leone, Somalia, Sudan and terrorism.

The UK also implements sanctions regimes imposed autonomously by the EU in relation to Belarus, Burma, China, the former Federal Republic of Yugoslavia (in connection with individuals indicted by the International Criminal Tribunal for the former Yugoslavia or responsible for certain acts of violence at Mostar), the Republic of Macedonia, Moldova, Uzbekistan and Zimbabwe.

In accordance with a decision of the Organisation for Security and Co-operation in Europe, the United Kingdom implements arms embargoes on Armenia and Azerbaijan. The Government also takes full account of the Economic Community of West African States moratorium on certain exports of small arms and light weapons to Economic Community of West African States members.

A full list of sanctions regimes and restrictive measures implemented by the UK is published on the Foreign and Commonwealth Office website at: www.fco.gov.uk/sanctions

Following a request . . . this document now includes objectives and lift criteria for each regime.

(HL Deb 18 December 2007 Vol 696 c346)

**15/10**

## Somalia

An FCO Minister wrote:

The Government fully support the UN arms embargo [against Somalia]. The UK sponsored UN Security Council Resolution 1766, adopted unanimously on 23 July 2007, extended the mandate of the Arms Embargo Monitoring Group for a further six months. The Monitoring Group reports to the Security Council on violations of the arms embargo.

Somalia unfortunately has a proliferation of illegal arms, many imported in violation of the embargo. The lack of a functioning government means that arms markets are unregulated. The situation is further exacerbated by the presence of clan militias and insurgents operating in the country. The Government institutions in Somalia do not currently have the capacity to hinder the illegal arms trade. The UK is working with the UN, and wider international community, to encourage the development of Government institutions in Somalia that will enable the authorities to develop its capacity in this area.

(HC Deb 22 November 2007 Vol 467 c1041W)

**15/11**

## Sudan

The International Development Secretary said in answer to a question about sanctions against Sudan because of the situation in Darfur:

It is precisely because parts of the international community have been threatening sanctions that we got both the result in relation to the heavy support package and yesterday's decision by the Government of Sudan on the hybrid (international force). Our position as a Government, as he will be aware, has been extremely clear that the Government of Sudan must honour the commitments that they have entered into, and we need to keep under review what further steps need to be taken, because commitments are not good enough; they must be matched by actions to support the deployment. We should say to the Government of Sudan, "We will continue to watch the steps that you take, and if at any point you fail to honour the agreement that you have given, we will go back to the UN Security Council." . . . not all members of the Security Council are in the same position as the United Kingdom Government, the United States of America and one or two other countries on the question of further sanctions.

He went on:

As I said in answer to the earlier question, in the end we must judge yesterday's announcement by the actions of the Government of Sudan and nothing else. There are proposals for an oil trust fund, but the question is how that would be established without the agreement of the Government of Sudan.

There is a second issue in relation to disinvestment, which is another matter that we discussed in the debate last week, and the genuine difficulty is that, given that the proceeds of Sudan's oil wealth are shared with the Government of South Sudan—for them, that is an important part of the comprehensive peace agreement—one would need to be careful about taking steps that reduced the money available to that part of Sudan's new Government, because the need for resources, health and education is huge in that part of the country.

I set out in my earlier replies the steps that we are taking to ensure that the Government of Sudan honour those commitments. In the meantime, the best that we can do is to provide support to the African Union mission, which we are doing via the substantial amount of money we have put in, and by getting agreement through the UN to the use of assessed contributions. The Government of Sudan have said that they want an all-African force and I hope very much that Africa will be able to come up with the number of troops. We discussed that in Addis Ababa in November and said that we should look to Africa first, but if the troops cannot all come from Africa, we should look elsewhere. I hope that it will be possible to find those troops.

. . . a comprehensive peace agreement is the only real solution to the crisis . . . the statement that was agreed at the G8 in Heiligendamm . . . shows that we have continued to press to make sure that the G8 gives a very strong lead. We have to get the talks going. That is a responsibility both on the Government of Sudan and on the rebels, because they too are partly responsible for the current banditry and attacks on humanitarian workers. They too have to stop doing that, get round the table and negotiate a peace deal.

(HC Deb 13 June 207 Vol 461 c742–744)

**15/12**
An FCO Minister wrote:

We believe sanctions have contributed towards containing the crisis in Darfur, for example in the Government of Sudan's acceptance of the UN's Heavy Support Package to the African Union peacekeeping force in Sudan. However, we want a solution to the crisis which may require further sanctions.

We are concerned that sanctions should not impact on those in Sudan who have no responsibility for violence in Darfur, or on the Comprehensive Peace Agreement, thus damaging the south. We are therefore pressing for further targeted sanctions on individuals and an extension of the UN arms embargo from Darfur to all of Sudan, in line with the EU embargo, if the Government of Sudan and the rebel movements fail to honour their commitments.

(HC Deb 14 June 2007 Vol 461 c1220W)

**15/13**

## Terrorism

A Treasury Minister wrote:

In my written ministerial statement of 10 October 2006, I undertook to report to Parliament on a quarterly basis on the operation of the UK's asset freezing regime. This is the first of these reports and covers the period October–December 2006(1).

Asset-freezing framework

The following changes have been made to asset-freezing legislation:

Terrorism (United Nations Measures) Order 2006, made in October; and

al-Qaeda and Taliban (United Nations Measures) Order 2006, made in November

These two Orders updated the previous Orders, as I explained in statements to the House on 10 October and 7 November 2006.

The Treasury has also strengthened the asset-freezing regime by agreeing, on the advice of law enforcement and intelligence agencies, to use closed source evidence in cases where there are strong operational reasons to impose a freeze but insufficient open source evidence available. I notified Parliament of this decision in October.

Asset-freezing Designations

In the quarter October–December 2006, the Treasury made seven domestic designations under the Terrorism Order and the Al-Qaeda and Taliban Order.

Of these, two persons already listed were re-designated under the new Orders.

The Terrorism Order and the Al-Qaeda and Taliban Order provide, where appropriate, for designations to be made confidentially and with restricted circulation of notice. Four persons were listed on this basis.

Two persons were listed on the basis of closed source evidence provided by law enforcement and intelligence agencies.

In addition, the following financial sanctions listings of persons with links to the UK took place:

none at the EU; and

one person at the UN.

No designated persons have been delisted in this quarter.

Designations this quarter make a total of 195 separate accounts and approximately £525,000 of suspected terrorist funds frozen in the UK since 2001.

Litigation

There has been one case of domestic litigation regarding financial sanctions.

The recent High Court judgment of 22 September 2006 in the case of *MA and MM v Her Majesty's Treasury* [2006] EWHC 2328 (Admin) upheld the Treasury's actions regarding benefits payments to the households of designated individuals. The case was heard by the Court of Appeal on 18 December 2006 and we are awaiting the judgement. [*In R (on the application of M, AM and MM) v HM Treasury et al* [2007] EWCA Civ 173, the Court of Appeal upheld the High Court judgment, Ed.]

Reviews

The Treasury keeps domestic asset-freezing cases under review. A number of formal reviews have been initiated in this quarter and the reviews of two cases have been completed. In both cases decisions were taken following the review to maintain the asset freeze.

Licensing policy

In accordance with UN Security Council Resolution 1452 (2002), the Treasury operates a licensing system whereby designated persons and others are able to apply to make or receive payments under specific and, if necessary, monitored conditions. In this quarter, the following licences were issued:

two listed persons were granted basic expenses licences, one of which was for benefits payments

there were no extraordinary expenses licences granted; and

eleven listed persons were granted legal expenses licences.

In addition, the household of one listed person was granted a benefits licence in accordance with the policy I set out in my statement of 3 July 2006 to Parliament.

(1) The detail which can be provided to the House on a quarterly basis is subject to the need to avoid the identification, directly or indirectly, of personal or operationally sensitive information.

(HC Deb 1 March 2007 Vol 457 c93WS)

## Part Sixteen: Use of Force

### Part Sixteen: II.A. *Use of force—legitimate use of force—self-defence*

#### 16/1

### Turkey—Northern Iraq

In its reply to the FAC Report, Global Security: the Middle East, the Government wrote:

102. The Government welcomes the fact that, despite Turkey's legitimate concerns about terrorist groups operating from Iraqi territory, it has shown restraint in its response. We continue to encourage Turkey to maintain its channels of dialogue with the Government of Iraq and to engage with the Kurdish Regional Government. We are urging the Government of Iraq to do more to address Turkey's legitimate security concerns. We have urged the Government of Iraq to proscribe the PKK as a terrorist organisation and to take firm steps to remove its ability to launch attacks against Turkey. We welcome the recent visit by Prime Minister Maliki to Turkey and the Memorandum of Understanding that was signed regarding cooperation between Turkey and Iraq to prevent and suppress terrorism and organised crime.

(Eighth Report of the Foreign Affairs Committee Session 2006–7 Global Security: The Middle East Response of the Secretary of State for Foreign and Commonwealth Affairs Cm 7212)

#### 16/2

### Israel

An FCO Minister said:

the Government of Israel have a responsibility to ensure the security of their people. They have a right to self-defence. If they want to build a barrier . . . they are entitled to do so. But that barrier must be on or behind the green line. Any barrier on occupied land contravenes international law and must come down. We have made that point to the Israeli Government on numerous occasions and we will continue to do so.

(HC Deb 3 July 2007 Vol 693 c987)

**16/3**
An FCO Minister wrote:

The Government have discussed the continued firing of rockets by Palestinian militants from Gaza into Israel with the Israeli Government on numerous occasions, and most recently during the visit of the Foreign Secretary to Israel and the Occupied Palestinian Territories on 17–19 November.

Over 1,000 Qassam rockets and mortar shells have been fired at Israeli targets since Hamas seized control of Gaza on 14 June 2007, wounding a number of Israelis. It has also caused damage to infrastructure. We continue to call for an immediate halt to these attacks, which target civilians and only escalate an already tense situation. While acknowledging Israel's right to defend itself, we call on Israel to show restraint in the face of these attacks and make clear that any response must be in accordance with international law.

(HC Deb 4 December 2007 Vol 468 c1136W)

**Part Sixteen: II.B.1.** *Use of force—Legitimate Use of Force—Collective Measures—United Nations*

**16/4**

## Afghanistan

The Government were asked whether they intended United Kingdom military forces deployed in the Helmand province of Afghanistan to target drug traffickers, as distinct from drug growers, operating in the province. A Defence Minister wrote:

Under the terms of NATO's operational plan for the International Security Assistance Force (ISAF), ISAF forces can provide, within means and capabilities, training and operational support to Afghan counter-narcotics efforts. But they are not there to take direct action against the drugs traffickers or to eradicate opium poppies in the fields. That is a job for the Afghan Government.

**16/5**
Further, the Government were asked how many suspected drug traffickers United Kingdom forces deployed in the Helmand province of Afghanistan had detained and handed over to the Afghan authorities. The Minister wrote:

UK Armed Forces deployed in Helmand province have not detained any drug traffickers.

The UK, as Afghanistan's partner nation on counter-narcotics remains committed to supporting the Afghan Government in implementing their national drug control strategy. The arrest and prosecution of drug traffickers is conducted by Afghan drugs law enforcement agencies, the Counter Narcotics Criminal Justice Task Force and the Government of Afghanistan.

(HL Deb 8 January 2007 Vol 688 cWA3)

**16/6**

The Government were asked whether the use of force by the European Union, the United Nations or NATO to prevent countries or territories from dividing or amalgamating is permitted under international law. An FCO Minister wrote:

Use of force, whether on behalf of the European Union or the United Nations or by NATO, to prevent countries dividing or amalgamating would be permitted under international law if authorised by a mandatory United Nations Security Council resolution under Chapter VII of the United Nations Charter.

(HL Deb 8 January 2007 Vol 688 cWA25)

**16/7**

The Foreign Secretary in relation to UK activities in Afghanistan wrote:

The UK took on lead G8 responsibility for counter narcotics following the Bonn Agreement in 2001. In 2006 it was agreed that the concept of 'lead nation' was redundant, as the Afghan Government now had lead responsibility for all aspects of security sector reform. The UK therefore became Afghanistan's 'partner nation' on counter narcotics.

Signed in July 2005, the Joint Declaration of An Enduring Relationship between the UK and Afghanistan is a bilateral agreement between the UK and Afghanistan. The Enduring Relationship Action Plan 2006–07 sets out the commitments between the two Governments under the 2005 Joint Declaration . . . Under both the Joint Declaration and the Action Plan, the UK agreed to help Afghanistan mobilise and co-ordinate international efforts to end the drugs trade, in support of the four national priorities identified in the Afghan Government's national drug control strategy (NDCS)—targeting the trafficker, strengthening and diversifying legal rural livelihoods, reducing demand and developing state institutions. We are spending £270 million over three years in support of the NDCS.

[The Joint Declaration is at

http://66.102.9.104/search?q=cache:6wRn40VnIR8J:www.fco.gov.uk/resources/en/pdf/pdf15/fco_ukaghanenduringrelationship+%22joint+declaration+of+an+enduring+relationship%22&hl=en&ct=clnk&cd=1&gl=uk; the Action Plan appears to be available only in Pashto, Ed.]

**16/8**

## Chad

An FCO Minister wrote:

In response to the continuing security and humanitarian crisis in Chad, in September the UK co-sponsored UN Security Council Resolution 1778,

which authorises the deployment of an EU force (EUFOR) and a UN multi-dimensional mission (MINURCAT) to Chad. The force aims to contribute to the stabilisation of the regions in eastern Chad and north eastern Central African Republic which border Sudan. Improved security will facilitate the delivery of humanitarian aid and help create the conditions necessary for voluntary, secure and sustainable return of refugees and internally displaced persons. EUFOR and MINURCAT support the larger African Union/UN mission to Darfur, which is mandated to protect civilians and is in the process of being deployed.

Long-term peace and security in the region needs to be underpinned by a lasting political solution. The UK supports the agreement reached between President Deby and Chadian rebel groups on 25 October in Sirte, Libya and urges all parties to implement the ceasefire. The EU is also sponsoring a process of dialogue between President Deby and the political opposition forces in Chad, which should contribute to creating a more stable political environment in which to promote peace. The UK takes every opportunity to call on the governments of Chad and Sudan to fulfil their obligations under the Tripoli agreement, which calls for a ceasefire between Chad and Sudan, and an end to support for armed movements, which destabilise the region.

(HC Deb 3 December 2007 Vol 468 c1043W)

**16/9**

## Iraq

The Prime Minister said:

I entirely agree that British forces are doing a fantastic job in Iraq in circumstances of difficulty and danger, but let us remind ourselves of why they are there. They are there under a United Nations resolution with the full support of the Government of Iraq . . . in 2003, after the conflict and the invasion of Iraq, there was a United Nations resolution that specifically endorsed the multinational force. We are there with the agreement of the Government of Iraq.

(HC Deb 24 January 2007 Vol 455 c1414)

**Part Sixteen: II.B.2.** *Use of force—Legitimate Use of Force—Collective Measures—outside the United Nations*

**16/10**

An FCO Minister wrote:

The Government supports France in their use of warships to protect humanitarian supply ships sailing to Somalia from incidents of piracy.

The UN Security Council unanimously passed resolution 1772 on 20 August 2007, calling for military protection of merchant shipping from such acts, in line with relevant international law.

(HC Deb 22 November 2007 Vol 467 c1042W)

**Part Sixteen: II.C.** *Use of force—Legitimate Use of Force—Others*

**16/11**

## Non-proliferation

In answer to a question about restricting the proliferation of nuclear weapons States, specifically Iran, an FCO Minister told the FAC:

We have a good record in this country-better than anyone in the world-for reducing our number of warheads and the technologies that we employ for delivering them, and so on. Iran signed up to that co-ordinated reduction, which we have all aimed at and which the non-proliferation treaty is about. We want the Iranians to abide by the rules that they signed up to-nothing more, nothing less. [Q.205]

And later he said:

We have certainly never threatened Iran with any form of military action and we have no intention of doing so. [Q.246]

(FAC, Global Security Iran, HC142 (2007))

**16/12**

## "Rogue" States

The Secretary of State for Defence was asked what his definition of the term "rogue state" as used in his statement on Ballistic Missile Defence of 25 July 2007, Official Report, Vol.463 column 72WS is; whether the term differs from the term "countries of concern"; [and] when the decision was taken to begin using the term "rogue state" in relation to UK involvement in the US Ballistic Missile Defence programme. He wrote:

The terms "rogue state" and "country of concern" both refer to states that operate outside of or near to the boundaries defined by international agreements and accepted norms of behaviour.

(HC Deb 19 November 2007 Vol 467 c485W)

## 16/13

## "Responsibility to Protect"/Humanitarian Intervention

(See also **1/1, 6/68–69 and 15/8**)
An FCO Minister in a debate on "Liberal Intervention" said:

It is clear to all of us that within the broad-based concept of liberal intervention is a subset called humanitarian intervention, where . . . there is a tighter, clearer definition of rules, terms and rationales for intervention. It is around that subset that I express the Government's support for [such an] approach . . . It was that subset which the Prime Minister had in mind when he talked about hard-headed internationalism, and which the former Prime Minister, Mr Blair, had in mind when, in that important Chicago speech [in 1999], which has been mentioned today, he set out criteria.

There are, of course, long historical antecedents on intervention from Gladstone to Palmerston and Don Pacifico, as was suggested. However, this concept of humanitarian intervention is at its core moving towards a doctrine which is not just an optional one of conscience at the one end or national interest at the other motivating us to intervene, but instead involves a set of criteria in a globalised world where these are not interventions of choice but interventions of necessity, either because of the internal threat posed by mass crimes against humanity to the citizens of the state in which we are considering intervening, or because of an external threat that that state poses to its neighbours and to the world, as Afghanistan did when it harboured Al-Qaeda in 2001.

As regards the internal threat, a lot of work has been done to develop the doctrine of the responsibility to protect, and to intervene where a Government themselves have become the source of mass human rights abuses of their people, or at least are failing to protect their people against that. But that intervention, which is humanitarian in character, is very specifically motivated by the protection of people rather than by the claim of regime change. This is an enormously important distinction that has been brought out today. We are moving towards a world where we understand that there are circumstances involving external or internal threat to people which merit intervention. Mr Blair's conditions have been reviewed very well today. Therefore, I offer a slightly separate but overlapping set of criteria against which one might want to assess such interventions: first, that they are rule-based; secondly, that we are willing to sustain them over many decades; thirdly, that they are adequately burden-shared with others to allow us to sustain them; and, fourthly—this is what I think Mr Blair had in mind—that they are doable and achievable and that we will not end doing more harm than good and causing more loss of life.

I should say a word on each of those. First, obviously the most straightforward rule-based approach is where there is an unequivocal resolution of the UN Security Council to endorse an intervention, but we are all aware that sometimes life is not so simple. The case of Kosovo was raised. I believe that in a Written Answer of 1998 [a Minister] said that a limited use of force was justifiable in support of purposes laid down by the Security Council, but without the council's

express authorisation, when that was the only means to avert an immediate and overwhelming humanitarian catastrophe. Such cases would in the nature of things be exceptional and would depend on an objective assessment of the factual circumstances at the time and on the terms of relevant decisions of the Security Council bearing on the situation in question. The argument can be made that Kosovo met those conditions. The intervention, which averted a dramatic loss of life, was followed by a Security Council resolution that endorsed the subsequent military and political arrangements that were put in place.

The second criterion is that any intervention must be sustained. A number of senior British officials have, over recent months, talked of periods of up to 30 years to establish a successful, democratic, freestanding, prosperous and effective state in Afghanistan. Sometimes those statements are little misunderstood as meaning an open-ended military commitment by the UK for that period—which is not what is meant by that and I devoutly hope is not what occurs. Nevertheless, a role in training and a deep role in development and reconstruction support, at a significant cost to the United Kingdom and others, is likely to be the consequence of our intervention in 2001. While I argue that it is utterly justified by the circumstances that led us to make that intervention, perhaps politicians need to be clearer with each other and with electorates about the fact that these commitments and interventions are rarely short, clean and quickly over in the way that is sometimes implied at the start.

