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Mr Spence



cc PS/PUS (L&B) 13/81
 + PS/Mr Bloomfield
 NI Perm Secs
 Mr Brennan
 Mr A Stephens
 Mr Chesterton
 Mr Gilliland
 Mr Merifield
 Mr Palmer
 Mr Cowling
 Miss Elliott
 Mr M Elliott
 Mr Jackson
 Mr Ehrman
 Mr Hammond, HO

IRISH LANGUAGE - UK OBLIGATIONS IN INTERNATIONAL LAW

Policy towards the Irish Language

I am sorry not to have commented earlier on Mr Carvill's helpful minute of 12 August to Mr Chesterton about our policy towards the use of Irish, and copied to Mr Lyon. Like you and Mr Chesterton (in his reply of 22 August) I regard the Government's commitment to recognising and respecting the two identities and traditions in Northern Ireland as implying, short of artificially - and expensively - erecting additional cultural differences, that we should recognise the legitimate use of the language in private interchange, and not unnecessarily obstruct its use without good administrative, security or financial reasons. The Government's wider commitment to comply with the requirements of international law, which this minute explores in more detail, reinforces the correctness of this conclusion.

Minority Languages in International Law

2. The FCO Legal Advisers have drawn our attention to two international Agreements, ratified by the UK, which are relevant.

CONFIDENTIAL

E.R.

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These are:

- (a) the UN Covenant on Civil and Political Rights whose Article 27 requires States in which "ethnic, religious or linguistic minorities exist, not to deny to persons belonging to such minorities, the right, in community with other members of their group, to use their own language"; and
- (b) the European Convention on Human Rights.

3. The relevance of both instruments is examined below.

The UN Covenant

4. The UK is bound, in principle, to respect the provisions of a Covenant which we have ratified. However, the UN mechanisms for enforcing observance are of limited efficacy. Under Resolution 1503 of the Economic and Social Council, the Sub-Commission on the Prevention of Discrimination and Protection of Minorities has the power to consider complaints of violations of human rights from individuals or organisations throughout the world. Governments are given the opportunity to submit a written reply to such complaints before they are considered by a working group of the Sub-Commission. Should this working group find that a complaint or series of complaints reveals a "gross and reliably attested pattern" of violations of human rights, the complaint will be transmitted upwards through the full Sub-Commission to the Commission on Human Rights. The procedure is confidential throughout. There are no sanctions, other than the opprobrium the State would inevitably have to bear. (There has, however, been one complaint under the Resolution 1503 procedure, by the Roddy McCorley Society that the UK Government policy on the use of Irish (especially in prisons) constituted a consistent pattern of gross violation

- 2 -
CONFIDENTIAL

E.R.

of human rights. This was, however, not pursued.)

5. The Covenant also provides some direct means of enforcement: under Article 40, States are required to submit to the Human Rights Committee, established under the Covenant, and update when requested, reports on the measures taken to give effect to the rights recognised in the Covenant. The Committee then sends comments to the Government concerned. Our latest report was examined earlier this year, and no criticisms were made of our policies towards the Irish language. Again, the Human Rights Committee can only reproach/^{the} Government in its report. It cannot require action. (Unlike the UK, the Irish Republic has not ratified the Covenant. Hence, the room of the Irish to exploit an alleged violation by the UK is limited. It is true that the UK has made an optional Declaration under Article 41 that would allow the Committee to consider complaints from one State party that another was not fulfilling its obligations under the Covenant, but, as a consequence of /^{their} non-ratification, the Irish are debarred from creating difficulties under this Article also.)

6. The UK has not ratified the Optional Protocol to the Covenant which would allow the Human Rights Committee to consider allegations from individuals that they are the victims of a violation of any of the rights set out in the Covenant on the grounds that this would merely duplicate the right of, individual petition under the ECHR.

The European Convention

7. Article 10 of the Convention guarantees the right to freedom of expression, but makes allowance for such restrictions as may be necessary in the interests of national security or public safety or for the prevention of disorder or crime. Neither this nor any other Article explicitly extends to the freedom to express oneself in the language of one's choice.

E.R.

Hence, even though a campaign might be mounted against some alleged violation of the Convention by our policy in regard to the Irish language, there is no reason to believe that such an action would succeed. (You may recall that in the Belgium Linguistics Case (1965) the European Court of Human Rights found against (native) French speakers who were seeking to win the right to a French language education for their children in the Flemish part of Belgium.)

Conclusions

8. FCO Legal Advisers tell us that our practice in relation to the use of Irish in the courts and administration generally is unlikely to contravene either the Covenant or the Convention. (They are less confident of our ability to defend our policy on the use of Irish in prisons about which I am writing separately to Mr Jackson.) It could, therefore, be argued that we could safely ignore both Agreements. But this would, I suggest, be wrong in principle and in terms of the Government policy of following international law. Moreover, if we are not able to defend our policies convincingly in terms of international law, we are open to criticisms from those who do not wish us well - including the Soviet Union whose linguistic minorities are fairly well catered for. The requirements of international law may not, therefore, be overriding - but they point in the same direction as our policy of respecting, and where possible, recognising minority traditions, whether ancient or recently discovered.

P N Bell.

P N BELL

12 November 1985