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CABINET OFFICE
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PRIME MINISTER
FILING INSTRUCTIONS
FILE No. C1D/2

European Convention on Human Rights

(C(80) 66)

BACKGROUND

The optional clauses of the European Convention on Human Rights provide for the right of individual petition to the European Commission of Human Rights and the acceptance of the compulsory jurisdiction of the European Court of Human Rights. All EC members except France, and 14 of the 20 States Parties to the Convention, accept the right of individual petition; 17, including all EC members, accept the compulsory jurisdiction of the Court. The United Kingdom initially accepted these clauses in 1966 for three years and subsequently for periods of two, three and five years. The present acceptance expires on 14th January 1981, and the Home Secretary and the Foreign and Commonwealth Secretary propose a further five-year renewal.

2. The Secretaries of State say that the dynamic and evolutionary interpretation placed on the Convention by the Commission and the Court has caused increasing concern. It has interfered further with the exercise of Parliamentary sovereignty than could have been foreseen and has limited the freedom of action of both the legislature and the judiciary. Particular areas of difficulty or embarrassment arising from earlier cases and cases under consideration or in prospect are listed in the Annex to C(80) 66. They include the interception of communications, immigration and (potentially) nationality, police procedures, penal law and treatment, corporal punishment in State schools, and (potentially) military discipline.

3. The Secretaries of State say that the decision not to renew could only be defended on the general grounds of protecting Parliamentary sovereignty. The United Kingdom would be attacked for avoiding its obligations under the Convention. Failure to renew would be difficult to reconcile with the Manifesto commitment to discuss a possible Bill of Rights, and would be represented in

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Northern Ireland as an implicit admission that arrangements there breached the Convention. There would be adverse comparisons with the Republic's indefinite acceptance of the right of individual petition. Internationally, we should lose our tactical advantage in our relations with the Communist bloc and other countries infringing human rights. A decision not to renew, particularly during the review of the Helsinki Final Act, would be criticised by our allies. It would make it harder to defend non-ratification of corresponding provisions in the United Nations Covenant on Civil and Political Rights.

4. The Secretaries of State note that renewal could be for less than five years, but that this would merely raise doubts about United Kingdom support for human rights, and would probably make it necessary to look at the question again during the runup to the next General Election. The third possibility, of indefinite renewal, would provide conclusive evidence of support for the protection of human rights and would be seen by some as a safeguard for the future. But it is uncertain whether we could withdraw from the commitment, if there were to be unacceptable adverse judgments at Strasbourg, even if the declaration itself referred to that possibility. It would in any case be politically difficult to withdraw from an indefinite commitment. Tactically, it might be salutary for the Strasbourg organs not to be able to count on United Kingdom acceptance into the indefinite future.

5. The Secretaries of State propose that the decision should be announced in answer to an arranged Parliamentary Question.

HANDLING

6. You will wish to ask the Home Secretary and the Foreign and Commonwealth Secretary to introduce their memorandum. You will then want the comments of the Lord Chancellor and the Attorney General on the legal aspects, the Lord Chancellor on the implications for a possible United Kingdom Bill of Rights, the Secretary of State for Northern Ireland on the implications for the Province, and the Secretary of State for Defence on the position in respect of military discipline. You may want the views of the business managers and the Paymaster General on the feeling in Parliament and the country.

7. The Cabinet might first review the political arguments, domestic and international, against withdrawal from the optional clauses. These seem to be compelling. They might then go on to consider the period of renewal. The

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unpredictability of the Strasbourg organs and the considerations in paragraph 4 above are strong arguments against indefinite renewal. The proposal by the Secretaries of State for five-year renewal, which would take the next decision on renewal beyond the next Election, has force.

8. Cabinet might endorse the proposal of the Secretaries of State that the decision should be announced in answer to an arranged Question. This would fall to the Home Secretary. You may want the views of the business managers on the relative advantages of an Oral as opposed to a Written Answer.

CONCLUSIONS

9. Subject to points made in discussion, Cabinet might endorse the proposal that the United Kingdom's acceptance of the optional clauses should be renewed for a further five-year period from January 1981, and that the decision should be announced in reply to an arranged Parliamentary Question.

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12th November, 1980

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