Thirdly, any intervention must be burden-shared. That brings us back to the United Nations and to the importance of trying to do it within a broad and, if possible, universal international coalition. It means that the human and financial costs are shared, and that it is easier to sustain the political will because we are all in it together. Fourthly, any intervention must be doable. Sierra Leone was doable. Kosovo was doable. We are going to make sure that Afghanistan is doable. But we are always tempted by that bridge too far to take on operations of such complexity and scale that they do not enjoy the confidence of the military that we ask to take on the task, let alone of public opinion.

In that, I argue that, as has been said today, Darfur posed a situation where the prospect of direct intervention to end the terrible killings that were going on in that region was properly resisted by British and other western politicians. It ultimately was not doable. The prospect of putting a British expeditionary force, with perhaps American and other European allies, into a landlocked region of Sudan the size of France with no obvious logistics and support systems available, against the overt hostility and military opposition of the Government in Khartoum, was not a plausible route to pursue, despite the dreadful things that were happening in Darfur. Instead, we were required to go through the painstakingly difficult, preposterously extended and still not ultimately successful effort to build an international coalition and to secure the support of China for more effective sanctions and pressure on the Government. We continue with that. The level of killing, fortunately, has gone down to a much lower level. We cannot pretend that we are not tempted. How much more difficult this is than the easier pulling the trigger on an intervention might have seemed; but ultimately we will conclude that, for all its difficulties, this is the correct way to proceed.

That brings us to the great gap between soft and hard power. At the hard power end, when it is doable and meets that test, it has all the clarity and cleanness of

going in, sorting out the situation and changing the situation on the ground in a dramatic way. Soft power is just that; often just too pliable, too soft, too putty-like in its ability to change the behaviours of Governments in their international relations and in how they behave towards their own people. We will hear increasingly from both sides of the House the discussion about how we develop something between soft and hard power. What range of instruments is available to us which, through international coalitions and having the will of the international community behind us, allows us to pressure Governments more effectively to moderate and change how they behave?

When we make an intervention because we believe that we have answered correctly the questions that we have posed ourselves—even there we move first from the pre-emptive phase where we want to apply soft power or harder forms of it to make an intervention unnecessary—we move to the next phase, which is peacekeeping. The need to strengthen UN and AU peacekeeping capabilities to give them the means to act effectively is an enormous challenge for all of us. Sierra Leone has been mentioned as a success. We should remember the circumstances under which that British intervention took place. The UN force there had not been sufficiently strongly armed to do the job. It had essentially been routed at the time the UK deployed. The UK was brilliantly able to restore order and allow a strengthened UN force to take over again. In East Timor, an Australian expeditionary force under a UN mandate initially established order before UN peacekeepers could take over. UN peacekeepers are lightly armed and are usually unable to undertake much offensive action.

Even when they do take over in the next phase, we are seeing the difficulties of mobilising a force for Darfur and the difficulties of even beginning to plan a force for Somalia. We have huge challenges of training, equipment, cost, mobility, and shaping the kinds of forces that these operations need. At one end, they need highly mobile forces that are able to undertake offensive activity if necessary and, at the other end, given that these wars are in countries' population centres, there is the need for police capabilities, normally of an armed Carabinieri kind, which can keep peace in refugee camps and can keep ethnic groups from each other's throats. Those are skills that often soldiers do not have but police forces do. As we work our way through the mechanics of intervention, we can see that there are a lot of capabilities and issues that we have not adequately addressed if we are to do this on an international basis.

Thinking about moving beyond the intervention, I will quote from the Prime Minister's speech earlier this week [speech at the Lord Mayor's Banquet, 12 November 2007. See above 1/1, Ed.], in which he argued that it is not just a matter of military intervention and peacekeeping but whether afterwards we have sufficient commitment to and vision of a recovery and reconstruction effort, and whether we have sorted out how the UN can be the fulcrum of an international effort to engage in that. He said:

"But where breakdowns occur, the UN—and regional bodies such as the EU and African Union— must now also agree to systematically combine traditional emergency aid and peacekeeping with stabilisation, reconstruction and development.

There are many steps the international community can assist with on the ladder from insecurity and conflict to stability and prosperity. So I propose that, in

future, Security Council peacekeeping resolutions and UN envoys should make stabilisation, reconstruction and development an equal priority; that the international community should be ready to act with a standby civilian force including police and judiciary who can be deployed to rebuild civic societies; and that to repair damaged economies we sponsor local economic development agencies—in each area the international community able to offer a practical route map from failure to stability".

So we have our work cut out for us if we are to go beyond the doctrinal conditions for intervention to creating the means, institutions and processes to deliver on stabilisation and nation-building, where we need to do it.

Finally, I look forward to the debate next week on our Armed Forces. I suspect that we will discuss a situation where there is a great fear that too much is being asked of our Armed Forces and that our investment in them and the support we are giving them are insufficient to the growing challenges we are putting their way. I suspect we will hear some voices say that we should, therefore, retrench and pull back from the activities we ask our Armed Forces to undertake. I suspect that from some of those same voices we will hear a caution about nation-building, the long commitment that that takes and the implicit romanticism of the idea that you can stand up other people's nations for them.

Against that, as we grapple with a global society where other people's problems are our own problems, where terrorists can find sanctuary in Afghanistan, where illegal migration from failing and failed societies can cause huge difficulties, where failed societies harbour not just poverty but breakdowns of public health and other issues that impact on all of us, from these Benches you will hear the argument that humanitarian intervention with clear rules built around an internationalised effort to achieve the goals that we mutually set ourselves will become more, not less, important as we seek to build a world of justice and opportunity for all and, equally, a world where those of us living in rich societies believe that our Governments, our armed forces and the institutions we have created, such as the UN, work not just to help the world's poor and those living in weak countries, but to offer protection for a 21st-century global society where no problems can be kept out any more by old-fashioned borders alone.

(HC Deb 15 November 2007 Vol 696 c626–630)

## **Part Sixteen: III.** *Use of force—disarmament and arms control*

### 16/14

### Comprehensive Nuclear Test Ban treaty

An FCO Minister wrote:

China and the US signed the Comprehensive Nuclear Test Ban treaty (CTBT) in 1996 but have not yet ratified it. India has neither signed nor ratified the treaty

The United Kingdom strongly supports the earliest possible entry into force of the CTBT. We continue to take every appropriate opportunity, both bilaterally and through the EU, to urge all states who have not yet done so to sign and/or ratify the CTBT without delay and without condition. We most recently took action with India in April 2007, with the US in September 2007, and agreed EU action with China in November 2007. The UK also continues to support the outreach activities of Ambassador Ramaker, the Special Representative of the ratifiers of the treaty, staff of the Provisional Technical Secretariat and the Executive Secretary of the CTBT. In addition, the UK actively participates in the annual events held under the provisions of article XIV of the treaty to facilitate entry into force.

(HC Deb 27 November 2007 Vol 468 c348W)

## 16/15

## Iran

On Thursday [22 February 2007, Ed.], Dr. Mohammed elBaradei**,** the director general of the International Atomic Energy Agency . . . issued another report on Iran's nuclear programme. The report makes it clear that Iran is continuing—and, indeed, expanding—its uranium enrichment activities in defiance of the Security Council. If mastered, those activities would give Iran the know-how to produce fissile material that could be used in nuclear weapons.

President Ahmadinejad claims that bullying western powers are trying to deny Iran its rights. He says that Iran's ambition is simply to generate electricity. For the sake of clarity, it should be put on record . . . that we have no wish to deny Iran, or any other country, its rights under the nuclear non-proliferation treaty, provided that it meets its obligations. We have not sought to stop Iran building a nuclear power station at Bushehr to generate electricity. We have even offered to help Iran develop a modern nuclear power industry, if it shows that its intentions are peaceful . . . . That was the offer made by the E3 plus three . . . the P5 plus Germany. It was one offer among many. Today, I have heard pleas for us to try to engage with Iran in whatever way we can. We have tried endlessly to engage with Iran, and we will continue to do so. The notion that somehow we are not part of an attempt to engage with Iran in rational discussions is probably the most serious slur of all. . . .

Above all, Iran needs to establish that it is not developing nuclear weapons. Iran has to answer some basic questions. If its ambitions are solely peaceful, why did it hide its enrichment programme for so long? Why is the military involved in a supposedly civilian programme? Why does Iran not give a full account of its dealings with AQ Khan's network, which helped North Korea and Libya with their secret nuclear weapons programmes?

The International Atomic Energy Agency board of governors and the UN Security Council have set out the essential steps that Iran needs to take to build

confidence, which include the full suspension of enrichment-related and reprocessing activities. The measures required by the Security Council would not affect Iran's pursuit of nuclear energy. Iran does not need to enrich uranium to generate electricity. However, the suspension would help to provide confidence that Iran is not seeking the know-how to make fissile material for weapons . . .

We remain committed to finding a negotiated solution and our approach has been to make it clear to Iran how it might benefit from meeting its obligations. At the same time, we have made it clear that it will face the risk of greater international isolation if it fails to take the steps required by the Security Council.

In June 2006, Javier Solana—the EU's high representative—presented proposals to Iran on behalf of the so-called E3 plus three—the UK, France, Germany, China, Russia and the US. Those proposals are far-reaching and offer a way forward that would provide confidence that Iran is not developing nuclear weapons. The proposals would also give Iran everything that it needs to develop a modern civil nuclear power industry, plus other political and economic benefits. Despite that, Iran has failed seriously to engage in discussions. The proposals are still on the table and, even at this stage, I hope that Iran will acknowledge the benefits of them and take the steps required by the Security Council so that talks can begin. The current sanctions will be frozen if Iran complies with the proposals and would be lifted in the event of a long-term solution. I welcome the efforts by Javier Solana in the past few weeks to urge the Iranians to take a positive path. I hope that everybody understands the significance of that and that real attempts have been made to engage with the Iranian Government. If the Iranians do not address international concerns, the Security Council will have no choice but to impose further measures.

[On] the effectiveness of financial sanctions, which are incredibly important . . . [w]e know that such sanctions worry the Iranians most. An indication of that is the 400,000 Iranians who live in Dubai, where they think that they can do their business. They are living there in preparation for what they consider the inevitable imposition of sanctions as a consequence of the intransigence of the Ahmadinejad regime. Iran is not North Korea. It has a great history . . . and it has a large merchant class—traders, scientists and engineers. The people of Iran want a prosperous country, but they know that that will not happen under the leadership of Ahmadinejad. The people of Iran understand that economic sanctions would be effective and therefore they are taking measures to ensure that, if necessary, they can carry on with their business outside Iran.

Another argument that I have heard from time to time is that sanctions will make Iran more rather than less determined to defy the international community. Security Council resolution 1737, which was adopted on 23 December, imposed a number of sanctions that focused on Iran's sensitive nuclear and missile activities. Those sanctions are a useful political toolkit to counter the activities of greatest concern, and they are also having a political effect. The Security Council's unanimous adoption of the measures has shown that President Ahmadinejad's claim that the international community is disunited and lacking in the will to act is a fantasy. Far from making the Iranian regime and people more united, the measures have . . . fuelled greater debate inside Iran about the costs of the course on which the regime has set the country.

(HC Deb 27 February 2007 Vol 457 c229–231WH)

**16/16**
The Foreign Secretary was asked about relations with Iran. He wrote:

The review of relations with Iran is continuing, but the principles underpinning our policy towards Iran have not changed.

Iran has every right to develop its own economy and society. We welcome dialogue and engagement with Iran as it does so, but it must also accept that it has responsibilities to the region and the wider international community. It cannot violate the terms of the Nuclear Non-Proliferation treaty nor undermine regional stability.

(HC Deb 23 July 2007 Vol 463 c707W)

**16/17**
The Prime Minister said:

It is diplomacy that we want to be the way forward, but we have to face up to the fact that in enriching uranium with no civil nuclear power process at work, the Iranian Government are in breach of the non-proliferation treaty and of all the commitments that they have made to the international community.

(HC Deb 17 December 2007 Vol 469 c606)

**16/18**

## Libya

The Foreign Secretary was asked what support had been given to Libya in relation to its decommissioning of weapons of mass destruction as agreed between Libya, the UK and third parties.
An FCO Minister wrote:

Libya's renunciation of its weapons of mass destruction programmes in December 2003 was a historic decision. The UK has been working closely with Libya and the United States, in particular through the Trilateral Steering and Co-operation Committee, to support Libya through the de-commissioning process.

This has included helping Libya to dismantle its nuclear weapons programme, allowing other international partners to convert its heavy-water nuclear reactor at Tajura into a light-water reactor. This in turn has helped Libya to meet the international standards required for its nuclear reactor to be placed under an Additional Protocol Safeguards Agreement with the International Atomic Energy Agency.

A comprehensive programme of redirection and engagement with Libya's scientific community into more conventional areas is under way. This includes

helping Libya to establish a regional nuclear medical centre, which would enable the production of nuclear isotopes for radiological medicine, and assistance and engagement with Libya's life-sciences community, particularly in the fields of human and animal infectious diseases, such as AIDS and Avian Influenza. Libya has also acceded to the Chemical Weapons Convention and will, under the verification regime of that convention, destroy its chemical weapons stockpile by the end of 2010.

The UK is also pursuing wider scientific co-operation with Libya, and signed with Libya a Memorandum of Understanding on Science Co-operation on 27 March.

(HC Deb 14 May 2007 Vol 460 c498W)

## 16/19

## Non-proliferation—UK

The Minister of Defence was asked if he would list the 13 practical steps toward nuclear disarmament referred to on page 13 of the White Paper Cm6994, in respect of which of these steps progress has been made. The Minister wrote:

We continue to support and have made progress on the "13 Practical Steps", agreed at the Nuclear Non-Proliferation Treaty Review Conference in 2000, which are applicable to the UK. These are listed in 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document, a copy of which is available in the Library of the House. The 13 steps are:

1. The early entry into force of the Comprehensive Test Ban Treaty (CTBT).

2. A nuclear testing moratorium pending entry into force of the CTBT.

3. The immediate commencement of negotiations in the Conference on Disarmament on a non-discriminatory, multilateral, and effectively verifiable fissile material cut-off treaty. The negotiations should aim to be concluded within five years.

4. The establishment in the Conference on Disarmament of a subsidiary body to deal with nuclear disarmament.

5. The principle of irreversibility to apply to all nuclear disarmament and reduction measures.

6. An unequivocal undertaking by nuclear-weapon states to eliminate their nuclear arsenals.

7. The early entry into force and implementation of START II, the conclusion of START III, and the preservation and strengthening of the Anti-Ballistic Missile Treaty.

8. The completion and implementation of the Trilateral Initiative between the United States, the Russian Federation, and the International Atomic Energy Agency (IAEA).

9. Steps by all nuclear-weapon states toward disarmament including unilateral nuclear reductions; transparency on weapons capabilities and Article VI-related agreements; reductions in non-strategic nuclear weapons; measures to reduce the operational status of nuclear weapons; a diminishing role for nuclear weapons in security policies; the engagement of nuclear-weapon states as soon as appropriate in a process leading to complete disarmament.

10. The placement of excess military fissile materials under IAEA or other international verification and the disposition of such material for peaceful purposes.

11. Reaffirmation of the objective of general and complete disarmament under effective international control.

12. Regular state reporting in the NPT review process on the implementation of Article VI obligations.

13. The development of verification capabilities necessary to ensuring compliance with nuclear disarmament agreements.

We have signed and ratified the Comprehensive Nuclear Test Ban treaty, continued to observe the moratorium on nuclear weapons testing, continued to press for the negotiation in the Conference on Disarmament, without preconditions, of a fissile material cut-off treaty whilst maintaining our moratorium. We have demonstrated our commitment to the irreversibility of nuclear disarmament. We continue to reiterate our unequivocal undertaking to accomplish the total elimination of our nuclear arsenal leading to nuclear disarmament and have undertaken several unilateral steps towards nuclear disarmament including reductions in warhead numbers, increased transparency by publishing historical accounting records of our defence fissile material holdings and reduced the operational status of our deterrent.

All fissile material no longer required for defence purposes is under international safeguards. We continue to reaffirm our commitment to achieving the general and complete disarmament objectives of Article VI. We report regularly in a number of different formats and fora on the progress we have made under Article VI. We have pursued a widely welcomed programme to develop UK expertise in methods and technologies that could be used to verify nuclear disarmament. Finally, we produced a series of working papers culminating in a presentation at the 2005 NPT—non-proliferation treaty—Review Conference. The Atomic Weapons Establishment continues to undertake research in this area.

(HC Deb 8 January 2007 Vol 455 c97W)

**16/20**

An FCO Minister wrote:

Article VI [of the Nuclear Non-Proliferation Treaty, Ed.] requires Parties to the Treaty to "pursue negotiations in good faith on effective measures relating to the cessation of the nuclear arms race at an early date . . . ".

While it is not possible to define precisely the timescale implied by the phrase "at an early date", we would note with regard to the cessation of the nuclear arms race that, since the end of the Cold War, the world's major nuclear arsenals have been significantly reduced.

The UK maintains only a minimum nuclear deterrent. Following the implementation of our December 2006 White Paper on the Future of the UK Nuclear Deterrent, we will have reduced our nuclear arsenal to 160 operationally available warheads: a reduction of 75 per cent. since the end of the Cold War. The largest nuclear stockpiles, those of the US and Russia, also continue to reduce significantly, for example under the terms of the Strategic Offensive Reductions Treaty.

(HC Deb 22 February 2007 Vol 457 c1896W)

**16/21**
An FCO Minister wrote:

Article VI [of the Nuclear Non-Proliferation treaty, Ed.] imposes an obligation on all states to pursue in good faith negotiations on effective measures for cessation of the nuclear arms race at an early date, on nuclear disarmament, and on a treaty on general and complete disarmament. The NPT review conference in 2000 agreed by consensus 13 practical steps towards implementation of article VI. The UK remains committed to those steps and is making progress on them.

We are disarming. The House heard in March of our decision to reduce the UK's stockpile of operationally available warheads by a further 20 per cent. to less than 160. Significant as that is, it is just the latest in a series of dramatic reductions in the UK's nuclear weapons. Since the end of the cold war, the explosive power of UK nuclear weapons will have been reduced by 75 per cent. UK nuclear weapons account for less than 1 per cent. of the global inventory.

We have withdrawn and dismantled our tactical marine and airborne nuclear capabilities and, consequently, have reduced our reliance on nuclear weapons to one system: submarine-based Trident. As hon. Members have said, we are the only nuclear-weapons state to have done that. We have also reduced the readiness of the remaining nuclear force. We now have only one boat on patrol at any one time and it carries no more than 48 warheads. We have not conducted a nuclear test explosion since 1991, and we have signed and ratified the comprehensive nuclear test ban treaty. We have ceased production of fissile material for nuclear weapons. We have also increased transparency of our fissile material holdings, and we have produced historical records of our defence holdings of both plutonium and highly enriched uranium.

Our decision to renew the Trident system did not reverse or undermine any of those positive disarmament steps. The UK is not upgrading the capabilities of the system, and there is no move to produce more useable weapons and no change in our nuclear posture or doctrine. The UK's nuclear weapons are not designed for military use during conflicts. They are a strategic deterrent that we would contemplate using only in extreme circumstances of self-defence. Over

the past 50 years, the deterrent has been used only to deter acts of aggression against our vital interests, never to coerce others.

...

The simple truth is that the UK is implementing its obligations under the NPT, while those states that are developing illicit nuclear weapons programmes are not.

...

First, we will continue to call for significant further reductions in the major Russian and US nuclear arsenals. We hope that the existing bilateral treaties will be succeeded by further clear commitments to significantly lower warhead numbers, including tactical as well as strategic nuclear weapons. We are clear that when it becomes useful to include in any negotiations the 1 per cent. of the world's nuclear weapons that belong to the UK, we will willingly do so.

Secondly, we must press on with the comprehensive test ban treaty and with the fissile material cut-off treaty. Both treaties limit in real and practical ways the ability of states that are party to them to develop new weapons and expand their nuclear capabilities. The treaties play a very powerful symbolic role, too, signalling to the rest of the world that the race for more and bigger weapons is over, and that the direction from now on will be down not up. In other words, they are exactly the sort of

"effective measures relating to cessation of the nuclear arms race"

that article VI requires us to negotiate. That is why we are so keen for those countries that have not yet done so to ratify the comprehensive test ban treaty, and why we continue to work hard for the start of negotiations on a fissile material cut-off treaty in Geneva.

