

CONFIDENTIAL



10 DOWNING STREET

From the Private Secretary

4 March, 1983.

European Parliament and Northern Ireland

The Prime Minister has seen your letter of 24 February containing preliminary legal advice with regard to the decision of the Political Affairs Committee of the European Assembly to make a report on Northern Ireland, Roger Bone's letter of 2 March containing advice on the political steps which we might take, and his further letter of 3 March containing considered views on the legal position.

The Prime Minister has noted the legal position as described in those papers. She has also noted that the Foreign and Commonwealth Secretary will convey a message privately to the Chairman of the Political Committee asking that the Committee desist from their unwelcome initiative.

B/P/1
Mrs. Thatcher will be grateful to be informed of Mr. Rumor's response, and in general, would like to be kept closely in touch with this matter as it develops.

I am sending copies of this letter to the Private Secretaries to the Lord Chancellor, the Attorney General, the Secretary of State for Northern Ireland, and Sir Robert Armstrong.

A. J. COLES

John Holmes, Esq.,
Foreign and Commonwealth Office.

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Prime Minister

Foreign and Commonwealth Office

London SW1A 2AH

In the light of the legal
 advice, and the attached political
 advice which you saw last night,
 do you still want to have a
meeting on this subject next week?

3 March 1983

A.F.C. 3/3.

No

Yes John,

European Parliament and Northern Ireland

I wrote to you on 2 March about political steps to put a stop to the proposed report on Northern Ireland by the Political Affairs Committee of the European Parliament. I now attach a note on the legal position, with which the Attorney General concurs.

The advice offers little hope of our being able in the foreseeable future to institute successful proceedings against the European Parliament in the European Court of Justice. Nor do our Legal Advisers think it would be possible to obtain an order from the Court which would prevent or delay the Political Affairs Committee from proceeding with the decision of 23 February.

I am copying this letter to Jim Nursaw (Attorney General's Office) and John Lyon (Northern Ireland Office).

Yes
 R B Bone

(R B Bone)
 Private Secretary

A J Coles Esq
 10 Downing Street



THE EUROPEAN PARLIAMENT: NORTHERN IRELAND

1. It appears that the decision adopted by the Political Affairs committee of the European Parliament may not be contained in any formal text. On the basis of the evidence available the committee seems to have recommended or decided that a report should be prepared on the situation in Northern Ireland. If this report were confined to those activities in Northern Ireland which fall within the scope of one of the Community treaties there would be no ground upon which to challenge its legal propriety. On the other hand if it were to deal with the internal political situation in Northern Ireland, going beyond the ambit of any of those treaties, it could fairly be said to fall outside the Parliament's powers. The object of this note is to consider whether, on the assumption that the Parliament has acted, or intends to act, ultra vires, it would be open to the United Kingdom to challenge the Parliament's action by instituting proceedings in the European Court of Justice.

2. It would not be open to the United Kingdom to bring an action against the European Parliament under Article 173 of the EEC Treaty or Article 146 of the Euratom Treaty, because those articles only allow the legality of acts of the Council or Commission to be reviewed by the Court. Nor could a direct
/action



action be brought under Article 177 EEC or Article 150 Euratom or Article 41 ECSC because those articles only allow references to the European Court to be made by national courts during the course of proceedings in the latter. There are no other articles in the EEC or Euratom Treaties which would give the European Court jurisdiction.

3. Under Article 38 of the ECSC Treaty the European Court may, on the application of a Member State, declare an act of the Assembly to be void. In so far as the European Parliament were acting as the Assembly of the ECSC its acts could therefore be challenged before the Court. If the action were successful the act would be declared void for the purposes of that treaty.

4. An application to the Court under Article 38 ECSC could only be made in order to challenge an "act" of the ^{Assembly?} Parliament. The European Court has not defined that term for the purposes of that Article, but it is reasonable to assume that it would attribute the same meaning to it as it bears in Articles 173 and 177 EEC. In connection with the EEC Treaty the European Court described "acts" as "all measures intended to have legal effects" in the AETR case, [1971] ECR 263 at page 276.

5. The action so far taken by the committee of the European Parliament is in no sense legislative in nature, and its

/decision



decision or recommendation that a report should be prepared
does not purport to create any legal rights or obligations.
It appears to envisage no more in the first instance than
the preparation of a discussion document. If at a later date
the European Parliament adopted some agreed conclusions
about the situation in Northern Ireland it might do so in the
form of a document called a "resolution", or it might give
the document some other title. Whatever the title, the
question would still be whether the document amounted to an
"act" for the purposes of Article 38 ECSC, and this would again
depend upon whether it was a measure intended to have legal
effects. Its exact terms would have to be considered before
any decision could be taken as to whether an action could be
instituted by the United Kingdom in the European Court.

F. Burrows

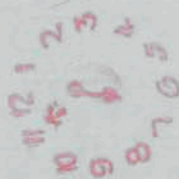
F Burrows
Legal Counsellor

FOREIGN AND COMMONWEALTH OFFICE

3 March 1983



3 - MAR 1983





10 DOWNING STREET

PRIME MINISTER

Mr. Prior says that
Mr. Concannon, having seen
Dr. FitzGerald in Dublin,
would like to come and have
a talk with you.

I know no more than this.
May we arrange?

Yes
A. & C.

3 March 1983



Prime Minister

The "legal" paper is still being considered by the Attorney's office. I have insisted that it must reach us without fail by Thursday night.

Foreign and Commonwealth Office

London SW1A 2AH

2 March 1983

A.S.C. 2/3.

MS

John T. ...

European Parliament and Northern Ireland

John Holmes wrote to you on 24 February setting out the FCO's preliminary views on the legal position concerning the Political Committee of the European Parliament's decision to produce a report on the political situation in Northern Ireland and on action which the UK might take to prevent this.

We are pursuing the legal questions with the NIO and the Attorney General, as agreed in Cabinet on 24 February. This letter suggests what action we should now take at political level, on which we have consulted Mr Pym in the US.

First, Mr Hurd raised the question in the margins of the Political Co-operation Ministerial Meeting in Bonn on 1 March. He explained the strong resentment here. He asked his colleagues to use their influence to head off their MEPs. They took the point, though obviously we cannot expect much from the Irish. M. Thorn spoke very firmly indeed against the Committee's initiative. He said he had just endured the most uncomfortable press conference of his life in Dublin.

Second, Mr Onslow yesterday discussed with Lady Elles what we could best do with the Parliament itself to head this off. (She of course, like other EDG members, voted against the EP initiative.) Her clear advice is that, in seeking to head off this initiative, we need to avoid playing into the hands of those in the Parliament who are hoping to make public capital out of the issue. This, in turn, will be damaging to Northern Ireland. Mr Pym is sure that the right approach is to avoid dignifying the Political Committee action by giving it more weight than it deserves.

/What



What Mr Pym intends to do, therefore, as a first step, is to convey a message privately to the Chairman of the Political Committee, Mr Rumor, who has himself taken a rather helpful line, setting out very clearly our views, and asking the Committee to desist from this unwelcome initiative.

If the Committee nevertheless decides to go ahead, Mr Pym thinks that either he or the Prime Minister will have to write to colleagues in member states. But he thinks that we should recognise that most of them are in no position to exert the necessary control over their MEPs even if they wanted to do so. If we can stop the European Parliament's initiative by acting directly on Mr Rumor, that would therefore be a preferable way of proceeding.

I am copying this letter to the Private Secretaries to the Lord Chancellor, the Attorney-General, the Secretary of State for Northern Ireland and Sir R Armstrong.

(R B Bone)
Private Secretary

A J Coles Esq
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