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 PL answer
 HS' reply

MINISTRY OF DEFENCE WHITEHALL LONDON SW1A 2HB

 TELEPHONE 01-218 9000
 DIRECT DIALLING 01-218 2111/3

MO 21/8/5

19th July 1984

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DEROGATIONS FROM INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

Thank you for copying to me your letter of 3rd July about the inter-departmental Working Group report on the UK's derogation from the UN and European Human Rights Instruments.

I agree with the main conclusion of the Working Group's report, that we should drop our notices of derogation. There is obvious advantage in going as far as we can in withdrawing them. My particular difficulty is, of course, what we should do in respect of Section 14(2) of the Northern Ireland (Emergency Provisions) Act 1978.

I should sound a note of warning about the ease with which we could discontinue section 14(2) and issue new operational instructions for soldiers. A soldier in Northern Ireland must have a quick and simple way of effecting a legal arrest. He does not have the benefit of the training and expertise of police officers in satisfying the normal requirements for the law when making an arrest, and I am concerned that a new formula which required the soldier to operate in a manner more akin to a police officer could be both operationally and politically hazardous. In dealing with crowd disturbances or more serious incidents the uncertainty which a young inexperienced soldier might feel about the proper basis for making an arrest could lead to hesitation on his part which, in turn, could result in loss of control. I am also wary of the political and PR implications of an increased number of technically false



arrests and the criticism this could attract that the Army was abusing its powers.

For these reasons, I am not convinced that the time is right to amend soldiers' powers of arrest in Northern Ireland. To do so could have most unwelcome operational consequences. Nevertheless, the risk of us being found in breach of our obligations if we withdraw our derogations does not seem high enough to outweigh the clear advantages of making a clean sweep of them. I therefore agree with your proposal that we should withdraw the notices, leave Section 14(2) as it is, and live with the consequences. But we should do so in the knowledge that there is no easy fall-back position if a case against us succeeds.

I am sending copies of this letter to the Prime Minister, Geoffrey Howe, Leon Brittan, George Younger, Quintin Hailsham, Kenneth Cameron, Michael Havers and Sir Robert Armstrong.

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Michael Heseltine

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Human Rights