Thirdly, we should begin now to build deeper relationships on disarmament between nuclear weapon states. For the UK's part, we have made it clear that we are ready and willing to engage with other members of the P5 on transparency and confidence-building measures.

Finally, we have also announced a series of unilateral activities that the UK will undertake as a "disarmament laboratory". We will participate in a new project by the International Institute for Strategic Studies on the practical steps required for the elimination of nuclear weapons, and we will undertake further detailed work at the UK's Atomic Weapons Establishment on the nuts and bolts of nuclear disarmament. That work will examine three discrete issues related to the verification of disarmament, the authentication of warheads, chain of custody problems in sensitive nuclear weapons facilities, and monitored storage of dismantled nuclear weapons.

(HC Deb 24 July 2007 Vol 463 c197WH–201WH)

**16/22**

The Foreign Secretary was asked what were the reasons the UK voted against the resolution Towards a Nuclear-weapon-free World:

Accelerating the Implementation of Nuclear Disarmament Commitments at the UN First Committee on Disarmament and International Security on 17 October 2007 [GA res 62/25: 154–5–14, Ed.] An FCO Minister said:

The United Kingdom abstained on rather than voted against this resolution at the UN General Assembly's First Committee. The resolution contained a great deal that we would have been happy to endorse. However, we remained unable to support the text because it gave no recognition to the significant nuclear disarmament achievements of most nuclear weapons states since the end of the cold war. We made this clear in an oral explanation given at the time of the vote.

(HC Deb 27 November 2007 Vol 468 c348W)

**16/23**
The Minister of Defence wrote:

The nuclear non-proliferation treaty makes an invaluable and irreplaceable contribution to multilateral nuclear disarmament and is the cornerstone of UK policy in this area. All actions that the UK undertakes on nuclear disarmament are concomitant to our legal obligations under Article VI of that treaty, which are equally applicable to the other recognised nuclear weapons states. The White Paper on The Future of the UK's Nuclear Deterrent (Cm 6994), published in December 2006, set out the UK's record on nuclear disarmament and announced the reduction of operationally available warheads to fewer than 160, which has now been achieved.

The NPT has now achieved near universality and includes states which renounced their nuclear weapons programmes when they joined the NPT as non-nuclear weapons states. We continue to call upon those remaining states outside the NPT to accede as non-nuclear weapons states.

(HC Deb 3 December 2007 Vol 468 c843W)

**16/24**
An FCO Minister wrote:

The UK is fulfilling all its obligations under the treaty on the non-proliferation of nuclear weapons (NPT), including those on disarmament under article VI of the treaty. We continue to support the relevant disarmament measures contained in the Final Document from the NPT Review Conference in 2000, including the 13 practical steps towards disarmament, and we have a good record on meeting the priorities they set out. Not all the 13 steps are relevant to the UK, such as those relating to bilateral measures between the US and Russia. However, we have made progress on the majority of those that are. The 2006 White Paper on the future of the UK nuclear deterrent committed us to a further 20 per cent. reduction in our stockpile of operationally available warheads and the then Foreign Secretary announced on 25 June, at the Carnegie Institute, further work on the development of expertise in methods and techniques to verify the reduction and elimination of nuclear weapons. We continue to call for the entry

into force of the comprehensive test ban treaty as soon as possible and, pending its entry into force, maintain a moratorium on nuclear weapons test explosions and any other nuclear explosions. The UK is also pressing for the immediate commencement of negotiations on a fissile material cut-off treaty, without pre-conditions, at the Conference on Disarmament in Geneva.

(HC Deb 3 December 2007 Vol 468 c1058W)

**16/25**

## Non-Proliferation—India and Pakistan

The FCO wrote in a memorandum to the FAC about India and Pakistan:
WMD Proliferation

63. India and Pakistan have both ratified the Chemical Weapons Convention (CWC) and the Biological and Toxin Weapons Convention (BTWC). India is destroying its stockpile of chemical weapons under the CWC verification regime. The Pakistani Ambassador is President-designate of the five-yearly BTWC Review Conference scheduled for later this year.

64. Neither country has signed the Nuclear Non-Proliferation Treaty (NPT), nor the Comprehensive Nuclear Test Ban Treaty (CTBT). Both India and Pakistan are on the list of countries which must ratify the CTBT before entry into force. For many years their nuclear status was ambiguous: even when India conducted a partially successful nuclear test in 1974, it characterised it as a "peaceful nuclear explosion". But in 1998 India conducted a series of nuclear tests, closely followed by Pakistan, and both countries openly declared themselves to have nuclear weapons programmes. However, since nuclear-weapon States (NWS) are defined by the NPT as "states which manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967", India and Pakistan have to be regarded as non-nuclear-weapon States (NNWS) for NPT purposes.

65. In the aftermath of the 1998 tests the UN Security Council, on the basis of a P5 Joint Communiqué, unanimously adopted UNSCR 1172. This condemned the tests and, among other things, called on India and Pakistan to stop their nuclear weapon development programmes and to become parties to the NPT.

66. The UK is a member of the Nuclear Suppliers Group (NSG). The NSG's present Guidelines on nuclear-use-only items prohibit their supply to any NNWS which does not have a safeguards agreement with the IAEA covering all its nuclear material (a so-called "comprehensive safeguards agreement", CSA). For the purposes of the NSG Guidelines India and Pakistan are not nuclear weapons states. There is no prospect of either accepting a CSA, which would require them to put under safeguards materials they intend for their nuclear weapons programmes. Consequently the Guidelines require that NSG members should not supply nuclear use only items to either country.

67. On 15 March 2002, the then Minister of State Ben Bradshaw set out HMG's policy towards nuclear exports to both countries. [HC Deb Vol. 381, c12298W-1299W, Ed] This policy was to deny all exports for items on the NSG Dual-Use List to India and Pakistan and to discourage contacts between UK nuclear scientists and their South Asian counterparts.

68. This policy was revised in August 2005 with respect to India. It now stipulates that we will continue to refuse:

• applications in respect of all NSG Trigger List items; and

• applications in respect of all items on the NSG Dual-Use List, when they are destined for unsafeguarded nuclear fuel cycle or nuclear explosive activities, or when there is an acceptable risk of diversion to such activities.

69. We will now, however, consider on a case-by-case basis licence applications for items on the NSG Dual-Use List destined for other activities. We will also consider all applications to export other items assessed as licensable, including those assessed as licensable under WMD end-use control, on a case-by-case basis, taking into account:

• the risk of use in, or diversion to, unsafeguarded nuclear fuel cycle or nuclear explosive activities, or acts of nuclear terrorism;

• the risk of possible onward transfer of these items to other States for proliferation purposes, including the recipient State's export control performance; and

• the potential utility of the items concerned for, and contribution that they would make to, such activities.

70. We will continue to consider applications for exports which will contribute to the physical protection or security of civil or military nuclear facilities or assets in India. Licences may be issued in exceptional cases, consistent with our obligations and commitments . . .

72. This announcement followed careful consideration of moves by India to improve its non-proliferation laws and their implementation. Following the revelation of the proliferation network run by AQ Khan, it was concluded that it was inappropriate at that point to make similar changes to our policy towards Pakistan.

(FCO Memorandum to FAC, Global Security: South Asia (2007) www.publications.parliament.uk/pa/cm200607/cmselect/cmfaff/uc55-iv/ucmem102.htm)

**16/26**

## Non-proliferation—Israel

An FCO Minister wrote:

The Government have on a number of occasions called on Israel to accede to the nuclear non-proliferation treaty as a non-nuclear weapon state, and to conclude

a full scope safeguards agreement and additional protocol with the International Atomic Energy Agency (IAEA). We continue to take appropriate opportunities to discuss all aspects of non-proliferation with representatives of the Israeli government.

Israel has a site-specific safeguards agreement with the IAEA, which gives the IAEA access to the Soreq nuclear site for monitoring purposes. Details of this can be found on the IAEA website at:www.iaea.ors.

(HC Deb 23 July 2007 Vol 463 c708W)

**16/27**
An FCO Minister wrote:

The Nuclear Non Proliferation Treaty (NPT) defines a nuclear weapon state as: any state which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967. This definition is exclusive to the following states party: the People's Republic of China; the French Republic; the Russian Federation; the United Kingdom of Great Britain and Northern Ireland; and the United States of America.

As the State of Israel has never signed the NPT, it is classed as neither a Nuclear Weapon State, nor a Non-Nuclear Weapon State.

(HC Deb 26 July 2007 Vol 463 c1472W)

**16/28**

## Security Council Resolution 1540

The Foreign Secretary was asked what steps the Government had taken to meet their obligations under Article 2 of UN Security Council Resolution 1540 (2004) on the prevention of non-state actors from financing activities to support the development of nuclear, chemical or biological weapons and their means of delivery. An FCO Minister wrote:

In its national reports to the 1540 Committee, the UK set out the framework of domestic legislation that relates to Article 2 of UN Security Council Resolution (UNSCR) 1540 (2004)... The UK has one of the best records in the world on implementation of UNSCR 1540 and we work constantly to ensure that all aspects of the resolution are fully implemented, including on proliferation finance. In addition, the standards agreed within the Financial Action Task Force (FATF), of which the UK is a member, help to promote the international legal framework necessary to combat illicit finance of all kinds. In February, G7 Ministers called specifically for the FATF to examine the risks involved in weapons of mass destruction proliferation finance.

[For the UK Reports to the Security Council, see www.un.org/Docs/journal/asp/ws.asp?m=S/AC.44/2004/(02)/3]

(HC Deb 21 May 2007 Vol 460 c1094W)

## Part Seventeen: The Law of Armed Conflict and International Humanitarian Law

**Part Seventeen: I.B.2.** *The Law of Armed Conflict and International Humanitarian Law—International armed conflict—The Law of International Armed Conflict—The commencement of international armed conflict and its effects (for example diplomatic and consular relations, treaties, private property, nationality, trading with the enemy, locus standi personae in judicio)*

**17/1**
The FCO Legal Adviser made the following statement to the UNGA Sixth Committee on 30 October 2007:

First, I turn to chapter VII of the Report [of the ILC, Fifty-ninth session, A/62/10, Ed.] on the effects of armed conflicts on treaties…

The United Kingdom has made comments on the draft articles at previous meetings of the Sixth Committee. We welcome the decision of the Special Rapporteur to restrict the present study to the effects of armed conflicts on treaties between States. As we have previously stated, expanding the scope of the draft articles to include treaties entered into by international organisations would not take into account the differences between States and international organisations, and also the widely disparate functions of international organisations.

As for the definition of 'armed conflict', the United Kingdom has previously noted that the question of whether to include non-international armed conflicts within the scope of the study is difficult. In considering this issue, it is worth recalling two points. First, the Special Rapporteur noted in his Second Report that it would be inappropriate to seek to provide a definition of 'armed conflict' which would be applicable for all areas of public international law. We agree with this observation, and note that the definition, as presently drafted, is expressed to be 'for the purposes of the present draft articles', a point which was highlighted by the Special Rapporteur in his Third Report. We consider this point to be particularly important. Second, we would also repeat the Special Rapporteur's observation that article 73 of the Vienna Convention on the Law of Treaties, which is the starting point for the present study, refers to the 'outbreak of hostilities between States'.

The United Kingdom has previously stated that it is in favour of including the criterion of 'intention' in draft article 4, and we confirm our view that it is important to include this provision. Any practical difficulties in ascertaining the intention of States can usually be overcome. In any case, this is a task in which both domestic and international tribunals are regularly required to engage.

The United Kingdom does have some outstanding concerns about the indicative list of categories of treaties in draft article 7. We note the Special Rapporteur's

explanation in his Third Report that the list simply reflects a series of factors that might lead to the conclusion that a treaty, or some of its provisions, might continue in the event of armed conflict. However, we consider that clarification is needed in the draft articles of the role of international humanitarian law in forming the *lex specialis*. We note that the Special Rapporteur has proposed to revisit the relevant provision, being draft article 6bis, and we look forward to seeing a revised text in due course.

(Text supplied by FCO)

## **Part Seventeen: I.B.3.** *The Law of Armed Conflict and International Humanitarian Law—International armed conflict—The Law of International Armed Conflict—Land warfare*

### 17/2

In reply to a question about the rules of engagement in response to mortar and rocket attacks on British forces in Afghanistan, the Minister of Defence wrote:

Rules of Engagement detail the levels of permissiveness for the application of force in all environments across a wide range of activities in which our forces may be employed. Profiles do not constrain the inherent right of self-defence, and neither do they provide detailed tactical instructions to commanders.

Our Rules of Engagement entitle our forces to take reasonable and necessary action in self-defence in response to mortar and rocket attack. The commander in situ would use his military judgment to determine what would be the most appropriate means to counter the attack at the time.

In order to safeguard the security of our armed forces on operations, it is MOD policy not to comment on specific operational profiles or the rules therein.

(HC Deb 1 February 2007 Vol 456 c501W)

### 17/3

The Minister of Defence was asked how many (a) 16-, (b) 17- and (c) 18-year-olds have served in Iraq, broken down by gender. A Defence Minister wrote:

Provisional estimates collated from manual records show that no 16-year-old and fifteen 17-year-old personnel have been deployed to Iraq since the "Optional Protocol to the Convention on the rights of the child on the involvement of children in armed conflict" was ratified on 24 June 2003. None have been deployed since July 2005.

Fewer than five of the 17-year-old personnel deployed were female.

The vast majority of those that were deployed were within one week of their 18th birthdays or were removed from theatre within a week of their arrival.

Fewer than five 17-year-olds were deployed for a period of greater than three weeks.

New administrative guidelines and procedures have been introduced by each of the Services following the ratification of the Optional Protocol to ensure that under 18-year-old personnel are not deployed to areas where hostilities are taking place unless there is a clear operational requirement for them to do so. Unfortunately, these processes are not infallible and the pressures on units prior to deployment have meant that there have been a small number of instances where soldiers have been inadvertently deployed to Iraq before their 18th birthday, as described above.

Figures on those aged 18 could be provided only at disproportionate cost.

All numbers are rounded to the nearest five.

(HC Deb 1 February 2007 Vol 456 c508W)

**Part Seventeen: I.B.6.** *The Law of Armed Conflict and International Humanitarian Law—International armed conflict—The Law of International Armed Conflict—Distinction between combatants and non-combatants*

**17/4**
The Solicitor-General was asked what steps had been taken by the Law Officers' Department to ensure the UK's compliance with United Nations Security Council Resolution 1738, on the protection of journalists in armed conflict. He wrote:

The United Kingdom takes seriously its obligations, under international humanitarian law, to protect journalists and other civilians in situations of armed conflict and already has in place the necessary measures to ensure compliance. The Law Officers' departments have not been required to take additional steps following the adoption of United Nations Security Council Resolution 1738 (2006).

(HC Deb 25 June 2007 Vol 462 c4W)

**Part Seventeen: I.B.7.** *The Law of Armed Conflict and International Humanitarian Law—International armed conflict—The Law of International Armed Conflict—International humanitarian law*

**17/5**
A Defence Minister wrote:

The Joint Warfare Publication 1–10 was replaced by the Joint Doctrine Publication 1–10 in May 2006 Prisoners of War, Internees and Detainees. Joint Doctrine Publication 1–10 has been separated into three sections—Prisoners of War, Internees and Detainees—reflecting the requirement for differing

approaches to the range of categorisation of those captured, interned or detained by UK Armed Forces deployed on operations abroad.

This publication recognises the change from the post-Cold War environment to the UK's more expeditionary approach and peace enforcement operations. It provides clarification on current detention procedures giving guidance on, among other things, the standards of treatment and facilities for prisoners of war, internees and detainees, and the training of UK Armed Forces on the handling of detained personnel.

Joint Doctrine Publication 1–10 remains in line with domestic UK law, international law and the laws of armed conflict, as does our operational practice towards detainees in Afghanistan which reflects Joint Doctrine Publication 1–10 [www.mod.uk/NRrdonlyres/749088E6-E50A-470E-938D-459A74481E88/)/jsp381.pdf, Ed.].

(HL Deb 9 January 2007 Vol 688 cWA58)

**17/6**
The Foreign Secretary was asked what steps the Government had taken (a) to comply with Article 1, and (b) to prosecute breaches under Article 147, of the Fourth Geneva Convention. An FCO Minister wrote:

The United Kingdom has signed and ratified the Fourth Geneva Convention and complies with its provisions. Every appropriate opportunity is taken in our bilateral relations and through appropriate international bodies to promote respect for the Convention and its articles.

The UK has enacted legislation (Geneva Conventions Act 1957, as amended) to enable prosecutions in respect of the grave breaches set out in article 147 in the UK. Alleged breaches of the convention relevant to the UK that are brought to our attention are investigated by the appropriate authorities. Prosecution decisions are made in accordance with criminal law principles by the appropriate prosecuting authority.

(HC Deb 25 June 2007 Vol 462 c200W)

**17/7**
An FCO Minister wrote:

The impact of Israel's military operations remains a real concern. Israel has the right to defend itself against terrorism but it must respect international humanitarian law. We regularly raise our concerns about this with the Israeli Government.

(HC 3 July 2007 Vol 462 c998W)

**17/8**
An FCO Minister wrote:

International forces, including UK forces, seek at all times to avoid loss of civilian life. The targeting process, weapons selection, doctrine, training and rules of

engagement are all in line with international humanitarian and human rights law and the law of armed conflict.

The Afghan security forces operate alongside two international forces, the International Security Assistance Force and Operation Enduring Freedom. Co-ordination between these groups is therefore key and has been the subject of further work over recent weeks. We are satisfied that there are sensible, pragmatic command and control relationships between the forces and that these are reassessed regularly.

All reports of civilian casualties are investigated promptly and thoroughly, in co-ordination with the Afghan authorities. Where the UN Assistance Mission in Afghanistan chooses to investigate an incident, it is entirely free to do so.

(HL 5 July 2007 Vol 693 cWA183)

## **Part Seventeen: I.B.8.** *The Law of Armed Conflict and International Humanitarian Law—International armed conflict—The Law of International Armed Conflict—Belligerent occupation*

### 17/9

In its reply to the FAC Report, Global Security: the Middle East, in October 2007, the Government wrote:

...

37. Although there is no permanent physical Israeli presence in Gaza, Israel maintains a significant degree of control, including control of Gaza's borders, airspace and territorial waters. We consider that Israel's obligations under the Fourth Geneva Convention 1949 continue to apply in respect of Gaza.

47...We have also repeatedly urged Israel to fulfil its Roadmap commitments to remove settlements established since March 2001, and to cease settlement expansion.

48. Since the signing of the Oslo Accords in 1993, the settler population in the West Bank has more than doubled, with profound economic implications. Each settlement requires a range of security measures to protect its inhabitants—one reason why the separation barrier is twice the length of the Green Line. The current barrier route around the major settlement blocks encloses between 8–10 per cent of the West Bank. In addition, the fences, checkpoints, road systems and permit regime associated with the settlements and outposts east of the barrier also have a severe impact on Palestinian freedom of movement, and thereby on the Palestinian economy.

49. We fully support the right of Israel to defend itself. The Government of Israel judges that checkpoints and the barrier are essential to provide that security. We are not in a position to judge the security implications of removing individual checkpoints, but have repeatedly urged Israel to reduce its restrictions on Palestinian movement as far as it can, consistent with its own security. We

believe there are some measures Israel could take without jeopardising its security. We have always accepted Israel's right to build the barrier, but maintain that it should move those parts of the barrier built on Palestinian land to the Israeli side of the Green Line. We have made this clear to the Government of Israel.

(Eighth Report of the Foreign Affairs Committee Session 2006–7 Global Security: The Middle East Response of the Secretary of State for Foreign and Commonwealth Affairs Cm 7212 (2007))

**17/10**

The Government were asked what specific measures they were taking to ensure that the European Union is implementing its guidelines (Heading III) on (a) compliance with international humanitarian law, and (b) the protection of human rights defenders, in respect of the occupied Palestinian territories. An FCO Minister wrote:

The EU has agreed guidelines in five areas: children and armed conflict, action against torture, death penalty, human rights dialogues and human rights defenders. There are no separate EU guidelines on compliance with international humanitarian law. However, we continue to stress to the Government of Israel and the Palestinian Authority the need to ensure that their actions comply with international law.

