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**Title:** Memorandum by HJ McCann, Secretary of the Department of the Taoiseach, on the prospects of success and likely consequences of the proposed case to be taken by the Irish government against the United Kingdom at the European Commission on Human Rights relating to the treatment of detainees in Northern Ireland.

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Minister,

You asked me yesterday for a departmental view on the question of taking action now before the European Commission on Human Rights in relation to the treatment of detainees in the North.

Prospects of success

Firstly on the prospects of success the Attorney General, who has seen the evidence, advises that we have a sustainable case. Our Legal Section says that, while there is clear evidence of ill-treatment, the outcome will turn on whether the European body will regard this as such as to amount to ~~any~~ inhuman or degrading treatment or torture. The Compton Report has sought to brand the ill-treatment as less than "brutality" and not very successfully at that. It is important to note, however, that the Compton Committee confined their investigation to that of a complaint that relates to physical treatment and did not deal with the mental aspects.

European aspects

Several European countries are very sensitive on this issue of torture of prisoners and to that extent might be sympathetic e.g. the Netherlands and Italy. On the other hand our future partners in the EEC could not be enthusiastic about two new members entering into this kind of conflict in public on the eve of their membership. The attitudes of Germany and France in particular might be doubtful in view of their desire for British goodwill in certain other contexts. It is probably true to say, however, that the Europeans would prefer to see us seeking to resolve the question in a European forum rather than in the United Nations where the Soviet Union and other Communist countries might seek to exploit the situation.

British attitude

A move to bring Britain before the bar of European opinion would inevitably be strongly resented by the British Government and lead to a considerable deterioration in Anglo-Irish relations. If Mr. Heath's previous outbursts are any guide he would probably be furious - at least in the short run. One might expect that Britain would get "really dirty" in handling our affairs. How could they hurt us? They would be unlikely to be receptive to any latitude we would seek under the Anglo-Irish Free Trade Area Agreement for so long as this may be relevant. They could prove difficult in acquiescing in concessions which you have negotiated for our Common Market entry. (I have asked for a list of any consents outstanding.) Our EEC Section would prefer that our Accession Treaty be signed before moving in Strasbourg.

On the other side action in Strasbourg would inevitably make the British much more careful in their handling of detainees and internment in the North. To the extent that this would slow down their gathering of intelligence information it would make it more difficult for them to

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make progress in the direction of a military solution. If they succeeded in containing the situation from a military point of view there would be less incentive for them to take unpalatable political action.

I asked Ambassador O'Sullivan yesterday to call to the FCO and to say that very strong pressure has been building up for us to move in this matter pressure which has become intensified since the publication of the Compton Report. I asked him to enquire whether there was anything positive in the forward thinking of the British Government which the Government here should take into account before coming to a decision. I attach a de-code of his reply received last night. In reply to a telephone enquiry as to his own view the Ambassador said that he personally would recommend against taking action at the present time.

View  
~~XXXXXX~~ of minority in North and domestic opinion

It seems clear that the minority in the North would favour action now in Strasbourg. As for domestic opinion Ministers will be the best judge of this but it seems to me that the public here would find it difficult to understand failure to take action.

General comment

From the point of view of relations with Britain and Europe the balance of argument is probably against taking action now. From the point of view of the minority in the North and domestic opinion and of lessening the chances of an early military solution in the North (with the consequential reduction in pressure to find a political solution) the arguments are in favour of action now. In other words from the strictly foreign affairs angle there are certain contra indications but from the internal point of view and the point of view of the North the pressures seem to be greater and it would appear to be difficult for the Government not to give priority to these pressures.



18 Samhain 1971