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21 February 2006

Mr Terry Davis
Secretary General
Council of Europe
Strasbourg

Dear Secretary General,

Article 52 of the ECHR

On behalf of the Secretary of State, particularly in order to meet your deadline of Tuesday 21 February, I have been instructed to convey the following reply to your letter of 21 November 2005.

Stephen F Howarth



Foreign &
Commonwealth
Office

Written Ministerial Statement

20 January 2006

Enquiries in respect of rendition allegations

The Secretary of State for Foreign and Commonwealth Affairs (Mr. Jack Straw):

Some media reports over the last 48 hours, based on a leaked Government document, have suggested that the Government may be aware that there have been cases of “extraordinary rendition” through UK territory or airspace about which it has not informed Parliament.

This is not the case. I have given Parliament clear answers, updated as information has become available to me. The following chronology makes this clear:

- *7 December:* the leaked document was sent by my office to the Prime Minister’s Office, setting out our understanding at that time.
- *12 December:* after continuing searches of official records over the following few days, my written Answer to the rt. Hon. Member for North East Fife, (Sir Menzies Campbell) (Official Column 1652W) set out the facts as they had then been established: there had been three instances in 1998 where the US authorities had requested permission to render a detainee through UK territory or airspace; and in two of these cases, where the detainee was to be transferred to the US for trial, the US request had been granted. In the other case, it had been refused. I added that officials continued to search the records.
- *13 December:* I discussed these issues at length in my public evidence session with the Foreign Affairs Committee.
- *10 January:* I issued a Written Ministerial Statement saying that Foreign and Commonwealth Office officials had now completed a search of their records back to May 1997. This search had turned up one further case, also in 1998: the Government had declined a US request to refuel a flight carrying two detainees en route to the US.

To summarise the position:

- We have found no evidence of detainees being rendered through the UK or Overseas Territories since 11 September 2001.
- We 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. In two of these cases, records show the Government granted the US request, and refused two others.

Since before 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 clear to the US authorities, including in recent months:

- i) that we expect them to seek permission to render detainees via UK territory and airspace (including Overseas Territories);
- ii) that we will grant permission only if we are satisfied that the rendition would accord with UK law and our international obligations, and
- iii) how we understand our obligations under the UN Convention Against Torture.

We are also clear that the US would not render a detainee through UK territory or airspace (including Overseas Territories) without our permission. As noted above, the US has sought such permission in the past.

The Government is committed to fulfilling its obligations under United Kingdom and international law. I have sought throughout to keep the House informed of developments. And shall do so again if new information comes to light.

Response of the United Kingdom Government to the Request of the Secretary General for an explanation in accordance with Article 52 of the European Convention on Human Rights

1. Explanation of the manner in which UK law ensures that acts by officials of foreign agencies within our jurisdiction are subject to adequate controls.

Officials of foreign agencies are bound, whilst within the UK, by the same laws that apply to all persons present here. Where there are reasonable grounds to suspect that a crime has been or may be committed then the police and other investigative authorities have the necessary powers to investigate and where appropriate prosecute those responsible for any such crime. Insofar as any official of a foreign agency may be entitled to any immunity from legal process, a waiver of that immunity can be sought and if the required co-operation is not forthcoming the official may be required to leave the UK. In addition, the Visiting Forces Act 1952 covers certain matters connected with the presence in the UK of the military forces of certain countries (including the USA), including the question of jurisdiction which means that the sending state's service authorities may exercise their own jurisdiction over their service personnel within the UK.

2. Explanation of the manner in which UK law ensures that adequate safeguards exist to prevent unacknowledged deprivation of liberty of any person within UK jurisdiction, whether such deprivation of liberty is linked to an action or omission directly attributable to the UK or whether the UK has aided or assisted the agents of another State in conduct amounting to such deprivation of liberty, including aid or assistance in the transportation by aircraft or otherwise of persons so deprived of their liberty.

All persons arrested by the Police in England and Wales are covered by the safeguards contained in the Police and Criminal Evidence Act 1984 (PACE) which include the maintenance of detailed custody records and would in practice prevent a person being held in unacknowledged detention. In Scotland there are similar legislative provisions in place to safeguard those in custody and to ensure that detailed custody records are maintained.

Unacknowledged deprivation of liberty by any person would constitute a crime such as false imprisonment or kidnapping which are both offences at common law triable on indictment. False imprisonment consists in the unlawful and intentional or reckless restraint of a victim's freedom of movement from a particular place. Kidnapping is an offence comprising the following four elements: (a) the taking or carrying away of one person by another; (b) by force or by fraud; (c) without the consent of the person so taken or carried away; and (d) without lawful excuse. Were a UK official to aid or abet a criminal act they may be guilty of an offence also. Where there are reasonable grounds to suspect that a crime has been or may be committed the Police and other investigative authorities have the necessary powers to investigate and where appropriate prosecute.