We are a strong supporter of the EU human rights defender guidelines, which were last reviewed earlier this year. At the time of the review, the Foreign and Commonwealth Office sent out instructions to all posts, including our Consulate-General in Jerusalem, inviting contributions to this evaluation. Following the conclusion of the review on 7 July 2006, we circulated the evaluation to all posts with instructions to support local EU presidency action as appropriate. Under the Austrian and Finnish presidencies in 2006, the EU has run a campaign on women human rights defenders. This builds on a freedom of expression campaign launched under the UK presidency in 2005.

We continue to take action to tackle human rights issues in Israel and the Occupied Territories. This action includes working with non-governmental organisations and raising our concerns bilaterally. We remain concerned at the restrictions of movement of Palestinians in and between Gaza and the West Bank. We continue to call on both sides to implement the 2005 Agreement on Movement and Access in full. We also call on Israel to route the barrier on or behind the Green Line and freeze all settlement activity and dismantle all outposts built since 2001. The routing of the barrier and the construction of settlements on occupied land is illegal. We continue to raise these issues with the Israeli Government.

(HL Deb 8 January 2007 Vol 688 cWA29)

**17/11**

The Government was asked whether they would make representations to the Government of Israel on issues concerning permanent family

reunification, both within the recognised frontiers of Israel and within the West Bank and Gaza. An FCO Minister wrote:

We are concerned at the effect the Citizenship and. Entry into Israel Law (Temporary Order) 2003. The law prevents the granting of residency status in Israel to most Palestinians from the Occupied Territories. The emergency order on which the current law is based expired on 16 January, but it has been extended for a further two months. In January 2007, an Israeli non-governmental organisation filed a petition to the Israeli High Court against the order. We also understand that the Government of Israel are considering new legislation dealing with this issue. We will continue to monitor events.

We are also concerned at Israeli practices which restrict entry into Israel for Palestinians who live outside Israel and the Occupied Territories and are married to Israeli citizens. We will raise our concerns with the Israeli Government.

(HL Deb 31 January 2007 Vol 689 c53WA)

**17/12**
An FCO Minister wrote:

We are concerned about the announcement of new housing units in Ma'aleh Adumim. We share the EU's concern noted in the 22 January General Affairs and External Relations Council about Israel's settlement activities in and around east Jerusalem as well as in the Jordan Valley and support the call for Israel to desist from any action that threatens the viability of an agreed two-state solution. The EU will not recognise any changes to the pre-1967 borders other than those agreed by both parties. Settlements are illegal under international law and settlement construction is an obstacle to peace. The road map is clear that Israel should freeze all settlement construction including the "natural growth" of existing settlements and dismantle all outposts built since 2001 . . . the Foreign Secretary raised our concerns about settlement activity in the West Bank with Israeli Foreign Minister Livni on 2 January. Our ambassador in Tel Aviv raised our concerns about Ma'aleh Adumim with the Israeli Government on 17 January.

(HL Deb 31 January 2007 Vol 689 c53WA)

**17/13**
An FCO Minister wrote:

We are concerned at reports that the Israeli government are considering changing the route of the barrier to incorporate two west bank settlements. We fully recognise Israel's right to self-defence, but the barrier's route should be on or behind the green line and not on occupied territory. Construction of the barrier on Palestinian land is illegal. The route is particularly damaging around east Jerusalem, as it risks cutting the city off from the west bank and dividing the west bank in two. Our ambassador in Tel Aviv raised this with Israeli Foreign

Minister Livni's office and the Israeli Ministry of Foreign Affairs legal advisers on 31 January 2007.

(HC Deb 5 February 2007 Vol 456 c672W)

**17/14**
The Foreign Secretary was asked what steps her Department had taken to ensure that no products emanating from settlements built in occupied territory in breach of the Fourth Geneva Convention are purchased by her Department and its overseas missions. An FCO Minister wrote:

The Foreign and Commonwealth Office (FCO) does not currently have a policy precluding the purchase of goods emanating from the settlements in the Occupied Palestinian Territories. The FCO's policy on the procurement of goods is based on value for money, having due regard to propriety and regularity and ensuring full compliance with the EU consolidated Public Procurement directive, implemented in the UK by the Public Contracts Regulations 2006, where applicable. However, in practice the FCO in London and FCO Posts do not purchase goods from the settlements . . .

There is no provision in either the EU consolidated Public Procurement directive or the UK Public Contracts Regulations 2006 (SI 2006 No. 5) to instruct the Foreign and Commonwealth Office's overseas missions in this way and I do not therefore intend to do so.

(HC Deb 2 May 2007 Vol 459 c1715W)

**17/15**
The Foreign Secretary was asked what the UK position was on the legality of (a) marketing in the UK and (b) purchasing from the UK property for sale in settlements in the Occupied Palestinian Territories which are deemed illegal according to international law; and what advice the Government give to British companies and organisations on the legal status of such transactions. An FCO Minister wrote:

We regard all settlements in the Occupied Palestinian Territories as illegal under international law and have repeatedly raised our concerns about settlement activity with the Israeli Government. The Government do not advise or encourage companies and organisations to market or sell property in the settlements, however it is not unlawful to do so under UK law.

(HC Deb 16 April 2007 Vol 459 c 39W)

**17/16**
An FCO Minister wrote:

Settlements are illegal under international law and settlement activity is an obstacle to peace. The Roadmap is clear that Israel should freeze all settlement construction including the "natural growth" of existing settlements, and

dismantle all outposts built since 2001. The EU will not recognise any changes to the pre-1967 borders other than those agreed by both parties. We support this...

Punitive house demolitions—the demolition of the homes of the families of suicide bombers and militants—were suspended on 17 February 2005. However, due to Israeli restrictions on the granting of housing permits to Palestinians in Jerusalem, Palestinians often build houses without obtaining permits. These homes are then demolished and heavy fines imposed. We are concerned about Israel's policy of house demolitions, especially in East Jerusalem, which leaves hundreds of Palestinians homeless each year and threatens to change the nature of some areas of the city. We have repeatedly raised our concerns with the Israeli authorities.

(HC Deb 25 June 2007 Vol 462 c210W)

**17/18**

The Foreign Secretary was asked whether she had held discussions with the government of Israel... on the (a) labelling and (b) claiming of trade preferences on goods produced in Israeli settlements in the Occupied Palestinian Territories and imported to the EU. An FCO Minister wrote:

Under a technical arrangement adopted by the EU-Israel Customs Co-operation Committee on 12 December 2004 all imports from Israeli Settlements in the Occupied Palestinian Territories and claiming Israeli preferential origin have been required since 1 February 2005 to indicate the place of production and accompanying zip code. The full rate of customs duty is payable on any consignment which is indicated as originating in a settlement.

(HC Deb 25 June 2007 Vol 462 c210W)

**17/19**

An FCO Minister wrote:

The Government are in regular contact with the US, Palestinian and Israeli Governments on a number of issues concerned with advancing the Middle East peace process, including settlements. Our embassy in Tel Aviv raised the issue of settlements and outposts with the Israeli Ministry of Defence on 29 November. Our consulate-general in Jerusalem discussed the issue of settlements with the Palestinians on 4 December and our embassy in Washington also discussed this issue with the US State Department on 5 December.

Settlements are illegal under international law and settlement construction is an obstacle to peace. The road map is clear that Israel should freeze all settlement construction including the "natural growth" of existing settlements, and dismantle all outposts built since 2001. The EU will not recognise any changes to the pre-1967 borders other than those agreed by both parties. The Government support this.

(HL Deb 12 December 2007 Vol 697 cWA69)

**Part Seventeen: I.B.9.** *The Law of Armed Conflict and International Humanitarian Law—International armed conflict—The Law of International Armed Conflict—Conventional, nuclear, bacteriological and chemical weapons*

**17/20**

## Biological Weapons

An FCO Minister wrote:

Members will wish to be aware of the outcome of the Sixth Review Conference of States Parties to the Biological and Toxin Weapons Convention held in Geneva from 20 November to 8 December 2006.

On 8 December, States Party agreed a three-part Final Document which included a Final Declaration where States declared their continued commitment to the Convention and their determination to exclude completely the possibility of the use of biological weapons. States Party reviewed the operation of the Convention and expressed their views on all its Articles in some detail. Importantly States Party agreed that the prohibitions in Article I, which defines the scope of the Convention, apply to all scientific and technological developments in the life sciences and in other fields of science relevant to the Convention that have no peaceful purpose.

The Conference also:

endorsed the work done between 2003 and 2005 by States Party on five specific topics relevant to the Convention;

established a three-person implementation support unit based in the UN in Geneva, to perform specific tasks in support of States Party and to serve as a focal point . . . ;

agreed to a concerted effort by States Party to persuade other States to join the Convention;

agreed a further inter-sessional work programme for 2007–2010 to discuss:

in 2007

(a) ways and means to enhance national implementation, including enforcement of national legislation, strengthening of national institutions and co-ordination among national law enforcement institutions; and

(b) regional and sub-regional co-operation on BTWC implementation;

in 2008

(c) national, regional and international measures to improve bio-safety and bio-security, including laboratory safety and security of pathogens and toxins; and

(d) oversight, education, awareness-raising, and adoption and/or development of codes of conduct with the aim to prevent misuse in the context of advances in bio-science and technology research with the potential of use for purposes prohibited by the Convention;

in 2009

(e) with a view to enhancing international co-operation, assistance and exchange in biological sciences and technology for peaceful purposes, promoting capacity in building in the fields of disease surveillance, detection, diagnosis and containment of infectious diseases: (1) for States Parties in need of assistance, identifying requirements and requests for capacity enhancement, and (2) from States Parties in a position to do so, and international organisations, opportunities for providing assistance related to these fields;

and in 2010

(f) provision of assistance and co-ordination with relevant organisations upon request by any State Party in the case of alleged use of biological or toxin weapons, including improving national capabilities for disease surveillance, detection, and diagnosis and public health systems.

The above agreement provides a good basis for future collaboration and co-ordination between States Party to the Convention. The United Kingdom worked closely with European Union partners and with a wide range of other States in the preparatory phase and at the Conference itself to build agreement on the middle ground, which ultimately provided the basis for the final consensus.

(HC Deb 8 January 2007 Vol 455 c3WS–4WS)

**17/21**

A Defence Minister wrote:

The Chemical, Biological, Radiological and Nuclear (CBRN) defence research being conducted by the Defence Science and Technology Laboratory (DSTL) at Porton Down is directed towards helping the UK achieve its policy aim of maintaining political and military freedom of action, despite the presence, threat or use of CBRN weapons.

The current nature of the biological research is summarised under the headings of Hazard Assessment, Detection and Diagnostics, and Medical Countermeasures in the UK annual Confidence Building Measures returns to the United Nations. These returns are submitted by the UK in accordance with the Biological and Toxin Weapons Convention.

The returns for 2003 to 2005 can be found on the Foreign and Commonwealth Office website at:

www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1065432161527.

The return for 2006 is currently being collated for submission to the UN in April and will be available on the website in due course.

Future directions in CBRN research are set out in the recently published Defence Technology Strategy which can be found on the Ministry of Defence website at:

www.mod.uk/DefenceInternet/DefenceNews/DefencePolicyAndBusiness/LordDraysonLaunchesDefenceTechnologyStrategy.htm

(HC Deb 1 February 2007 Vol 456 c510W)

**17/22**

The Government were asked whether Article III of the Biological and Toxin Weapons Convention would prohibit the direct or indirect transfer by states of agents specified in Article I of the Convention to non-state actors. An FCO Minister wrote:

At the Sixth Biological and Toxin Weapons Review Conference, state parties reaffirmed that Article III of the convention is sufficiently comprehensive to cover any recipient whatever at international, national or sub-national levels and called on states parties to ensure that direct and indirect transfers of materials relevant to the Convention are authorised only when the intended use is for purposes not prohibited under the Convention.

[Article I contains the duty not "to develop, produce, stockpile or otherwise acquire or retain" biological agents or weapons based on them; Article III provides a duty not to transfer the prohibited items to "any recipient whatsoever", Ed.]

(HL Deb 8 February 2007 Vol 689 cWA151)

**17/23**

## Cluster Bombs

The Foreign Secretary was asked if she would make a statement on the outcome of the Oslo conference on cluster munitions; and how her Department plans to implement the agreement reached at the conference. She wrote:

The UK is pleased to be able to support the Oslo Declaration, committing us to work towards a new legally binding instrument on cluster munitions that cause unacceptable harm to civilians. The UK's interpretive statement at Oslo explains how this fits with our national policy available on the Foreign and Commonwealth Office website at:

www.britishembassy.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&cid=1163677198241.

We will pursue the aim agreed at Oslo with all the users and producers through the convention on certain conventional weapons and other relevant fora.

Asked further what discussions she has had with her (a) US, (b) Russian, (c) Chinese and (d) Israeli counterparts on the outcome of the Oslo conference on cluster munitions; what the outcome was of those discussions, She wrote:

I have not discussed cluster munitions with my US, Russian, Chinese or Israeli counterparts since the Oslo conference (22–23 February). The UK delegation to the conference on disarmament in Geneva has spoken to the aforementioned countries on the outcome of the Oslo conference and on addressing the issue of cluster munitions within the convention on certain conventional weapons. We continue to remain in close contact with these and other interested Governments on this important issue.

(HC Deb 7 March 2007 Vol 457 c1997W)

**17/24**

In its Report on Global Security: the Middle East, the FAC had written:

We conclude that the failure rate of 'dumb' cluster bombs could be as high as 30%, much higher than the Government's estimate of 6%. We further conclude that the failure rate of 'smart' cluster bombs could be as high as 10%, again significantly higher than the Government's estimate of 2.3%. We recommend that, in its response to this Report, the Government state whether it is prepared to accept that the failure rate of 'smart' cluster munitions could be as high as 10%, and if so, how it justifies continuing to permit UK armed forces to hold such munitions (Paragraph 106).

In its reply, the Government wrote:

55. The Government's policy on the use of cluster munitions balances military necessity with humanitarian concerns. Following an MoD assessment, the Defence Secretary announced on 20 March this year the immediate withdrawal of the UK's "dumb" cluster munitions, the RBL 755 and the MLRS M26 (these being systems that have neither an autonomous guidance capability, nor a self-destruct mechanism). The UK variant of the M85 submunition, which we retained, has a self-destruct mechanism and therefore does not fall into this category. It has undergone rigorous and comprehensive testing prior to entering service and is subject to regular in-service trials. In September 2005 an in-service safety and performance test carried out at the Hjerkinn Range, Dombass, Norway, concluded the failure rate was 2.3%. As such we do not accept that failure rates of the UK variant of the M85 could be as high as 10%.

56. The Government is concerned by reports of high failure rates of the Israeli M85 sub-munition in Lebanon, but notes that without Israeli firing data the quoted failure rates cannot have a status greater than an estimate. We are awaiting the results of Israel's internal investigation into their system's performance. We continue to call on Israel to make available to the UN full details of cluster munitions strikes from last summer's conflict between Israel and Hizbollah.

57. We share the Committee's concerns about certain types of cluster munitions. That is why the UK has withdrawn its "dumb" cluster munitions and is committed to securing a legally binding international instrument to address the

humanitarian impact of such cluster munitions. The UK is playing a leading role in multilateral discussions with this aim.

The Committee had written:

We accept that Israel has an inalienable right to defend itself from terrorist threats. However, we conclude that elements of Israel's military action in Lebanon were indiscriminate and disproportionate. In particular, the numerous attacks on UN observers and the dropping of over three and a half million cluster bombs (90% of the total) in the 16 hours after the Security Council passed Resolution 1701 were not acceptable. We recommend that, in its response to this Report, the Government explicitly state whether it believes that, in the light of information now available, Israel's use of cluster bombs was proportionate. (Paragraph 108)

The Government replied:

58. As the UK made clear during the conflict last year, we were deeply concerned by the deaths of civilians and damage to infrastructure in both Lebanon and Israel. We consistently urged Israel to act proportionately, to conform to international law, and to do more to avoid civilian death and suffering.

59. The Government recognises the UN statistics that the Committee highlights in its report. It is concerned by the estimate that one million cluster bombs remained unexploded; that 26% of Lebanon's cultivable land had been contaminated; and that 90% of the cluster bombs dropped on Lebanon occurred in the last 72 hours of the conflict. The Government is concerned by the findings of both the UN Commission of Inquiry's investigation into the conflict in Lebanon and Human Rights Watch's September 2007 report, both of which conclude that Israel's use of force was disproportionate and failed to adequately distinguish between military and civilian targets. However, it should be noted that the UN Commission of Inquiry itself recognises in its Report (para. 20) that the Report cannot constitute a full and final accounting of all alleged violations. We also note the US State Department's announcement in January 2007 that "there were likely violations" by Israel with regard to a "use agreement" between the US and Israel on their supply of cluster munitions.

60. We recognise that Israel faced a genuine threat throughout the conflict, and suffered a significant number of civilian casualties as a result of Hizbollah's rocket campaign. However, the large scale use of cluster munitions in the final 72 hours of the conflict following the adoption of UNSCR 1701 caused significant loss of life and injury, and economic hardship, for the population of south Lebanon. We have expressed these concerns to the Israeli Government and will continue to urge the Israelis to provide all relevant information to UN on the location of their cluster munition strikes in south Lebanon.

(Eighth Report of the Foreign Affairs Committee Session 2006–7 Global Security: The Middle East Response of the Secretary of State for Foreign and Commonwealth Affairs Cm 7212 (2007))

**17/25**
A Defence Minister wrote:

The UK does not carry out post-conflict humanitarian impact assessments after munitions, including cluster munitions, have been used; there is no requirement

to do so under International Humanitarian Law. The priority following operations is to clear unexploded ordnance in order to provide freedom of movement for our forces and conduct the highest priority clearance operations that threaten civilian lives.

We recognise that Explosive Remnants of War, caused by unexploded ordnance, including cluster munitions, are a humanitarian problem. That is why the UK has played an active role at the UN in creating a new legally binding protocol containing a number of new legally binding provisions that will provide significant humanitarian benefit to those civilians in areas affected by Explosive Remnants of War. We are urging all states to sign and ratify this protocol as soon as possible. We are in the process of ratifying this and the MOD is in the process of implementing its provisions. The universal implementation of this will drive a significant reduction in the post-conflict effects of Explosive Remnants of War.

We are still waiting for the outcome of the Israeli inquiry into their use of cluster munitions in Lebanon. To date the UK has contributed £2.7 million towards the clearance of unexploded munitions, including cluster munitions, in Lebanon. This is specifically intended to minimise the humanitarian impact of unexploded submunitions and other Explosive Remnants of War.

(HC Deb 25 July 2007 Vol 643 c1078W)

**17/26**
An FCO Minister wrote:

There is no internationally agreed definition of a cluster munition, or of a distinction between "dumb" and "smart". A definition will be the key element to negotiate in any future instrument, both in the Oslo Process and in the framework of the Convention on Certain Conventional Weapons. We believe the focus should be on banning those cluster munitions that pose the greatest risk to civilians: those without target discrimination or an in-built self-destruct/self-deactivation mechanism.

(HC Deb 4 December 2007 Vol 648 c1131W)

**17/27**

## Non-lethal Weapons

The Minister of Defence was asked (1) in what circumstances military personnel use non-lethal weapons on operations; and (2) what types of non-lethal weapons may be used in current military operations. He wrote:

UK military personnel use non-lethal weapons primarily on public order operations such as crowd control, when the safety of personnel needs to be protected but the use of lethal force would not be appropriate. This role has been fulfilled in Northern Ireland in support of the Police Service of Northern Ireland, and

in overseas operations in Iraq, Afghanistan and the Balkans. Depending on circumstances, UK military personnel may use batons, plastic baton rounds and CS smoke.

And further, what the policy reasons are for non-lethal spray type weapons not being routinely carried by British forces during operations.

