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Discussion on Fair Employment, Maryfield, 26 June 1986

1. British side: Mr. David Fell, Secretary, Department of Economic Development; Mr. Ronnie Spence, Under Secretary, Central Secretariat; Ms. Frances Elliott, Under Secretary, NIO; Mr. Stephen Hewitt and Miss Valerie Steele, Secretariat.  
Irish side: Mr. Eamonn O Tuathail and Mr. Brendan Lyons, D/FA; Mr. Michael Lillis, Mr. Padraic O Coileain, Mr. Noel Ryan and Mr. Daire O Criodain, Secretariat. The discussion took place over dinner at which it was not possible to take notes.
2. Before dinner, Mr. Spence gave an illustrated presentation on the state of and prospects for the Northern Ireland economy. An edited version of the paper which Mr. Spence used in his presentation has already been sent to the Department. At the end of his presentation Mr. Spence concluded that the state of the economy generally and the employment prospects, in particular, left little scope for action to redress imbalances in employment between the two communities in the North.
3. During the course of the discussion the Irish side stressed the importance of the higher levels of nationalist unemployment and the perception of discrimination against the minority in employment practices as contributory factors to political instability. Among the measures suggested to improve the situation were the following:
  - greater resources for the Fair Employment Agency in terms of personnel and funds; and a strengthening of its investigative powers;
  - a reinforcement of the Declaration of Principle and Intent set out in the 1976 Fair Employment Act which, if he signs it, entitles an employer to an Equal Opportunity Certificate and to call himself an Equal Opportunity Employer. It was suggested that the Declaration be upgraded, possibly into a Code of Practice, that an employer might be required to reaffirm his adherence to it regularly and that his performance in relation to it should be subject to more rigorous review;
  - employers should be required to maintain a register showing a breakdown of their staff according to their religion;

- in view of the political urgency of the problem consideration might need to be given to more radical forms of corrective action which would be seen to go beyond merely tampering with it. Selective application of affirmative action programmes and amendment of the 1973 Constitution Act which prohibits their introduction were mentioned in this context.
4. Mr. Fell agreed that the existing situation did constitute a major problem. However, the Government's capacity to act was constrained by a number of factors. First, the present economic climate of rising unemployment, an expanding labour force, a declining industrial base and declining inward investment as well as severe curtailments on public expenditure, represented a strong constraint on Government action. Second, the Government was legally and politically obliged to adhere firmly to the principle of equal opportunity in employment. Quotas and affirmative actions were outlawed by the provisions of the 1973 Constitution Act. In any event, to introduce such measures deliberately to benefit the minority community would provoke a strong reaction among the majority, all the more when jobs were scarce all around. Mr. Fell suggested that there had been some sectoral successes in recent years. He instanced the employment practices which had led to a steady increase in the proportion of catholics in the senior grades of the civil service (principal and upwards) as a model which he would like to see apply to the economy as a whole. Regarding the future, Mr. Fell said that the resources of the FEA were to be increased shortly and that more extensive proposals were currently under consideration by the Secretary of State on foot of the report from the Steering Group on Employment Equality.
5. Mr. Fell referred to the campaign in the United States in support of the implementation in Northern Ireland of the MacBride principles on fair employment and to the adverse effect this could have for investment in Northern Ireland. He said that it was important that the Irish Government should distance itself firmly from this campaign as the people behind it in the U.S. were concerned less to improve the lot of the minority in the North than to damage its economy. The Irish side quoted the Taoiseach's statements in the U.S. warning that while the thinking behind the principles was unexceptionable, they could have the net effect of reducing employment in the North. The Irish side pointed out that

From their experience of the U.S., simply to condemn a campaign of this kind would not detract from its momentum but could indeed augment it. The best way to undermine the campaign behind the Principles was to put forward a positive programme of action which would respond to genuine concern about discrimination against the minority in the North. Mr. Fell appeared to accept these points.

6. Mr. Fell said that when the proposals on fair employment, currently under consideration by the Secretary of State, were brought forward in the autumn his side would welcome the views of the Irish Government on them. However, he considered that the measures would not start with a fair wind if they were seen as having emerged from the Conference. This was a sensitive political area and he considered it inappropriate that whatever discussion took place between the two Governments should be made public in any detail in, for example, Conference communiqués. The Irish side replied that the Irish Government was contemplating putting forward proposals in this area within the Conference and awaited, with interest, the proposals under preparation on the British side. The Irish side suggested that it might be possible for the issues involved to be thrashed out to a very great extent through the medium of the Secretariat, in which case substantive discussion at meetings of the Conference itself would be minimal.
  
7. The central difference between the two sides related to the Irish side's request to see the draft legislation proposals on fair employment which Fell said would involve major changes in the existing legislation. Fell said the authorities would be in an impossible position if it emerged that the Irish Government had put its views on the British ideas before a draft order was published. (Note: this was discussed afterwards in the Secretariat, the British side of which said that (a) they agreed with the Irish position and (b) Fell and Spence had been impressed by our arguments).

D. O Criodain  
10.7.86