The Human Rights Act 1998 gives effect in domestic law to the rights and protections contained in the Convention and provides both for victims to be able to bring actions for breach of human rights against public authorities (section 6) and also for primary and subordinate legislation to be read and given effect to in a way which is compatible with Convention rights (section 3). In addition, the Scotland Act 1998 provides that Scottish Ministers (the devolved executive in Scotland) have no power to act in a way which is incompatible with Convention rights (section 57(2)).

Separately from this legislative framework, any individual may bring an action for habeas corpus (in England and Wales) to test the legality of his detention or a civil action for the tort of false imprisonment (in Scotland, an action for the delict of unlawful detention) if he is deprived of his liberty unlawfully including where such deprivation is contrary to Article 5 of the Convention.

In addition, under section 65 of the Regulation of Investigatory Powers Act 2000 the Investigatory Powers Tribunal considers complaints relating to any alleged conduct by the UK Security and Intelligence Services. The Tribunal may call witnesses and has extensive access to information.

Finally, there are a number of general police powers which relate to aircraft. In England and Wales, police have a power to enter premises to arrest for indictable and certain other offences (section 17 of PACE). For this purpose, “premises” are defined as including “any aircraft” (section 23 of PACE). Under section 8 of PACE a Justice of the Peace may issue a search warrant to enter and search premises (including aircraft) where there are reasonable grounds for believing that an indictable offence has been committed and that specified relevant material is likely to be found on the premises.

In Scotland, a criminal court has jurisdiction, at common law, over aircraft within or flying over Scotland. Section 92 of the Civil Aviation Act 1982 also makes provision for the application of the criminal law to aircraft. If the police have a specific basis to believe that an offence is being committed on board an aircraft, the police can apply to the court for a search warrant (either at common law or under statute) to enter and search that aircraft. If circumstances of urgency exist and the police have a specific basis to believe that an offence is being committed against the person of an individual on board an aircraft and which endangers the safety of that person they may board the craft and investigate the circumstances in the same way as they may enter any premises in order to prevent an offence of violence continuing.

Constables throughout the UK enjoy certain additional powers under Part III of the Aviation Security Act 1982 in respect of non-military airports that have been designated by order of the Secretary of State. These powers give the Chief Officer of Police for the police area in which the airport is situated responsibility for the general policing of the airport and are without prejudice to other powers enjoyed by the police. Specific powers include a power to enter any part of the airport.

3. Explanation of the manner in which UK law provides an adequate response to any alleged infringements of Convention Rights of individuals within UK jurisdiction, notably in the context of deprivation of liberty, resulting from the conduct of officials

of foreign agencies. In particular, explanation of the availability of effective investigations that are prompt, independent and capable of leading to the identification and sanctioning of those responsible for any illegal acts, including those responsible for aiding or assisting in the commission of such acts, and the payment of adequate compensation to victims.

As indicated above, the conduct of an official of a foreign agency may give rise to criminal or civil action in the UK. In particular, the police have power to carry out prompt and independent investigations into any allegations they receive that a crime has been committed within the UK.

In addition, any individual can bring an action for habeas corpus or for false imprisonment/unlawful detention. Where a person is convicted of a criminal offence, a court may make a compensation order requiring him to pay compensation to the victim for any personal injury, loss or damage caused whether directly or indirectly by the acts which constitute the offence. A victim of a crime of violence may also seek compensation from the Criminal Injuries Compensation Scheme.

4. In the context of the foregoing explanations, – ie explanations of the manner in which UK internal law ensures the effective implementation of the provisions of the Convention with respect to everyone within our jurisdiction - an explanation is requested as to whether, in the period running from 1 January 2002 until the present, any public official or other person acting in an official capacity has been involved in any manner – whether by action or omission – in the unacknowledged deprivation of liberty of any individual, or transport of any individual while so deprived of their liberty, including where such deprivation of liberty may have occurred by or at the instigation of any foreign agency. Information is to be provided on whether any official investigation is under way and/or any completed investigation.

No UK public official or other person acting in an official capacity has been so involved. Allegations made by the UK NGO Liberty and others that UK airspace has been used for the transfer of detainees to locations where they may be subject to ill-treatment have been passed to the Police.

5. A Written Ministerial Statement to Parliament by the Secretary of State for Foreign and Commonwealth Affairs of 20 January is enclosed.