**17/28**
A Defence Minister wrote:

Under the Chemical Weapons Convention, non-lethal spray weapons such as CS smoke may only be used for law enforcement, including domestic riot control purposes and are therefore unsuitable for use on many types of operations carried out by British forces.

(HC Deb 9 January 2007 Vol 455 c521W)

**17/29**

## Nuclear Weapons

A Defence Minister said:

So what is our nuclear deterrence policy? Our deterrent is intended to help ensure that nobody seeks to threaten our vital interests, and that nobody seeks to use nuclear weapons to blackmail us or the international community. It is not intended to coerce or threaten others; nor is it intended as a tool for war-fighting or to seek military advantage on the battlefield.

The principles which govern our approach to nuclear deterrence are unchanged, and the White Paper spells them out: our focus is on preventing nuclear attack; we will retain only the minimum deterrent required for our security; we maintain ambiguity about the circumstances in which we might contemplate use of nuclear weapons, although we are very clear that we would consider using them only in extreme circumstances of self-defence, including the defence of our NATO allies; our deterrent supports collective security through NATO; and an independent centre of nuclear decision-making in the UK enhances the overall deterrent effect of allied nuclear forces.

We will continue, as now, to have the flexibility to vary the number of missiles and warheads that might be employed, as well as having the option of a lower yield from our warhead. That flexibility can make our nuclear forces a more credible deterrent against smaller nuclear threats, but we remain clear that any conceivable use of our nuclear weapons—at whatever scale—would necessarily be strategic, both in intent and effect. Indeed, we have deliberately discontinued the use of the term sub-strategic, in the sense that it had been used previously to apply to a possible, limited use of our nuclear weapons.

One concern that has been expressed is that our deterrent is somehow operationally dependent on the United States, or that we can be prevented from

employing it. This is simply not the case. Decisions on any use of our nuclear weapons would be sovereign UK decisions, and no other country could prevent their employment. Only the Prime Minister can authorise the use of our nuclear weapons, even if the missiles are to be fired as part of a NATO response. The instruction to fire would be transmitted to the submarine using only UK codes and UK equipment. All the command and control procedures are fully independent, and the missiles do not use the global positioning satellite system: they have an inertial guidance system. Nothing in the planned Trident D5 life extension programme will change that position.

While we have never concealed that we choose to procure certain elements of our system from the United States, I can provide assurance that the system is fully operationally independent of the United States. Successive Governments would not have sustained our nuclear deterrent on these terms were that not the case.

Another charge levelled is that the retention and renewal of our deterrent system is illegal and, in particular, incompatible with our obligations under the nuclear non-proliferation treaty. Again, that is simply not the case. The UK has been, and will continue to be, at the forefront of efforts to reduce the size of existing arsenals and to fight proliferation. We have reduced the explosive power of our nuclear weapons stockpile by over 70 per cent since the end of the Cold War. We have the smallest stockpile of any of the five recognised nuclear powers, and only we have reduced to a single system. We already have less than 1 per cent of the total global stockpile of nuclear weapons.

Following careful assessment of our future deterrent needs, we have now decided to make a further 20 per cent cut, involving the dismantling of about 40 warheads. In future, the maximum number of operationally available warheads will be fewer than 160, down from fewer than 200. That will represent a reduction by about half since 1997, compared to the plans of the previous Government.

(HL Deb 24 January 2007 Vol 688 c1107)

## 17/30

In a debate on the future maintenance of the UK's strategic nuclear deterrent, the Foreign Secretary said:

Since the non-proliferation treaty came into force in 1970, all nuclear weapons states have taken steps to maintain their deterrents. The decisions on which we are seeking agreement today are no different. But the UK has been more open and transparent than any other state in explaining the basis of our decisions in advance to our people and to the international community.

There are four key issues. I will address each in turn. The first is what are we doing to fulfil our obligations under the nuclear non-proliferation treaty . . . The NPT created two distinct categories of states. Those that had already conducted nuclear tests—ourselves, the US, the Soviet Union, China and France—were designated nuclear weapons states and could legally possess nuclear weapons. All other states-signatory were designated non-nuclear weapons states. Article VI of the NPT imposes an obligation on all states

"to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a Treaty on general and complete disarmament".

The NPT review conference held in 2000 agreed, by consensus, 13 practical steps towards nuclear disarmament. The UK remains committed to these steps and is making progress on them.

We have been disarming. Since the cold war ended, we have withdrawn and dismantled our tactical maritime and airborne nuclear capabilities. We have terminated our nuclear capable Lance missiles and artillery. We have the smallest nuclear capability of any recognised nuclear weapon state, accounting for less than 1 per cent. of the global inventory, and we are the only nuclear weapon state that relies on a single nuclear system. The Prime Minister has announced a further unilateral reduction in our nuclear weapons in line with our commitment to maintain only the minimum necessary deterrent. We will reduce the stockpile of operationally available warheads by another 20 per cent., to fewer than 160 warheads during the course of this year. This will involve the eventual dismantlement and disposal of about 40 warheads. The UK will then have cut the explosive power of its nuclear weapons by three quarters since the end of the cold war. That is more than any other nuclear weapon state has yet done . . .

The latest proposal does not change the trend of disarmament that we have been pursuing. I want clearly to spell out to the House what we are not doing. We are not upgrading the capability of the system. We are not producing more usable weapons. We are not changing our nuclear posture or doctrine—in particular, we do not possess nuclear weapons for "war fighting" or tactical use on the battlefield. And we have not lowered the threshold for the use of nuclear weapons . . .

We have taken other unilateral actions in line with the 13 steps. We have not conducted a nuclear test since 1991. We ceased production of fissile material for use in nuclear weapons in 1995. And all excess fissile material stocks no longer required for defence purposes have been placed under international safeguards. Those unilateral actions have been complemented by active diplomacy on multilateral nuclear disarmament . . . We led international efforts on the comprehensive test ban treaty. The UK ratified the treaty in 1998, and our diplomats continue repeatedly to urge other countries to ratify so that it can enter into force. As I said, we have called repeatedly for the immediate start of negotiations in the conference on disarmament in Geneva on a fissile material cut-off treaty . . .

I share the view of many in the House that it is perhaps time for a fresh push on these measures on the international stage. How successful such a push would be remains to be seen, but there have been a series of bilateral agreements since the end of the cold war, which have greatly reduced the major nuclear arsenals. By the end of this year, the United States will have fewer than half the number of silo-based nuclear missiles that it had in 1990. By 2012, US operationally deployed strategic nuclear warheads will be reduced to about one third of 2001 levels. Under the terms of the strategic offensive reductions treaty, Russia is

making parallel cuts, and the French have withdrawn four complete weapons systems.

Britain remains committed to the abolition of nuclear weapons, and we are actively engaged, and encouraging others to be engaged, in a process that will lead to that goal. But progress will be steady and incremental, and only towards the end of that process will it be helpful and useful for us to include our own small fraction of the global stockpile in treaty-based reductions.

So there is no basis to suggest that we have done anything other than fully comply with our obligations under the NPT. Indeed . . . I regard it as dangerous folly to equate our own record, as some have tried to do, with that of countries such as North Korea and Iran, which have stood or stand in clear breach of their obligations as non-nuclear weapon states under the NPT. There is no legal or moral equivalence between their position and ours. I would urge people, whatever other arguments they might use to oppose the motion, not to use that one, because it undermines the very basis of the treaty itself: that those recognised as non-nuclear weapon states should not seek to acquire nuclear weapons. The international non-proliferation regime is not perfect, but it has prevented the wide-scale proliferation of nuclear weapons. I regard it as dangerously irresponsible to use the excuse that the UK is retaining its weapons to justify others seeking to acquire them, and it runs the real risk of increasing the global nuclear threat, not reducing it.

(HC Deb 14 March 2007 Vol 458 c301–303)

**17/31**

The Minister of Defence wrote:

The Government are strongly committed to the Nuclear Non-Proliferation Treaty (NPT), which is the cornerstone of the nuclear non-proliferation regime. The White Paper on the Future of the United Kingdom's Nuclear Deterrent published on 4 December 2006 (Cm 6994) makes clear that renewing our minimum nuclear deterrent capability is fully consistent with all our international obligations, including those under the NPT . . .

As stated in paragraph 3–4 of the White Paper . . .

"Our focus is on preventing nuclear attack. The UK's nuclear weapons are not designed for use during military conflict but instead to deter and prevent nuclear blackmail and acts of aggression against our vital interests that cannot be countered by other means."

It is a key part of our deterrence posture that we retain ambiguity about precisely when, how and at what scale we could contemplate use of our nuclear deterrent. We would only consider using nuclear weapons in self-defence—including the defence of our NATO allies—and even then only in extreme circumstances. That has been and will remain our policy.

(HC Deb 12 March 2007 Vol 458 c57W–58W)

## Part Eighteen: Neutrality and Non-Belligerency

## Part Nineteen: Legal Aspects of International Relations and Co-operation in Particular Matters

**Part Nineteen: I.A**. *Legal Aspects of International Relations and Co-operation in Particular Matters—General economic and financial matters—Trade*

**19/1**
The International Development Secretary was asked what assessment he had made of the potential impact on access to HIV treatment of the Government of Thailand's issuance of compulsory licences to produce locally or import generic versions of the drugs efavirenz and lopinavir/ritonavir.

A Minister wrote:

The Thai Government only recently announced their intention to issue compulsory licences for a number of patented medicines; therefore the impact of this action on access to HIV treatment is not yet clear.

We support the right of developing countries to implement the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) as is appropriate for their circumstances and in order to ensure access to HIV treatment. We also support the right of developing countries to utilise the flexibilities allowed under TRIPS to ensure affordable access to medicines to meet public health needs, this includes the use of compulsory licensing provisions included in the TRIPS agreement.

(HC Deb 6 March 2007 Vol 457 c1824W)

**19/2**
A Minister wrote:

The UK Government's 2005 position paper on Economic Partnership Agreements (EPA) (http://www.dfid.gov.uk/aboutdfid/organisation/ukpolicy-epas.pdf, Ed.) states that

"The [European] Commission should be ready to provide an alternative to an EPA at the request of any African, Caribbean or Pacific (ACP) country."

This remains our position. We would be very happy to consider and implement a WTO compatible alternative if put forward by any member of the ACP. However, the ACP have made it clear that they are committed to completing EPA negotiations by the end of this year and the UK Government consider it a priority to work with them towards that goal.

In the event that the deadline is not met in any of the regions, our position is that we would like to see arrangements which are least disruptive to ACP exporters and that do not leave the ACP any worse off than they are under current arrangements.

(HC Deb 10 September 2007 Vol 463 c2031W–2032W)

**19/2**
The Secretary of State for International Development was asked why there was such urgency about concluding economic partnership agreements between certain ACP countries and the EU. He said:

Straightforwardly, the urgency is not set down by the European Commission per se, but the Cotonou agreement has been deemed World Trade Organisation-incompatible, and the deadline of 31 December is of long standing. Simply rolling forward the Cotonou provisions would be WTO-incompatible, and the deadline has been clear.

(HC Deb 15 November 2007 Vol 467 c875)

**19/2**
A Minister wrote:

No intellectual property provisions have been included in the Economic Partnership Agreements (EPAs) signed to date.

The UK has always been clear that issues other than trade in goods should only be included in EPAs if the African, Caribbean or Pacific regions wish them to be. If a region wants to negotiate intellectual property rights in their EPA, then the UK policy is that no country should be required to go beyond existing commitments under the World Trade Organisation (WTO) agreement on trade related intellectual property rights (TRIPS). This agreement includes the right for countries to improve their access to cheaper medicines by producing, exporting or importing generic medicines under a compulsory licence. The UK supports this right. The Department for International Development has financed a number of organisations to assist developing countries to make better use of their TRIPS flexibilities, including compulsory licensing.

(HC Deb 13 December 2007 Vol 469 c839W)

**19/3**
A Minister wrote:

We continue to provide support and advice to build developing countries own ability to meet International Labour Organisation (ILO) and environmental standards, rather than seeking to impose solutions from outside.

The UK has consistently promoted efforts to ensure that international trade takes place on a sustainable basis, the principles of which include respect for the rights of workers and for environmental standards. We support voluntary codes of practice such as the Ethical Trading Initiative and the Fairtrade Foundation. We also support the work of the International Labour Organisation (ILO), which has a three-year, £20 million partnership agreement with DFID. The UK Government are also supporting sustainable development through measures such as the Extractive Industries Transparency Initiative (EITI) and the EU Forest Law Enforcement, Governance and Trade (FLEGT) initiative.

There are no restrictions available to be applied to imported goods which are manufactured for United Kingdom-based retailers by work forces that are either

employed under conditions that do not meet International Labour Organisation (ILO) standards, or that operate in factory conditions that breach local environmental pollution regulations. This is because there would be significant practical obstacles to implementing such measures, as well as the fact that it would be difficult to make them compatible with World Trade Organisation (WTO) rules.

(HC Deb 15 October 2007 Vol 464 c757W)

**19/4**
A Minister wrote:

Internationally, many animals hunted and traded as bush meat are listed in the appendices to the Convention on International Trade in Endangered Species (CITES). Where this is the case, any international trade in these animals, their parts or derivatives is therefore either banned completely or controlled by means of a permitting system.

(HL Deb 30 October 2007 Vol 695 cWA182)

**19/5**
A Minister wrote:

International commercial trade in ivory has been prohibited under the Convention on International Trade in Endangered Species (CITES) since 1989 and this is actively enforced by HM Revenue and Customs at our borders and the police service internally. The illegal import or export of ivory can result in a large fine and/or several years imprisonment.

The UK fully supports efforts undertaken by the CITES community to improve enforcement activity in source and destination markets as well as working to eradicate illegal trade within the UK itself. The UK financially supports two key CITES programmes related to ivory trade; the Monitoring of the Illegal Killing of Elephants (MIKE) and the Elephant Trade Information System (ETIS) programmes. These enable the international community to monitor poaching and illegal trade levels so resources can be targeted where they are most needed.

(HC Deb 15 November 2007 Vol 467 c341W)

## **Part Nineteen: I.B.** *Legal Aspects of International Relations and Co-operation in Particular Matters—General economic and financial matters—Loans*

**19/6**
A Minister wrote:

Last autumn, after strong lobbying by the UK, the international community agreed to remove the requirement (known as the Heavily Indebted Poor

Countries (HIPC) sunset clause) that countries must have started a programme of support with the IMF by the end of 2006 to remain eligible for debt relief. All 13 countries that have yet to reach HIPC decision point will therefore still be able to qualify for debt relief.

The UK supports debt relief for all poor countries—not just HIPCs—that would use the savings to progress towards the millennium development goals. We therefore continue to offer debt relief (reimbursements of 10 per cent of debt service payments to IDA and the AfDF) to qualifying low-income countries under the UK Multilateral Debt Relief Initiative. Moldova recently qualified for this assistance, bringing the total number of recipients to seven countries.

The UK is working with the World Bank, IMF, African Development Bank and other development partners to ensure that countries that have benefited from debt relief can access the financing they need to reach the millennium development goals, without re-accumulating unsustainable levels of debt. The joint World Bank/IMF Debt Sustainability Framework (DSF) provides guidance on new borrowing and lending to low-income countries. Countries that may struggle to repay loans receive grants from the World Bank and African Development Bank instead. The UK is also leading efforts among export credit agencies (ECAs) to agree new guidelines on responsible lending to countries that have received debt relief. It is important that borrowers and lenders work together to ensure any new borrowing is appropriately concessional, well targeted and used for productive purposes.

(HL Deb 9 January 2007 Vol 688 cWS6)

**19/7**
A Minister wrote:

To be eligible for debt relief under the heavily indebted poor countries (HIPC) initiative, as defined by the international system, a country must:

have unsustainable debts (debt-to-export levels above 150 per cent. or debt-to-government revenues above 250 per cent.) after the application of traditional debt relief measures, such as those offered by the Paris Club group of government creditors;

only be eligible for assistance on highly concessional terms from the International Development Association (IDA) at the World Bank, and the International Monetary Fund's (IMF) Poverty Reduction and Growth Facility;

establish a track record of reform and implement a Poverty Reduction Strategy Paper, using the savings from debt relief to reduce poverty;

and have cleared any outstanding arrears to the International Financial Institutions.

Each heavily indebted poor country has to decide whether or not to seek debt cancellation under the HIPC initiative. Those that complete the HIPC process are granted complete cancellation of their debts to the IMF, IDA and African Development Fund under HIPC and the Multilateral Debt Relief Initiative.

(HC Deb 5 July 2007 Vol 462 c1165W)

**19/8**
A Minister wrote:

DFID has not made its own assessment [of the debt status of Lesotho] as, like other agencies, it relies on the assessments made by the IMF and World Bank, which administer the HIPC initiative.

In June 2005, the International Monetary Fund conducted a Debt Sustainability Analysis and concluded that Lesotho's debt levels were sustainable. This means that Lesotho does not classify as a heavily indebted poor country (HIPC). However, the UK is committed to ensuring debt relief for all IDA—only low income countries that can use the resources effectively for poverty reduction. Lesotho would qualify for DFID's Multilateral Debt Relief Initiative once its public expenditure management systems are effective enough to ensure funds can be spent on the intended purposes of poverty reduction.

(HC Deb 25 July 2007 Vol 463 c1120W)

**19/9**
A Minister wrote:

The poorest countries are eligible for 100 per cent. debt cancellation on their bilateral debts under the Heavily Indebted Poor Countries (HIPC) Initiative, as well as 100 per cent. debt cancellation on their debts to the World Bank, International Monetary Fund (IMF) and African Development Bank under the Multilateral Debt Relief Initiative (MDRI). The UK is at the forefront of debt cancellation for poor countries and international poverty reduction. We exceed our commitments under the Heavily Indebted Poor Countries (HIPC) and Multilateral Debt Relief Initiatives (MDRI), providing the poorest countries with 100 per cent. cancellation on their bilateral and multilateral debts. The HIPC and MDRI systems have cancelled billions of pounds worth of debt and we continue to believe that they are the most appropriate way to tackle sovereign debt problems. Unpayable debts should not hinder the poorest countries from making progress towards the millennium development goals.

All of our loans are made to internationally recognised governments, are bound by legal contracts and are recognised in international law, we do not therefore consider them to be "illegitimate". We believe that debt relief should be provided on the basis of a country's economic situation rather than their history of poor or corrupt governance. Many countries that have a history of poor governance are now middle-income countries. If we cancelled so-called "illegitimate" debts for such countries, the full cost would have to be met from DFID's aid budget, diverting vital resources away from poorer countries. It is also likely that creditors and investors would take a negative view of the credit worthiness of developing countries in case the loans were later repudiated. This would be damaging for developing countries trying to strengthen their economies and reduce poverty through access to international investment and financing.

(HC Deb 16 October 2007 Vol 464 c985W)

**Part Nineteen: III.** *Legal Aspects of International Relations and Co-operation in Particular Matters—Environment*

**19/10**
A Minister said:

The Government are deeply concerned about the reported cruelty during the Canadian seal hunt. They have undertaken a review of policy on this issue and have concluded that the UK should press the European Commission to propose EU-wide measures to ban the import of listed harp and hooded seal products. This would establish a harmonised EU approach.

It is the Government's view that action taken at EU level would be more effective than national measures alone, avoiding distortions in the operation of the single market and allowing for effective enforcement by customs authorities. The UK is committed to pursuing EU action and ensuring that any resulting EU Commission proposal will be effective. We are writing to Commissioner Dimas requesting urgent action.

Meanwhile, the EU proposal for an EU-wide ban on the domestic cat and dog fur trade is under active discussion within the Council of the European Union and European Parliament and we hope to be able to agree this proposal as quickly as possible.

(HC Deb 8 February 2007 Vol 456 cWS43)

**19/11**
Winding up a debate on illegal logging, an Environment Minister said:

. . . the $15 billion lost each year by some of the poorest countries in the world through illegal logging is calculable. That is the extent of the problem . . . Some of the poorest people in the world lose the most. More than that, 20 per cent. of $CO_2$ emissions into the atmosphere, which contribute to climate change, come from deforestation. That is a measure of the social importance of the issue.

