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C(68) 132COPY NO. 7431st December, 1968

CABINET

UNITED NATIONS CONVENTION ON RACIAL DISCRIMINATIONMemorandum by the Secretary of State for the Home Department

On 13th December the Home Affairs Committee considered a proposal by the Minister of State for Foreign and Commonwealth Affairs to ratify the United Nations Convention on the Elimination of all Forms of Racial Discrimination before the end of the year, subject to a reservation to cover our Commonwealth immigration legislation. At Home Affairs I had to reserve my position on the need for this reservation. Accordingly, it was announced in a Written Answer on 19th December that we hoped to be in a position to deposit the instruments of ratification early in the New Year, and I now seek the views of my colleagues on the question of the reservation.

2. The suggestion that a reservation might be necessary arises on Article 1(1) of the Convention which defines "racial discrimination" as any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life; and, in particular, from Article 5(d)(ii) under which States undertake to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights . . . " . . . The right to leave any country, including one's own, and to return to one's country".

3. The proposal before Home Affairs was that our ratification should be subject to a reservation that Her Majesty's Government "do not regard the Commonwealth Immigrants Acts, 1962 and 1968, or their application, as involving any breach of the Convention and fully reserve their right to continue to apply those Acts". In brief the arguments for entering this reservation are that if we were to ratify without a reservation, and if a formal complaint by a State were considered by the Committee which will in due course be set up to implement the Convention, or by the International Court of Justice, there would be a risk that the Commonwealth Immigrants Act, 1968 might be said to be incompatible with the Convention. This would leave us with the alternatives of rescinding or modifying the Act, or denouncing the Convention by giving a year's notice under Article 21. The memorandum by the Minister of State for Foreign and Commonwealth Affairs did not suggest that the risk

CONFIDENTIAL

of such a complaint being made was great, and brought out the point that if a complaint were made there would be a whole range of possibilities for settlement short of the stark alternatives of our having to modify our legislation or denounce the Convention. From the making of a complaint or, in the final resort, a decision by the International Court, the whole procedure is estimated to take at least three years.

4. Ratification with the reservation proposed would no doubt provide us with the best protection against future embarrassment under the Convention (unless it were itself declared incompatible with the Convention by the formal objection under Article 20 of two-thirds of the States who were parties); but in my view it would be wrong to enter any reservation. The possibility that the Commonwealth Immigrants Act, 1968 might create difficulties for us in relation to this Convention was foreseen from the outset. The Attorney-General circulated a paper (C(68) 36) to Cabinet which was considered on 15th February (CC(68) 13th Conclusions). In it he said:- "In the case of the Convention on Racial Discrimination we can argue that the proposed legislation is based on criteria of territorial connection with the United Kingdom and does not discriminate on grounds of race, colour or national or ethnic origin". The minutes record the Attorney-General as saying that our position in relation to this and other international agreements and declarations would be "difficult but not impossible".

5. The relevance of the Bill to our existing and prospective obligations under international instruments was hardly referred to in the debates on the Bill. But the extension of immigration control to United Kingdom passport holders not having a close connection with the United Kingdom was misrepresented as a racially discriminatory measure. This we have firmly and consistently denied. I said in the House (Official Report: 27th February, 1968, column 1251): "It has been suggested that this is a racist conception. That is not so. It is true that Clause 1 does not apply to Australian or New Zealand or Canadian citizens because all of them are already subject to control. The test that is adopted is geographical not racial. Those who, or whose fathers or fathers' fathers were born, naturalised, adopted or registered in the United Kingdom will be exempted whatever their race. .... It is a wild exaggeration to refer to this legislation as racist". But if we now expressly reserve our position under the Commonwealth Immigrants Acts, in ratifying this Convention, we shall be going out of our way to invite the criticism that we ourselves recognise that our legislation is open to legitimate attack on grounds of discrimination. To draw attention to the matter by entering a reservation is to invite a re-opening of the issue, and would be inconsistent with the firm line that we have hitherto taken. And to cover the Act of 1962 also in the reservation seems quite unjustifiable. It is the maintenance of our Commonwealth immigration control on a non-discriminatory basis that causes us such embarrassment with Australia and New Zealand from time to time.

6. In my view the better course, and the one with which I invite my colleagues to agree, is to ratify the Convention without any reservation, and as the Minister responsible for immigration I am prepared to accept the consequences of this. If our legislation is challenged, we shall rely on the arguments that satisfied us that it was not discriminatory.



7. Meanwhile, with the agreement of the Secretary of State for Foreign and Commonwealth Affairs, the Channel Islands and the Isle of Man have been informed of Her Majesty's Government's proposal to ratify the Convention (which would impose obligations on them) and their formal agreement sought, with a view to ratification not later than the end of January, 1969.

L. J. C.

Home Office, S. W. 1.

31st December, 1968

