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The Permanent Representative in Geneva telephoned me on 22 June in response to a call from me the previous evening. He indicated that the Mission in Geneva had been in touch with the Human Rights Secretariat and had obtained documents and advice concerning the procedures of the Human Rights Commission. Two documents are being sent from Geneva for our attention. The member of the Secretariat had said that it was normal for Governments to reply to complaints made against them. As Ambassador Hayes had indicated in his letter of 26 May, the sub-Commission on Prevention of Discrimination and Protection of Minorities would meet in August and September, but its work would be preceded by a meeting of a Secretariat Screening Group from 1 August on. This Screening Group would not deal with the admissibility of the McCusker case but would generally prepare the discussion of the case by the sub-Commission. Ambassador Hayes said that it would be highly desirable for a reply from us to be available before the Screening Group met on 1 August.

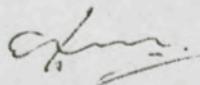
One of the documents being transmitted to us indicates the criteria for admissibility of complaints. The Ambassador felt that whoever drafted Mr. McCusker's communication had familiarised himself very thoroughly with these criteria. The document attempted to conform to every criterion in the book. On further procedures, the Ambassador indicated that the sub-Commission could decide to set up a working group to examine in detail petitions received.

Our reply could deal both with the question of admissibility and also with the substance of the complaint. The Ambassador would favour our replying as soon as possible so as to bring our views to the attention of the Screening Group early in August.

As regards the British Government, the Ambassador felt that they would wish to have, through the respective Missions in Geneva, consultations on this matter before the sub-Commission

met. As I had asked him the previous evening, a member of his Office would now attempt through personal contact with a British official to discover the nature of British thinking about the complaint, but he was not certain how much would be revealed by the British at the present stage. It was, he felt, likely that they would seek our agreement to consultations on the matter before revealing their own thinking. I repeated what I had suggested in our previous conversation, that is that the Mission in Geneva might say to the British that our examination of the matter was at an early stage and that we were unclear as yet whether to challenge the admissibility of the complaint or to argue against the substance of the complaint or to do both. We were aware that to rule out discussion of the petition or even to make an attempt to do this would have political effects, thus raising considerations which go beyond legal feasibility. I suggested that the Mission might at this stage say in informal contacts with the British Mission that, while the matter was under consideration, they had no reason to believe that our side would not be open to consultations in due course.

Finally, the Ambassador commented on remarks made by the member of the Secretariat with whom his office had been in touch. This man had pointed out that the McCusker petition was a new kind of complaint. Instead of complaining that a Government or Governments had infringed Human Rights, it was charging that Governments had failed to act so as to prevent other third parties (in this case the Provisional IRA, INLA, etc) from infringing Human Rights in various respects. The Ambassador was of the view that, notwithstanding the strained pleading and rather flimsy nature of McCusker's case, its legal novelty would possibly ensure a great deal of attention. He anticipated a degree of interest in the case and considered that it was likely to be written up extensively in legal journals when the U.N. process for considering it had got under way.



D.M. Neligan

22 June 1982