In both procurement and the wider control of wood supplies, sustainability absolutely remains the Government's goal. Verification of legality . . . is simply the first step and an indicator of sustainability. It is not an alternative to it.

There are some differences between the Government's policy and that being adopted by some member states. In particular, our standard contract requirements exclude reference to the protection and well-being of forest-dependent people . . . the UK has been challenged on that. We are a signatory to international agreements on sustainable forestry that recognise the importance of protecting forest-dependent peoples' rights and customs, so that challenge is understandable. We are seeking further advice on procurement law, and will change our position to include relevant social criteria if we are confident that it would be appropriate and legal to do so.

. . . the Governments of Denmark and the Netherlands concluded that that was appropriate and legal. Our previous legal advice is that that would not be

appropriate or legal, and we are considering whether to revise that and whether we can press it further.

The development of a discerning market for legal and sustainable timber requires institutional and market processes to work together. The UK has continued to support co-operation with the timber trade, especially in getting messages to the supply chain that legal timber is now required. Much has been achieved . . . but I am determined that there must be a serious step change in Government procurement and in our actions to address illegal and unsustainable timber production.

(HC Deb 28 February 2007 Vol 457 WH314)

**19/12**
The Secretary of State for Business wrote:

The Government are also working towards a regulatory regime which will manage the safe and reliable storage of $CO_2$ and does not conflict with international agreements. We currently expect to consult on UK regulation of CCS in November [2007].

Regulatory work also includes amendments to international conventions and working towards the inclusion of CCS in the EU ETS. The UK has already taken the lead in proposing and securing amendments to the London Convention and OSPAR treaties which legalise $CO_2$ storage beneath the seabed, a major step towards enabling the implementation of CCS.

With Norway we have established a taskforce to establish the underlying principles for $CO_2$ storage in the North Sea basin. The work of the taskforce is progressing well and has already produced its first deliverable, a report on a set of common principles for the regulation and management for storing $CO_2$ in geological formations beneath the seabed.

(HC Deb 5 July 2007 Vol 462 c117W)

**19/13**
An Environment Minister wrote:

The UK Government works actively through several international organisations to further the protection offered to dolphins and other cetaceans. These include the Agreement on the Conservation of Small Cetaceans of the Baltic, North East Atlantic, Irish and North Seas (ASCOBANS), the Convention for the Protection of the Marine Environment of the North-East Atlantic (the "OSPAR Convention") and the Convention on International Trade in Endangered Species (CITES).

The UK Government have implemented a comprehensive system of by-catch monitoring under the requirements of the EC Habitats Directive and Council Regulation 812/2004. In 2003, the UK was the first member state to publish a response strategy for the monitoring of small cetaceans by-catch. In December 2004, the UK banned pelagic pair trawling for bass by UK vessels within 12 miles off the south-west coast of England. The Sea Mammal Research Unit

(SMRU) regularly reports the results of its research on by-catch monitoring which covers all relevant UK fishery sectors, including the bass pair trawl fishery to the Department, and has recently presented us with their 2006 findings. This report will be submitted to the European Commission and published on DEFRA's website in due course. The Commission evaluate all contributing member states' schemes.

The UK Government have identified the potential benefits of acoustic devices, such as pingers, in reducing bycatch of dolphins and other cetaceans in fixed gear fisheries and argued successfully at an international level for these devices to be required in certain fisheries by EU legislation. Prior to enforcing the use of pingers under Council Regulation EC 8121 2004, the UK Government wants to ensure that those we recommend to be used are safe and cost effective for the industry and offer the maximum protection to porpoises.

We have also provided significant funding for collaborative working with other countries to collect information on the distribution and abundance of cetaceans in European Atlantic offshore waters. Other countries participating in this research study are France, Ireland and Spain. The outputs from this work will provide new information on the distribution, abundance and habitat preferences of a number of cetaceans, which include the bottlenose dolphin and common dolphin. This information will be used to assess the threats to dolphins and inform what mitigation measures may be required.

All dolphins are listed in either Appendix I or II of CITES. Under CITES, commercial trade in wild-taken Appendix I dolphins is only allowed in exceptional circumstances. Appendix II dolphin species are not necessarily threatened with extinction, but may become so unless trade is regulated. The UK supports the listing of dolphins on the appropriate Appendix and, in 2004, supported the up-listing of the Irrawaddy dolphin from Appendix II to I. Under CITES, countries manage trade in listed species to ensure that their conservation is not threatened by trade. Under that management regime, the UK (and EU) takes strict measures in respect of trade, and keeping in captivity, of all dolphins. Trade in wild-taken dolphins would only be allowed in exceptional circumstances, for example scientific, breeding, or educational purposes (where these would bring conservation benefits to the species concerned). Commercial trade in the EU in these species is strictly prohibited. The UK encourages other countries to adopt similar standards.

(HC Deb 21 November 2007 Vol 467 c861W–862W)

## **Part Nineteen: IV.** *Legal Aspects of International Relations and Co-operation in Particular Matters—Natural resources*

### 19/14

An Environment Minister wrote:

The UK Government are pursuing rainforest protection through a number of measures that include research on improving forest management, banning

trade in endangered species and reducing trade in illegally logged timber products.

On reducing the trade in illegal timber from rainforests, and all other forest types, the Government are working to implement the EU Forestry Law Enforcement Governance and Trade (FLEGT) regulation, adopted in 2005. This allows the EU to enter into Voluntary Partnership Agreements with timber producing countries, and will include a licensing system to identify legal timber products for export to the EU.

Collaboration continues with other major consumer countries in the G8 (plus China) and with the private sector. In particular, the UK Government's timber procurement policy, which requires all timber supplied to have derived from legally harvested trees, has become a beacon for other Governments to tackle illegal logging through voluntary consumer action.

Developing countries currently have no obligations to mitigate greenhouse gas (GHG) emissions, although they can contribute to global emission reductions by hosting projects under the Clean Development Mechanism (CDM). The CDM includes afforestation and reforestation projects, but not deforestation, because of concerns that forestry protection projects would displace the deforestation elsewhere, with little or no net gain.

Under the United Nations Framework Convention on Climate Change negotiations, Papua New Guinea and the Coalition of Rainforest Nations (CRN), and subsequently Brazil, have proposed that developing countries might participate in climate change agreements by voluntary targets to reduce deforestation below national (rather than project specific) baselines.

Achievement relative to a national reference level would take account of any displacement of deforestation within a country.

At the launch of the Stern Review in October 2006 . . . the Chancellor of the Exchequer announced that the UK would be working in partnership with a number of partners to explore ways of mobilising international resources to assist developing countries in sustainable forestry management. These partners include Brazil, the CRN, other developing countries, Germany (as Presidency of the G8) the EU and the World Bank. We are currently in talks with Germany and developing countries to establish how best to take this forward.

Furthermore, the UK Government are committed to working with other countries to promote the conservation of the world's wildlife, for example, through our membership of agreements such as the Convention on International Trade in Endangered Species (CITES) . . .

United Nations Food and Agriculture Organisation (FAO) data shows that about 13 million hectares of the world's forests are lost annually due to deforestation. Brazil (3,103) and Indonesia (1,871) demonstrated the largest net forest loss (1,000 hectares per year) between 2000 and 2005. However, the net rate of loss is slowing down, thanks to new planting and natural expansion of existing forests. A range of initiatives introduced by Brazil are thought to have reduced deforestation rates in the Amazon by an estimated 31 per cent. in 2004–05 and 30 per cent. in 2005–06.

No single action can stop illegal logging. Combating it requires the simultaneous implementation of many policies and measures in and between those countries that produce timber and those that import it. In 2002, the UK signed a Memorandum of Understanding with Indonesia that commits both Governments to work together to tackle illegal logging and the associated trade in timber between the two countries. Forest Law Enforcement, Governance and Trade (FLEGT) legislation was adopted under the UK Presidency of the European Union (EU) in December 2005. This will allow the EU to enter into agreements with developing countries that export timber.

In January 2006, new funding of £24 million over five years to tackle illegal logging and underlying governance problems was announced. This will focus on tropical countries in Africa and Asia.

Action to reduce emissions from deforestation is not currently included under the Kyoto Protocol. This is because of the risk of such projects simply resulting in displacement of deforestation, to no net environmental gain. Proposals recently put forward by Brazil, Papua New Guinea (PNG) and Costa Rica, supported by the Coalition of Rainforest Nations, measure reductions in emissions relative to a national baseline, rather than a project-specific one. This greatly reduces the risk of displacement. The UK welcomes both proposals, and is actively working with the EU and international negotiating partners to secure a successful outcome on reducing emissions from deforestation in developing countries at the UN climate negotiations in Bali, in December 2007.

(HC Deb 24 January 2007 Vol 455 c1800W–1801W)

**19/15**
A Minister said:

Let me start with international labour standards, which are set out in various international treaties. Perhaps the most quoted are . . . the ILO Conventions and the European Convention on Human Rights. The UK was one of the founding members of the ILO and was among the first to ratify its key conventions, including the central ones relating to trade union rights—conventions 87 and 98. We therefore take our obligations seriously. During the 1980s, our reputation was diminished internationally by the removal of trade union rights at GCHQ, and hon. Members will recall that one of the first acts of the Labour Government when they came to office in 1997 was to restore trade union rights at GCHQ, which signalled both domestically and internationally where we stood on these issues.

The ILO has mechanisms to monitor member state compliance with international standards, and there is often debate about whether member states are conforming with the spirit and letter of the conventions. Even this country has been part of those debates over the years, and I am pleased to say that it has never been formally reprimanded by the ILO's governing body, although there has been debate about laws in this country and others and the extent to which they comply with the conventions. The conventions often focus on broad principles, which is important, because they need to apply to many different settings around the world, with different labour market conditions, in both developed and developing countries.

Over the years, we have engaged in an ongoing and constructive dialogue with the ILO about the conventions, and I understand that its advisory committees have not interpreted its trade union conventions as requiring companies to recognise trade unions for collective bargaining purposes. That is subject to national legal systems and the negotiation that takes place between unions and companies.

...

When it comes to ILO obligations, the United States is not signed up to every Convention that we are signed up to, and, in any case, virtually every ILO member state faces questions as to whether it is interpreting its obligations fully. These are not clear-cut issues, and different interpretations of treaty obligations are possible. This is not always as simple as saying that because these questions are raised, the basic international standards are not being observed.

It should also be expected that the terms and conditions of work forces around the world will vary, as will even those between work forces in developed countries. That is because labour market conditions, tax and social security systems and so on differ from state to state.

...

We would expect [British companies operating abroad] to comply with the legal systems in which they operate. Some countries have ensured that basic standards are built into their employment law, although that is not the case in others. We would encourage British companies operating around the world voluntarily to apply the basic minimum standards. We cannot compel our companies to operate in that way in foreign jurisdictions, although we have instituted arrangements in our own corporate law and we are party to monitoring arrangements that provide for greater openness and transparency in this area.

(HC Deb 24 July 2007 Vol 463 c226WH–229WH)

## 19/16

The representative of the UK made the following statement to the UNGA Sixth Committee on 2 November 2007:

I now turn to chapter V [the Report of the ILC, Fifty-ninth session, A/62/10, Ed.] on shared natural resources...

The United Kingdom notes that the Drafting Committee of the Commission adopted, in 2006, 19 draft articles on transboundary aquifers. We have, in past meetings of the Sixth Committee, refrained from making substantive comments on this topic, primarily because we do not consider that we are directly affected by this aspect of the Commission's work. We have, however, followed the Commission's work closely, and recognise the importance of this issue.

The United Kingdom observes that the Special Rapporteur and the Commission have had a lengthy debate on whether or not, and how, the Commission might cover the issue of shared oil and gas resources. We have previously expressed the view in this Committee, as have other delegations, that any study on oil and

gas would entail great complexity, and we are also uncertain about the existence of, or need for, any universal rules on this question. Like many other States, we have a lot of experience in dealing with cross-boundary oil and gas fields. In general, bilateral discussions with neighbouring States are guided by pragmatic considerations, based on technical information. Our general approach to these issues is that States should co-operate in order to reach agreement on the division or sharing of such cross-boundary fields.

With this in mind, the United Kingdom is not convinced, at this stage, that there is a pressing need for the Commission to elaborate a set of draft articles or guidelines on shared oil and gas resources.

(Text supplied by FCO)

## **Part Nineteen: VIII.** *Legal Aspects of International Relations and Co-operation in Particular Matters—Legal matters (for example judicial assistance, crime control, etc.)*

### Aut dedere aut iudicare

**19/17**

The representative of the UK made the following statement to the UNGA Sixth Committee on 2 November 2007:

Finally, I will turn to chapter IX of the [International Law] Commission's Report [Fifty-ninth session, A/62/10, Ed.] on the obligation to extradite or prosecute (*aut dedere aut judicare*)...

The United Kingdom has some general comments about the direction of the Commission's work on this topic. Last year, in the Sixth Committee, we urged the Commission to treat the principle of universal criminal jurisdiction with caution, and not to be diverted by a comprehensive study of universal jurisdiction. In this regard, we welcome the Special Rapporteur's decision to draw a clear distinction between the obligation to extradite or prosecute and the principle of universal jurisdiction, and to carry out a careful examination of their mutual relationship.

The United Kingdom also welcomes the Special Rapporteur's confirmation that the Commission's further work on this topic will not examine the so-called 'triple alternative', which refers to the possible obligation to extradite, prosecute, or surrender an individual to an international criminal tribunal. As we stated last year in the Sixth Committee, the surrender of individuals to international criminal courts is governed by a distinct set of treaty arrangements and legal rules.

The United Kingdom has previously expressed the opinion that the obligation to extradite or prosecute only arises as a matter of treaty law, and is not a rule of customary international law. This remains our view. Even if the obligation were said to exist as a matter of customary international law, this would exist only in relation to a very narrow class of crimes.

Finally, with regard to the final form of the Commission's work, the United Kingdom encourages the Commission to remain flexible at this early stage of its consideration of this topic.

(Text supplied by FCO)

**19/18**

Memorandum of understanding on co-operation between the Office of the Prosecutor General of the Russian Federation and the Crown Prosecution Service of England and Wales, February 2006:

The Office of the Prosecutor General of the Russian Federation and the Crown Prosecution Service of England and Wales, hereinafter referred to as the Participants,

RECOGNIZING the importance of strengthening and further developing mutual co-operation in the enforcement of criminal law,

AWARE OF the need to ensure that co-operation is carried out in the most effective way,

BASED on the principles of equality, respect for sovereignty and universally recognized norms of international law aimed, in particular, at securing protection of human rights and freedoms,

HAVE DECIDED AS FOLLOWS:

Article 1

The Participants will co-operate on the basis of this Memorandum of Understanding within the limits of their competence and in accordance with the law and international obligations of their respective States.

Article 2

The Participants will, upon mutual agreement, hold meetings and consultations in order to exchange their practical experience and discuss the issues of mutual interest, including those discussed at relevant international fora and organizations including the United Nations Organization, the Group of Eight and the Council of Europe.

Article 3

The Participants will co-operate in the sphere of extradition and in other issues of mutual legal assistance. Where appropriate, this shall include consultation and the provision of advice at the stage when such requests are being drafted.

Article 4

The Participants will, upon mutual agreement, co-operate on issues of mutual interest concerning professional training of the staff of both the Office of the Prosecutor General of the Russian Federation and the Crown Prosecution Service of England and Wales.

Article 5

The Participants may, upon request or upon their own initiative, exchange information on the legal systems and national legislation of their respective States.

Article 6

The Participants will, upon mutual agreement, hold joint conferences, workshops and round table discussions.

Article 7

This Memorandum of Understanding shall not prevent the Participants from defining and developing any other mutually acceptable directions and forms of co-operation.

Article 8

1. Within the framework of this Memorandum of Understanding, the Participants may communicate with each other directly.

2. Each Participant will appoint a department and/or officers responsible for maintaining contact with the other Participant and inform the other Participant thereof, specifying the relevant contact details within 30 days from the date of signature of this Memorandum of Understanding.

Article 9

Documents falling within the framework of this Memorandum of Understanding will be forwarded with a translation into the language of the State of the Participant to whom they are addressed unless otherwise agreed.

Article 10

The Participants will each bear their own expenses arising from co-operation on the basis of this Memorandum of Understanding unless otherwise agreed.

Article 11

The Participants will settle any disputes arising from the interpretation and application of this Memorandum of Understanding through consultations on the basis of mutual understanding and respect.

Article 12

1. This Memorandum of Understanding will enter into force upon the date of its signature.

2. This Memorandum of Understanding will remain in force unless and until its denunciation by either Participant by notice in writing to the other Participant. This Memorandum of Understanding shall cease to be in force 60 days after the receipt of such notice by the other Participant.

Done at London on this 15th day of November 2006 in duplicate, in Russian and English, all texts being equally authentic.

(www.cps.gov.uk/publications/agencies/opgrf_cps.html)

**19/19**

## Corruption

The Minister for Trade said:

The International Development Secretary accounted for much of the work in his progress report to the Prime Minister, published on 12 March. I offer a few examples. First, we continue to push the anti-corruption agenda in international forums, such as the G8, the European Union and the UN, particularly the implementation of the UN convention against corruption, whose provisions on improving international co-operation on asset recovery are particularly important.

Secondly, we are implementing the third EU money-laundering directive to make it even harder to move criminal money, including looted assets, through our financial system. Thirdly, thanks to funding of £6 million from DFID over three years, in recognition of the impact of the scourge on developing countries, we have strengthened the UK's law enforcement capacity to investigate allegations of foreign bribery and the laundering of corrupt assets by political elites. On the former, the City of London police are already supporting the Serious Fraud Office in five investigations and made arrests in January. On the latter, the UK has restrained £34.6 million of assets acquired through corruption by foreign political elites.

The Metropolitan police has established a strong operational relationship to bring specific cases to prosecution. The Met's arrest of the former Governor of Bayelsa state had a strong impact in deterring wealthy Nigerians from trying to launder money through London. The Met has also responded to requests from the Nigerian Government relating to a second former state governor. In one case, £1 million was returned and in the other, property bought in London is about to be sold so that the proceeds can be returned to the people of Nigeria from whom they were stolen.

Let me provide other examples. Following an investigation by the Ministry of Defence police, an MOD official, Michael Hale, after taking bribes from a Californian company, was convicted earlier this month on nine counts of corruption. For the OECD, that case does not count, since the conviction was of the bribe taker rather than the bribe giver, but I stress that it shows that the legal framework and the requirement for the Attorney-General's consent worked as they should. It also showed the judge's resolve to punish such crimes with a custodial sentence.

Separately, a UK citizen, Joyce Oyebanjo, was convicted earlier this year of laundering £1.4 million of stolen assets from Nigeria. She was sentenced to three years' imprisonment. The Attorney-General has secured an extra £22 million to fund Serious Fraud Office investigations arising from alleged corruption under the UN oil-for-food programme.

On top of the hundreds of millions of pounds that the Department for International Development has already spent on improving governance in

dozens of countries around the world, we recently launched a new £100 million governance and transparency fund to strengthen the ability of civil society, parliamentarians, trade unions and a free media to hold their Governments to account.

As well as boosting the UK's own capacity to investigate international corruption allegations, we have taken an important role in the International Association of Anti-Corruption Authorities, set up by the Chinese to improve co-ordination and sharing of best practice among anti-corruption law enforcement authorities. Both the Director of Public Prosecutions for Northern Ireland and the director of the Serious Fraud Office will help to direct the organisation. The UK's leadership on the extractive industries transparency initiative has allowed it to become widely recognised as the international standard for the management of public revenues from oil, gas and mining.

We were also in at the beginning of the conception of the Kimberley process to boost transparency in the diamond trade and stamp out "conflict" diamonds. That is now so successful that it is estimated that more than 99 per cent. of rough diamonds are certified as conflict-free. We continue to work with partners to address outstanding issues, most recently by representing the EU on a review visit to Ghana in March.

In partnership with the private sector, the UK is now one of only a handful of countries with independent oversight of our national contact point on the OECD guidelines on multinational enterprises. That is an important step towards boosting the credibility of this important complaints procedure. All of these are good examples of the benefits that all parties derive from co-operation between Governments, business and non-governmental organisations.

