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Mr Terry Davis
Secretary General
Council of Europe
Strasbourg

Dear Secretary General,

Article 52 of the ECHR

On behalf of the Secretary of State, I have been instructed to convey the following reply to your letter of 7 March 2006.

Stephen F Howarth

Memorandum submitted by the United Kingdom in response to the Secretary General of the Council of Europe's letter of 7 March 2006 to the Secretary of State for Foreign and Commonwealth Affairs requesting further clarification on the following point:

Control mechanisms (administrative, judicial, parliamentary or other) in respect of activities of foreign intelligence services within the jurisdiction of your State, and whether they are conducted in co-operation with national agencies or not (please note that in this context, available control mechanisms regarding national agencies should be indicated, and whether they extend to foreign agencies).

This memorandum is intended to be read in association with the relevant points submitted under question one in the United Kingdom's response to the Secretary General's request for information dated 21 November 2005¹.

Under the Security Service Act 1989 the Director General of the UK Security Service is responsible to the Secretary of State for Home Affairs for the activities of the officers of foreign intelligence agencies in the UK where these activities relate to the protection of the UK's national security.

UK-accredited liaison officers from foreign intelligence and security agencies, regardless of country of origin, who are declared to the Security Service, are given a formal briefing on arrival. This briefing gives them guidelines under which they must operate while in the UK. They are required to consult and seek approval from the Security Service before any operational activity can be undertaken. These guidelines also cover the activity of officers from their agencies visiting the UK.

Under the provisions of the Security Service Act 1989, as amended, the Security Service may investigate the activity in the UK of any intelligence agency, should it pose a threat to national security.

The work of the Security Service is overseen in three different ways:

i. Ministerial oversight

Senior Ministers are responsible to Parliament for the conduct and activities of the security and intelligence agencies. The Home Secretary in respect of the Security Service, which is responsible for protecting the UK against covertly organised threats to national security; and the Foreign Secretary in respect of both the Secret Intelligence Service, which collects Britain's foreign intelligence; and the Government Communications Headquarters (GCHQ), which deals with signals intelligence and keeping Government communication and information systems safe from hackers and other threats.

The Prime Minister is responsible for the UK intelligence machinery as a whole. The Home Secretary has responsibility for the Security Service. He is accountable to Parliament, and therefore to the public, for the work of the Service. He appoints the Director General of the Service, who is directly accountable to him, in consultation with the Prime Minister. The Home Secretary is regularly briefed by the Director General on any changes to the threats to national security,

major current investigations and any other significant matters. Similar, though slightly different arrangements apply under the Intelligence Services Act 1994 in respect of the Foreign Secretary's responsibility for and the Prime Minister's role in relation to SIS and GCHQ.

ii. Parliamentary oversight

Parliamentary oversight of the Secret Intelligence Service, GCHQ and the Security Service is provided by the Intelligence and Security Committee (ISC), established by the Intelligence Services Act 1994. The Committee examines the expenditure, administration and policy of the three Agencies. It sets its own work programme. It has wide access to the range of Agency activities and to highly classified information. Its cross-party membership of nine from both Houses of Parliament appointed by the Prime Minister after consultation with the Leader of the Opposition. The Committee is required to report annually to the Prime Minister on its work. These reports, after any deletions of sensitive material, are placed before Parliament by the Prime Minister. The Committee also provides ad hoc reports to the Prime Minister from time to time. The Committee has confirmed that it is looking at the issue of rendition as part of its current work programme.

iii. Judicial Oversight

The Regulation of Investigatory Powers Act 2000 (RIPA) established a Commissioner for Interception, a Commissioner for the Intelligence Services and a Tribunal to examine and hear proceedings under section 7 of the Human Rights Act 1998. These Commissioners must hold and have held high judicial office and are appointed by the Lord Chancellor to underline their independence. The job of the Commissioner for Interception is to keep under review the issue of interception warrants and the adequacy of arrangements for ensuring the product of interception is properly handled. The Commissioner submits an annual report to the Prime Minister which is subsequently laid before Parliament and published. The job of the Intelligence Services Commissioner is to keep under review the issue of warrants by the Secretary of State authorising intrusive surveillance and interference with property in order to make sure that the Secretary of State was right to issue them.

These oversight mechanisms are not designed to apply to foreign agencies. As indicated in the United Kingdom's previous memorandum to the Secretary General, while in the UK, officials of foreign agencies are bound by the same laws as apply to all persons present here. The memorandum also set out the position on waiver of immunity from legal process and circumstances in which an official of a foreign agency may be required to leave the UK.

¹ The United Kingdom submitted the following text in response to question one in the Secretary General's request for information dated 21 November 2005:

“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.”