We have been praised by the OECD, particularly for the work that we have done to train front-line officials and raise awareness in the UK business community—both here in the UK and around the world. One of the ways in which we have done that is by commissioning a DVD. We are one of few Governments in the world training front-line staff to make them aware of the damage that corruption can cause and what their responsibilities are in helping to find it, bring it to court, stamp it out and bring to justice the people who are perpetrating it in the first place.

There are many positive stories about how a strong political will and courageous individuals can make a tangible difference. Several other OECD countries have asked us for more details about our activities to help inform their own efforts. That, I must say to the hon. Member for Twickenham, does not show a laggard, self-interested or irresponsible response to the key issues of the day on these matters. His comments therefore bear no resemblance to reality . . .

We are supporting the work of the Nigerian Economic and Financial Crimes Commission to tackle money laundering and corruption. That includes collecting financial forensic evidence in line with international standards and tracking suspicious transactions—a general issue that the hon. Gentleman raised. That has helped to secure 150 convictions and the recovery of about

$5 billion since our activities started in 2002. Our work is making a substantial difference . . .

We can all improve our performance on these matters. This is a difficult and complex area, but I want to make it absolutely clear that the Government are completely committed to doing the best by the British people and the international community. We are at the forefront of tackling corruption. In the last decade, we have made great strides. We are not squeamish about the role of the OECD. I am talking not just about our peer review, but about what happens in all international communities, whether we are thinking of the Human Rights Council or the OECD. We are very committed to peer review—and that includes ourselves. Every time that there is a peer review, there is an example of improving practice. We accept that.

We play an active part in the OECD—with the individuals and the institution. We also fund it and put in the right resources to make sure that we have an effective international legislative framework to expose and root out corruption where it exists and to repatriate the resources that corruption sucks out of states that mostly cannot afford to lose those resources in the first place. That money can then be put into education, health, transport and all the other key things that we take for granted in this country. Sadly, many countries that are victims of corruption lose out significantly in those areas.

(HC Deb 1 May 2007 Vol 459 c1489–1493)

## Extradition–UAF

**19/20**
A Home Office Minister wrote:

Before the bilateral extradition treaty between the UK and the UAE was signed on 6 December 2006, there were two formal treaty negotiation meetings between our two countries. There were also informal discussions between officials of both countries.

The treaty will come into force once both Governments have exchanged instruments of ratification and the UAE has been designated as a Category 2 territory under the Extradition Act 2003. Until this time, there are no general extradition relations between the UK and UAE . . . under section 193 of the Extradition Act 2003, the UK can have extradition relations with non-treaty partners who are party to international conventions that contain extradition provisions and to which the UK is also a party.

The UK is also able to process ad hoc extradition requests from non-treaty partners under section 194 of the 2003 Act.

(HC Deb 15 January 2007 Vol 455 c835W)

[See United Arab Emirates No. 3 (2007) Extradition Treaty between the United Kingdom of Great Britain and Northern Ireland and the United Arab Emirates on Extradition London, 6 December 2006 Cm 7283]

The Explanatory Memorandum of the Extradition Treaty between the UK and the UAE says:

POLICY CONSIDERATIONS

GENERAL

There are currently no formal extradition arrangements between the UK and the UAE; however, there are a number of international conventions that establish arrangements for conduct covered by certain conventions that both countries are party to. This Treaty is one element in a package of crime-fighting measures that were signed on 6 December 2006. The UAE is a key partner for the UK, in particular in work on financial crime—including money laundering, VAT fraud, counter narcotics and counter-terrorism. This package of measures will enhance our ability to work in close co-operation with the UAE on these important issues.

These agreements will provide a sound framework for co-operation between the two states. The introduction of a formal basis for extradition for conduct covered by the Treaty will lead to a more efficient and effective process for extradition between the two countries instead of relying on the ad hoc provisions in domestic extradition law for the many offences which do not fall under an international convention

[(www.fco.gov.uk/treaties), Ed.]

**19/21 (See also 7/4)**

## Extradition—Russia—Litvinenko

An FCO Minister was asked by the FAC what would be the extent of UK co-operation with Russia following the measures taken by the UK as part of the "Litvinenko" affair? The Minister said:

Primarily, in addition to the expulsion of the individuals, it is . . . about visa regulations. We were in the process of discussing improvements in the administration of visas, which would primarily have affected officials initially. That has been put into suspension. We have also put our position in respect of a similar set of arrangements for visas that Moscow already applies to the United Kingdom. Perhaps it would be helpful to say that the UK receives more than 120,000 applications for visas through Moscow, the vast majority of which are successful. However, this suspension of co-operation is not about the regular travellers—the visitors, tourists and business people—but about applications made by Russia's Government authorities. That is the suspension that has been put in place. [Q.95]

He was asked if other areas of co-operation might be affected. Could he assure the Committee that areas of co-operation such as on that on climate change or co-operation on common efforts against terrorism will not be damaged by this response? He said:

The Foreign Secretary said in his statement to the House that this is a precise response to the failure to co-operate on a serious crime. Our response is intended

to be measured, and I think that it is largely accepted as being measured. Our European Union partners acknowledge it as such, and it is intended to say to the Russians how seriously we take this matter. I can say additionally that it is not our intention for it to affect the type of issues that you have commented on, which I am sure we will touch on later in our proceedings. However, specifically on counter-terrorism co-operation, we work strategically and operationally with the Russians, and will continue to do so when it is clearly in the UK's national interest and our wider interests. For example, we will continue to work together at the United Nations on the Counter-terrorism Committee, and at the UN on the Sanctions Committee on the Taliban and al-Qaeda. That is very important work, which we will continue. As I say, this is a precise and measured response to a very serious crime and the lack of Russian co-operation and it addresses how seriously we take this issue. [Q.96]

The Minster was asked if the Government was prepared for possible retaliatory non-co-operation by Russia in response. He said:

The proper response from the Russians is the extradition of the individual identified by independent UK authorities as the suspect in this dreadful murder. That is the proper response. [Q.97]

Since the Russians had made it clear that they were not prepared to do that, was the Government prepared for them simply to retaliate in any other way.

The Minister replied:

We still believe that the Russians should extradite. In terms of what the Russians do next, clearly, they have indicated their attitude through spokespersons both in Moscow and in London. It is certainly our intention, through this process, to emphasise that we still see Russia as a strong ally on important issues, and a country with which we have important bilateral and multilateral arrangements. It is our certainly our intention, as we go through this process, to conclude it. That remains the case . . . we are clear that the action that we have taken is the absolutely appropriate action, and many other member states in the European Union have acknowledged that over the last 24 hours. [Q.98]

The further, he was asked:

You have made it clear what you want the Russians to do and I am sure many would agree with you. But do you want to see disengagement by UK business and UK investors, in respect of investing in Russia, to put further pressure on the Russian authorities? Or are you content simply with putting pressure on Russian officials?

He said:

I do not think that would be helpful at all. The UK's national and strategic interest is served by continued UK investment in Russia and, indeed, Russian investment in the United Kingdom. So it is not in the UK's interests for that to happen. It is not an initiative and not a process that we would seek to initiate at all. [Q.99]

The Minister was asked if the Government would consider a trial in a court outside Russia and the UK.

He said:

No. [Q.101]

And he continued:

We are ruling that out because it does not suit our purposes and does not suit the stated purposes and concerns of the Russians, in terms of their constitutional bar and the extradition. So it does not suit either nation's purposes in terms of the idea of a third country. [Q.102]

The Minister was asked more generally about relations with Russia in this area—"I also mention Berezovsky. Why do we not send him back to Russia? He is calling for the overthrow of the Russian Government. This is a man who should be subject to the new laws we made in the late 1990s to try to prevent that kind of activity. Have we tried a more diplomatic approach, saying, 'Okay, you can have him, if we can have him,' and going down the usual channels. Just what is your end game? What do you want to achieve?" He said:

I do not think it would be helpful for us to get into a process of "You can have him, if we can have him," to use your colloquial expression. The processes are not connected in that way . . . Without going into the evidence and the nature of the extradition requests from the Crown Prosecution Service to the Russian Government, a substantial amount of detail has been compiled by independent UK authorities, which led them to believe that a Russian national had a case to answer for the murder of a British national in Britain. It is entirely appropriate that the CPS, after coming to that assessment independently, makes that independent application to the Russian authorities. That is what they have done; that is why it is significantly different from the type of scenario that you spoke about. In the case of Berezovsky and others, there is a similar independent process in the UK in which the CPS carries out an assessment of comments or actions of individuals who live in the United Kingdom, under whatever status, as to whether they would legitimately have a case to answer. Sometimes that does not translate directly into the Russian understanding. [Q.114]

The Minister was asked if policy was been conducted consistently. He said:

The end game for us is Russian co-operation with the independent judicial process of the United Kingdom, and the extradition of one individual against whom substantial evidence has been compiled to legitimise the request for extradition. On the matter of the Russian constitution, there is an acknowledgement that other countries have been in a similar situation but have found a way of co-operating on extradition that the Russians have seemed entirely unwilling to seek. That is the important point for us—the Russians have failed to co-operate or to register the severity with which we consider the matter. The Germans, for example, had certain constitutional issues with regard to extradition, but they found a way of co-operating with their independent judicial process. The Russians not only failed to do that but failed to attempt to do so. [Q.115]

(FAC Second Report, Global Security: Russia, HC 51(2007))

**19/22**
In a written statement, the Solicitor-General said:

Today the Crown Prosecution Service (CPS) has decided, after applying the evidential and public interest tests set out in the Code for Crown Prosecutors, to prosecute Mr Andrey Konstantinovich Lugovoy, a Russian citizen, for the murder of Alexander Valterovich Litvinenko. The CPS decision was reached after they had consulted the Attorney-General, which is the usual practice in serious and complex cases. The CPS have concluded that there is sufficient evidence to prosecute Mr Lugovoy for murder and it is in the public interest to do so.

It is alleged that in London on or about 1 November 2006, Mr Lugovoy poisoned Mr Litvinenko by administering a lethal dose of Polonium 210, a radioactive material. Mr Litvinenko died on 23 November 2006 in a London hospital of an acute radiation injury.

The CPS will now take immediate steps to seek the extradition of Mr Lugovoy from Russia to the United Kingdom so that he can be charged and prosecuted for murder in this country.

The Attorney-General agrees with the CPS decision.

(HC Deb 22 May 2007 Vol 460 c75WS)

**19/23**
(See also **3/7**)

## Extradition—United States

The Home Secretary wrote:

Since 28 June the Home Office has handled 14 pieces of correspondence from hon. Members and members of the public on the subject of UK/US extradition arrangements . . .

The representations supported inaccurate claims in the press that I was about to introduce an additional statutory bar to extradition called "forum" which could prevent extradition where a case could be tried in the UK.

The Government keep extradition legislation under review, but have no plans to introduce this additional bar, which would apply to all countries with which the UK has extradition relations, including the US. I am satisfied that the Extradition Act 2003 already contains full and effective safeguards for the rights of requested persons. Introducing a ground for refusal of extradition based on forum is not only unnecessary, but would make the Act operate in a manner that is inconsistent with all of the UK's bilateral extradition treaties—including the bilateral treaty between the UK and the US. It would also give rise to real practical difficulties for prosecutors and would risk allowing criminals to evade justice.

Home Office Ministers have consistently made it clear in Parliament and to the press that the new extradition treaty with the United States is not one-sided, and

we are satisfied that the provisions ensure that extradition is dealt with under procedures that are as broadly comparable as it is possible to achieve between two different jurisdictions.

The UK/US extradition treaty means that both the UK and the US are under an international obligation to assist with extradition requests to the extent compatible with the law. The key issue is to ensure that offences are dealt with in the place where they can be most effectively prosecuted. Where the main witnesses and the main evidence are in another state, then it makes sense for the defendants to be extradited to face justice there.

Taking all these matters into account, I am satisfied that the right balance has been struck between the need to safeguard the rights of defendants against the need to uphold the rule of law.

(HC Deb 3 December 2007 Vol 468 c770W–771W)

**19/24**
(See also **8/2**)

The Attorney-General wrote:

On 1 November 2006, my noble friend Lady Scotland informed the House that I had opened discussions with the Attorney General of the United States of America on jurisdictional issues in criminal cases.

I am pleased to inform the House that the Attorney General of the US, the Lord Advocate of Scotland and I have agreed guidance for handling cross-border cases between the UK and US.

I believe that the guidance will improve communication by facilitating the early sharing of case information and consultation between prosecutors in those jurisdictions. International co-operation in fighting transnational crime is essential. Further, this guidance should assist prosecutors to have the earliest notice of cases that could be of interest to them for possible investigation and prosecution in the UK. The guidance retains the UK prosecutor's powers to decide that a case should be tried in the UK when this is possible and in accordance with the law and public interest.

The guidance agreed between the UK and US is augmented by domestic guidance for prosecutors in England, Wales and Northern Ireland. The domestic guidance will enable my office to ensure that each of my prosecuting departments is informed of cross-border cases in which it may have an interest.

(HL Deb 25 January 2007 Vol 688 cWS68)

**19/25**

## Mutual Assistance

A Minister wrote:

Requests for mutual legal assistance are received by the UK central authority within the Home Office. They are considered under the relevant UK legislation, namely the Crime (International Co-operation) Act 2003, in conjunction with international convention or treaty obligations that may be pertinent. The central authority receives approximately 5,000 such requests from other states per annum.

Requests are checked to ensure that they come from a competent judicial authority and that they relate to criminal investigations or proceedings being conducted by the requesting state. Checks are also conducted on the requests to ensure there are no issues relating to double jeopardy or human rights considerations such as the death penalty.

While the majority of these cases are straightforward and can be processed relatively quickly, some of the more complex cases require more consideration.

(HC Deb 17 December 2007 Vol 469 c947W)

**19/26**

## OECD Bribery Treaty—BAE—Al Yamamah

The Attorney-General said:

I shall make a Statement which relates to the investigation by the Serious Fraud Office into BAE Systems plc concerning payments made in relation to the Al Yamamah programme with Saudi Arabia. This afternoon, the Serious Fraud Office has announced that it is discontinuing this investigation. Its statement says:

> "The Director of the Serious Fraud Office has decided to discontinue the investigation into the affairs of BAe Systems plc as far as they relate to the Al Yamamah defence contract. This decision has been taken following representations that have been made both to the Attorney General and the Director concerning the need to safeguard national and international security. It has been necessary to balance the need to maintain the rule of law against the wider public interest. No weight has been given to commercial interests or to the national economic interest".

Given the intense interest in this issue and its market sensitivity, I have decided to inform the House this afternoon of this decision and to give a further brief explanation. The SFO has divided its investigation of these matters into three periods. The first period, which it has termed phase one, runs from the mid-1980s until the coming into force of the Anti-terrorism, Crime and Security Act 2001. This Act extended the pre-existing law of corruption to the bribery of overseas officials. The view of the SFO in relation to these payments is that no prosecution should be brought before the coming into force of the new Act. That is a view with which I concur.

The other phases concern the period after the coming into force of the new Act. Phase two covers payments made at about the time of the termination of the arrangements under which payments had previously been made by BAE. Phase three covers a longer period in relation to which at the moment there is little

hard evidence that payments were made. In the SFO's view, there is no guarantee that this investigation would lead to prosecution and there are real issues to be determined. In order to complete this investigation, significant further inquiries would be necessary, which would last in the SFO's judgment a further 18 months. It accordingly has concluded that in these circumstances the potential damage to the public interest which such a further period of investigation would cause is such that it should discontinue that investigation now. I agree that there are considerable uncertainties that a prosecution could be brought; indeed, my view goes somewhat further as I consider, having carefully considered the present evidence, that there are obstacles to a successful prosecution so that it is likely that it would not in the end go ahead.

As to the public interest considerations, there is a strong public interest in upholding and enforcing the criminal law, in particular against international corruption, which Parliament specifically legislated to prohibit in 2001. In addition I have, as is normal practice in any sensitive case, obtained the views of the Prime Minister and the Foreign and Defence Secretaries as to the public interest considerations raised by this investigation. They have expressed the clear view that continuation of the investigation would cause serious damage to UK/Saudi security, intelligence and diplomatic co-operation, which is likely to have seriously negative consequences for the United Kingdom public interest in terms of both national security and our highest priority foreign policy objectives in the Middle East. The heads of our security and intelligence agencies and our ambassador to Saudi Arabia share this assessment.

Article 5 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions precludes me and the Serious Fraud Office from taking into account considerations of the national economic interest or the potential effect upon relations with another state, and we have not done so. Noble Lords will understand that further public comment about the case must inevitably be limited in order to avoid causing unfairness to individuals who have been the subject of investigation or any damage to the wider public interest. It is also appropriate that I should add that the company and individuals involved deny any wrongdoing.

(HL Deb 14 December 2006 Vol 687 c1711–1713)

**19/27**

The Government were asked under what statutory or prerogative power the Attorney-General gave instructions to the Serious Fraud Office not to pursue its investigation of offences of corruption in relation to Saudi Arabian arms contracts; what limits there were, if any, on the exercise of this power to halt investigations; and into what classes of offence. The Attorney-General wrote:

No such instructions were given. The SFO itself decided to discontinue its investigation but not as a result of any instructions from me.

Further, the Government were asked whether the Attorney-General had received representations from BAE Systems warning of the adverse impact on business from the loss of a Eurofighter Typhoon agreement

unless the Serious Fraud Office investigation into alleged bribery of Saudi officials was halted.

The Attorney-General wrote:

BAE Systems made such representations to me in November 2005, which I passed on to the Serious Fraud Office. However, in reaching the decision to discontinue the investigation, in accordance with Article 5 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the SFO took no account of such considerations.

(HL Deb 8 January 2007 Vol 688 cWA9–WA10)

**19/28**
And the Government were asked what were the respective roles and responsibilities of the Prime Minister and the Attorney-General in reaching the decision to halt the Serious Fraud Office investigation into alleged bribery by BAE Systems of Saudi officials.
The Attorney-General wrote:

The decision to discontinue the investigation was made by the Serious Fraud Office, which exercises its functions under my statutory superintendence. As I explained in my Statement of 14 December 2006, I obtained views from the Prime Minister and the Foreign and Defence Secretaries as to the public interest considerations raised by the investigation. The nature of those views was set out in my Statement.

And the Government were asked whether the decision to abandon the Serious Fraud Office investigation into the Al Yamamah oil-for-arms contracts was influenced by pressure from Saudi Arabia in relation to the jet fighter contract with Saudi Arabia.

The Attorney-General wrote:

As I explained in my Statement of 14 December 2006, the public interest factors taken into account by the SFO related to national and international security, not commercial or economic considerations.

(HL Deb 8 January 2007 Vol 688 cWA9–WA10)

**19/29**
The Foreign Secretary was asked if she would make a statement on the UK's record of compliance with the 1999 Organisation for Economic Co-operation and Development (OECD) Anti Bribery Convention; and what enquiries had been made by the OECD regarding UK compliance since the beginning of December 2006. An FCO Minister wrote:

The Working Group on Bribery (WGB) of the Organisation for Economic Co-operation and Development (OECD) monitors implementation of the Anti-Bribery Convention through a system of peer review.

In its December 1999 "phase 1" evaluation of the UK's legislative compliance with the convention, the WGB said that it was

"not in a position to determine that the UK laws are in compliance with the standards under the convention."

The OECD conducted a follow-up review after the introduction of the Anti-Terrorism, Crime and Security Act 2001, whose part 12 amended the scope of UK law as it relates to bribery. The WGB's "phase 1bis" evaluation, published in March 2003, concluded:

"...the UK law now addresses the requirements set forth in the convention".

In a separate cycle of reviews, the WGB assesses all aspects of parties' implementation of the convention—from awareness-raising to administrative processes and legal enforcement. The "phase 2" report on the UK was published in March 2005. It commended a number of aspects of our anti-bribery framework, such as employee whistleblower protection, the ability of the tax authorities to make spontaneous disclosures of suspicious information to law enforcement agencies and the wide scope of the "regulated sector" in our anti-money-laundering reporting regime. The report also noted the Government's support provided to a range of private sector and civil society anti-corruption initiatives. In addition, the report made a number of recommendations for further action, for example in our awareness-raising efforts, on investigation and prosecution and on working with the Crown dependencies and overseas territories. In line with the standard procedure, the UK gave an oral progress report to the WGB in March 2006 and we will be submitting a written report in March this year. I will place a copy of this report in the Library of the House after the WGB plenary discussion in March [http://213.253.134.43/oecd/pdfs/brosweit/2807051E.PDF, Ed.]

The chair of the working group wrote in December 2006 to explore the reasons for the Serious Fraud Office's decision to discontinue its investigation into bribery allegations against British Aerospace with respect to Saudi Arabia. Contacts with the chair continue and the UK delegation will discuss questions other delegations may have at the next plenary meeting on 16–18 January 2007.

(HC Deb 15 January 2007 Vol 455 c828W)

## 19/30

In a debate about controls on arms exports, a Trade Minister said:

The days are gone when the UK defence industry was largely autonomous. Defence manufacturing is now a complex globalised process, with international collaboration firmly to the fore. Technology crosses borders, often electronically, at all stages of the process, and components and equipment will often leave the UK to be turned into the final product elsewhere. That mirrors what is happening in many industries and it happens for perfectly legitimate business reasons, but it inevitably presents additional challenges for export controls.

Our export controls are graduated on a risk basis: the higher the risk and the greater the potential damage from an unwarranted export proceeding, the greater the stringency of control. Thus in some cases—for example, those in which components are going to the Governments of NATO countries and other trusted allies—we can

provide more flexible licensing options. For high-risk transactions, however, we need to apply close scrutiny before a decision is given. For those activities that are inherently undesirable, we want to control not only what happens in the UK, but what UK citizens are doing overseas. That relates to the so-called extraterritorial controls.

For example, we quite rightly apply extraterritorial controls in the field of torture equipment and for supplies to embargoed destinations. In doing so, the UK is sending a clear message that it does not want such things to be exported from its territory, and nor does it want its citizens, wherever they may be located, to be involved in arranging for others to supply them or to provide other services in support of those supplies. However, making extraterritorial controls work in practice is always going to be difficult.

Such controls are likely to lead to conflicts of jurisdiction where other countries take a different view from us on individual cases, causing problems with enforcement. It is difficult to ensure that UK citizens overseas are aware of them, and there is clear potential to confuse those who find themselves operating under two separate, perhaps differing, sets of legislation . . .

I reiterate that all applications from any destination, including Israel, are rigorously assessed against the consolidated EU and national export licensing criteria on a case-by-case basis. With applications from Israel, the likelihood of an export being used in the occupied territories is a key factor in risk assessment against the consolidated criteria. If a licence is considered to be inconsistent with the criteria, the licence will be refused, as many for Israel have been.

Our overseas posts also have standing instructions to report any misuse of UK-supplied equipment. If such information comes to light—whether through the media, NGOs or intelligence reports—it will be taken into account when assessing future licence applications. This issue may also be raised with the relevant authorities in the country in question . . . I can say that we recently refused licences for the export of head-up displays to Israel because of concerns that they might be used in the occupied territories . . .

[I was asked about] extraterritoriality for trafficking and brokering. The British Government controls UK involvement in the movement of any military goods from one overseas country to another if any part of the trading activity takes place in the UK. Fully extraterritorial trade controls would apply to any UK person anywhere in the world and to any act calculated to promote the supply or delivery from one third country to another of restricted goods only—long-range missiles with a range of 300 km or more and their components and torture goods—and to military equipment to embargoed destinations. Whether those controls should be extended to other types of military equipment, particularly small arms and light weapons, or adapted in other ways are key questions for the forthcoming review. The Government will seriously consider all the evidence that is put before them . . .

[I was asked about] export licensing and sustainable development . . . DFID is the lead Department for advice on sustainable development considerations, as defined in criterion 8 of the consolidated criteria. The criteria require the Government to consider the compatibility of exports with the economic and technical capacity of the end-user country before issuing or refusing a licence. That ensures that sustainable development must be considered in relation to export licence applications.

The ECO will refer licence applications to DFID for assessment against criterion 8, if the destination is on the list of countries for which sustainable development is most likely to be an issue and—with standard individual export licences and standard individual trade control licences—the value of the licence is above a certain threshold that is determined on a country-by-country basis. The destination list is made up of countries that are eligible for concessional loans from the World Bank's International Development Association and is taken to represent the world's poorest. The list is kept under constant review to take account of changing circumstances.

(HC Deb 22 February 2007 Vol 457 c182–185WH)

## 19/31
## Attorney General's Speech to launch the Justice Assistance Network

The Rule of Law matters. It is not just a slogan. It is necessary for: peace, economic development, human rights and the ability to create efficient and effective social infrastructures that improve health and education; and for the fight against crime, corruption and terrorism.

In putting this network in place we are ensuring that justice is at the heart of making poverty history. The Justice Assistance Network marks an essential step forward in providing assistance and intervention overseas. We have a duty to provide legal assistance to the places that need it most and in doing this we are making it a priority to address poverty and humanitarian causes.

In the 1990s, the World Bank's Consultations with the Poor gathered the views of more than 60,000 people in 60 countries. The messages were clear: poor people care about their safety, security, dignity and respect as much as they care about better access to services and improved livelihoods. Ensuring that people have access to, and confidence in the law is how this is achieved in practice.

And there are strong economic reasons for promoting justice reform. A country cannot function effectively, grow its economy, take care of and develop its population, or take its proper place in the world, if it is not exercising and subject to the Rule of Law. In 2003 the European Commission estimated that stolen African assets equivalent to more than half the continent's external debt were held in foreign bank accounts—a shocking statistic illustrating both the opportunities and degree of threat of corruption unchecked. In the intervening period work between the UK and several African countries, for example, Nigeria, Kenya, and Ghana, concerning asset forfeiture procedure and mutual legal assistance is helping to address the problem . . .

Importantly, people, particularly foreign investors, will not invest in countries where they cannot look to effective and honest forms of dispute resolution to deal with the problems which may arise as their investment runs its course. If there is not a system worth reporting to they go elsewhere . . .

The UK has a strong reputation in this field. UK legal advice is in demand and there is great interest in how we do things. The UK legal brand is known and respected. My concern has been that we could do better where formal co-ordination of activity between government departments was concerned . . .

The Justice Assistance Network and its principles of engagement will satisfy the requirement in terms of government activity. It will draw together, in a virtual network, key personnel with knowledge of their respective departmental capabilities. The application of the agreed principles of engagement by them and the terms of reference they will utilise will lead to better informed decisions about the priority to be afforded to individual initiatives and (crucially) the allocation of the most appropriate resources to fulfil our objectives.

The Network will meet at regular intervals and will report on progress to Ministers. Its Work Plan for the coming year has been established.

As to the effective bridge between the public and private sectors, many of you will know that last year, after consultation between the professional bodies involved I was invited to establish the International Pro Bono Committee. Among other important functions this Committee will act as a forum for the exchange of information between organisations like the Bar Council, Law Society, International Bar Association and others, and as a clearing house matching skills and experience to demand.

Now there will be a direct channel of communication between its work and the activities of the Judicial Assistance Network via officials from my own office who will sit on both. Whilst the work of the international pro bono community will remain wholly independent from that of the public sector, better connections between the two will lead to a more complementary relationship and one that will be mutually beneficial.

One of the outcomes I and ministerial colleagues will be looking for from the more strategic approach the Network and its principles of engagement is the identification, organisation and delivery of more holistic—end-to-end—projects that involve each part of the justice process in a synchronised fashion. For example, by being able to provide judicial, prosecutorial, investigative, general legal and management skills in a co-ordinated programme rather than being committed to only one part of the justice sector. What might be termed 'working smarter' than at present. The routine engagement of Ministers and officials from across government provided for by the Network will mean that this will be easier to put into practice than has hitherto been the case. Add to this the communication with the skills and knowledge of the private sector then I believe we have created a much better platform from which to achieve our aims.

(Speech by the Attorney-General, Justice Assistance Network launch—The Role of UK Law in promoting Justice Overseas, 16 May 2007, www.attorneygeneral.gov.uk/attachments/Justice%20Assistance%20Project%20Speech.pdf )

**19/32**

## Trafficking

A Minister wrote:

The Government are committed to ratifying the Council of Europe Convention on Action against Trafficking as soon as possible as part of our ongoing anti-trafficking strategy, set out in the comprehensive UK Action Plan on tackling

human trafficking. We will not ratify the Convention until it is certain that we have implemented it in full because our legal system, unlike in some other signatory countries, requires full compliance with a Convention before ratification.

(HC Deb 17 December 2007 Vol 469 c960W)

**19/33**

## Transfer of Prisoners

A Justice Minister wrote:

The United Kingdom is a party to two multi-party prisoner transfer agreements, the Council of Europe Convention on the Transfer of Sentenced Persons, and the Commonwealth Scheme for the Transfer of Convicted Offenders. In addition, the United Kingdom has concluded a small number of bilateral prisoner transfer agreements. The following lists those countries and territories with which the United Kingdom has a prisoner transfer arrangement. [The list is not reproduced here, Ed.]

No payments have been made to foreign countries for the transfer of prisoners to serve the remainder of their sentence.

(HC Deb 19 November 2007 Vol 467 c517W)

**19/34**

A Justice Minister said:

One of the central principles of the Council of Europe Convention on the Transfer of Sentenced Persons, under which Michael [Shields] was transferred to a prison in the United Kingdom, is that the receiving state must respect the findings of the sentencing state [Shields had been convicted in Bulgaria, Ed.]. Indeed, Article 13 of the Convention makes it clear that the sentencing state alone retains the right to review the judgment of its court. Under the terms of that convention there is limited scope for the receiving state, which in this case is the United Kingdom, to change the sentence imposed by the sentencing state. A sentence can be adapted where the sentence imposed exceeds the sentence available to courts in the receiving state for the same offence . . . Michael is serving a sentence of 10 years for attempted murder. As the maximum sentence available to British courts for attempted murder is life imprisonment, we have no power to reduce Michael's sentence on those grounds.

(HC Deb 20 November 2007 Vol 467 c1165)

**Part Nineteen: IX.** *Legal Aspects of International Relations and Co-operation in Particular Matters—Military and security matters*

**19/35**

The Foreign Secretary was asked whether the agreement with the US under which the UK acquires nuclear submarine-related technologies

required by way of reciprocation the UK to support the US in armed conflicts under certain circumstances. An FCO Minister wrote:

No.

(HC Deb 15 January 2007 Vol 455 c828W)

**19/36**

## Arms Trade

An FCO Minister wrote:

The Government are committed to leading work to secure a legally binding treaty to set standards for the international trade in conventional arms, including small arms. On 6 December 2006 we secured agreement to start a UN process to take forward this work, with the backing of 153 states. In March we submitted to the UN the United Kingdom's views on the initiative, making clear we envisage a treaty which will allow the responsible sale of small arms but will prohibit their sale in certain cases, including where they will be used in the commission of serious violations of international humanitarian or human rights law, or to provoke or exacerbate internal or regional conflict.

(HC Deb 2 July 2007 Vol 462 c895W–896W)

**19/37**
An FCO Minister wrote:

The UK recognises that all countries, including Israel, have a legitimate right to purchase conventional arms for their defence and security needs. However, UK policy dictates that all licences are assessed on a case by case basis against the Consolidated EU and National Export Licensing Criteria. This takes into account respect for human rights and the preservation of regional peace, security and stability. If there is a clear risk that the equipment will be used in a manner inconsistent with the Consolidated Criteria, a licence will not be approved.

(HC Deb 23 July 2007 Vol 463 c708W)

**19/38**

### Arms Trade—Tanzania—Military Air Traffic Control System

In a debate on arms exports (a military air traffic control system to Tanzania), the Secretary of International Development said:

Criterion 8 [of the consolidated EU and national arms export criteria] requires the Government to consider whether the export will "seriously undermine the economy or seriously hamper the sustainable development of the recipient country".

The export licensing process also involves consideration of conflict, human rights and other issues, but criterion 8 is most relevant to this particular case. The Government take their responsibilities on arms export licensing very seriously, and they considered the application of the criterion carefully when the licence for the air traffic control system for Tanzania was considered. The issue was thoroughly discussed by the Departments involved and, in the end, the Secretary of State for Trade and Industry concluded that the licence should be approved. That is not to say that there were no concerns about the system and its suitability—there clearly were, as the World Bank and the ICAO reports made clear—but the test of criterion 8 is whether it is likely seriously to undermine the economy and sustainable development. The Government at the time judged that it would not do so and, looking back from this vantage point, it would be hard to argue that it did.

It was put to the Minister that:

The argument is that criterion 8 should have ruled out the sale of the system because it seriously hampers the sustainable development of the country. I would argue that for a country heavily in debt, that must be the case, but if the [Minister] argues to the contrary, is he saying that criterion 8 needs to be amended?

The Minister replied:

Criterion 8 does not exactly say that. There will be an opportunity to review the Export Control Act 2002 during the year, and the House has the opportunity this evening to debate the issue, as we are doing. We should always reflect on experience. In the end, the Government weighed these matters up and reached a view that the test in criterion 8 was not met.

First, there was a need for clearer guidance within Whitehall. We have now agreed guidance for officials when they look at the impact of proposed arms exports on a recipient country. The principle that sustainable development must be taken into account in licensing decisions was enshrined in the Export Control Act 2002, which is one of the toughest licensing systems in the world. The House should recognise that. DFID continues to play an active part in the licensing process. The Export Control Act is due for review this year. The Department of Trade and Industry will lead the process, consulting widely with other Departments, Parliament and civil society. One important area that we will look at is the activities of arms brokers, how well the current controls are working and whether they need to be strengthened.

The second question that we need to ask ourselves is how we continue to ensure, as a major exporter of defence equipment and as a major international donor, that UK arms exports do not undermine development. That is what we are concerned about. We know that excessive spending on arms can divert money away from health and education, and irresponsible transfers can be used to ignite violence.

Nevertheless, all countries have a right to provide for their legitimate defence and security needs, and those of their citizens. For that they need suitable equipment, and few developing countries have the means to manufacture that equipment. Most are dependent on arms imports. In the circumstances, what we

can do is to have the right framework for taking decisions about UK licensing decisions, but to recognise that that is not good enough if other countries do not follow the same approach. That is why the UK has been leading the campaign for an international agreement, in the shape of an arms trade treaty, which would benefit everyone and which would also have the power to stop arms transfers that fuel violent conflict, particularly in the world's poorest countries.

The Minister was then asked whether or not he would press for the registration of brokers.

He said:

...extra-territoriality currently applies to certain brokering activities abroad relating—from memory—to weapons of mass destruction, instruments of torture and brokering that contravenes international arms embargoes. At the time we said that we wanted to see how the new arrangements worked. Part of the purpose of the review of the legislation is to give the House the opportunity to reflect on that. If the world did more to control the flow of small arms and light weapons, which are principally responsible for the terrible death toll in developing countries, I am sure the whole House would welcome that.

On international action, the UK has ratified the UN Convention against Corruption and promoted the very successful extractive industries transparency initiative. We are setting up the governance and transparency fund to help those working to improve transparency, we have established the international corruption group, and we are taking on additional police officers working with the City of London and Metropolitan police. Why? It is to increase our capacity to investigate bribery, corruption and money laundering.

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Another Minister then said:

The episode started in 1992, when our high commissioner in Tanzania alerted the then Government to the requirement for a new air traffic control system, and the Defence Export Services Organisation notified BAE Systems of the prospect. The Government's decision to issue export licences in December 2001 for an air traffic control system for Tanzania was taken after careful and lengthy consideration of the application—and clearly some controversy—against the Government's consolidated EU and national arms export licensing criteria... the Government take their responsibility on arms export licensing, including in relation to sustainable development, most seriously. In assessing all applications, we draw on the expertise of several Departments to ensure stringent assessment against the licensing criteria. They ensure that the risks that concern us all, including internal repression, internal or regional conflict, the need to support sustainable development and the risk of diversion to undesirable end users, are rigorously assessed on every occasion.

The Government carried out just such an analysis when they considered the licences for the air traffic control system for Tanzania. We also discussed the issue thoroughly among Departments, and concluded that the licence should be

approved. Although there were some concerns about the system and its suitability, ultimately they were matters for the Government of Tanzania to resolve. It was not our place to dictate to the Government of Tanzania which system they thought that they needed. Equally, if the export was not clearly in breach of any of the EU criteria, it would not have been right for us to withhold a licence with a view to blocking the proposed export.

One of the interesting features to come out of this debate is the balance that we need to strike between the criteria that should determine the Government's action and the independence of a sovereign nation. I should like to cite the remarks of Tanzania's Foreign Minister Kikwete—now its President—in 2002:

"We are not a department of the World Bank—we are a country and it's a bit insulting to suggest that we need to wait for the World Bank to prescribe what's best for us . . . The responsibility for Tanzania is in the hands of Tanzanians."

. . .

The issue of whether the Government of Tanzania needed a military air traffic control system—and whether it was, to coin a phrase, fit for purpose—has been a big feature of this debate. The criteria required us to assess whether the export was compatible with the technical and economic capacity of the recipient country. Beyond that, I repeat that it was for the Government of Tanzania to assess whether the system was appropriate for their needs, and whether to purchase it. The fact that the UK Government issued the licences did not oblige the Government of Tanzania to proceed with the purchase.

Why did we authorise this export to Tanzania, one of the world's poorest countries? Was the system too expensive? We have discussed these questions during the debate, and they were specifically considered in the assessment against the consolidated criteria, particularly criterion 8. In assessing the application, the Government were required to consider whether the export would

"seriously undermine the economy or seriously hamper the sustainable development of the recipient country".

Our judgment was that it would not, even in the worst case scenario. If we had assessed that the export was not consistent with any of the criteria, licences would not have been issued.

Asked about the methodology of applying Criterion 8, the Minister said:

. . . we have a clear methodology for applying criterion 8. It is EU-based and is summarised, I am advised, in the Export Control Organisation's 2005 annual report, commencing on page 83, and accessible via the DTI website. That is EU guidance based on UK guidance developed in the light of the Tanzanian case.

Obviously, there were some points arising from the Tanzanian case, which we have subsequently addressed. The need was highlighted for clearer procedures within Whitehall for assessing applications when criterion 8 came into play. We have therefore agreed guidance for officials when they consider the impact of a proposed arms export on the recipient country. That guidance has been incorporated into the EU criteria. Moreover, the principle that sustainable development

must be taken into account in licensing decisions was enshrined in the Export Control Act 2002. DFID continues to play an active part in the licensing process, and in all discussions on the arms trade.

... In 2005, 129 licence applications were refused and many others were withdrawn when the stringency of the criteria were understood. I am advised that we actually have the highest refusal rate of any EU country ...

We also publish comprehensive details of our policy and decision making in our quarterly and annual reports, and we are of course scrutinised carefully by the Quadripartite Committee. Not least because of the issues raised, we will initiate a review later this year of the controls introduced, in 2004, under the Export Control Act 2002. That is timed to commence three years after the new export control legislation was implemented, in accordance with Cabinet Office better regulation guidelines. There will be full public consultation, and the review is timely.

The Government also have a proud record on attacking corruption. We have ratified the UN Convention against Corruption, and put new legislation in place to allow us to do so. We have also established a new internal corruption group staffed by City of London and Metropolitan police officers ...

[CRITERION EIGHT OF THE CONSOLDIATED EU AND NATIONAL GUIDELINES ON ARMS EXPORTS

The compatibility of the arms exports with the technical and economic capacity of the recipient country, taking into account the desirability that states should achieve their legitimate needs of security and defence with the least diversion for armaments of human and economic resources.

The Government will take into account, in the light of information from relevant sources such as United Nations Development Programme, World Bank, IMF and Organisation for Economic Cooperation and Development reports, whether the proposed export would seriously undermine the economy or seriously hamper the sustainable development of the recipient country.

The Government will consider in this context the recipient country's relative levels of military and social expenditure, taking into account also any EU or bilateral aid, and its public finances, balance of payments, external debt, economic and social development and any IMF- or World Bank-sponsored economic reform programme., Ed.]

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