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- 1. PS/MR VIGGERS (B&L)
- 2. PS/SECRETARY OF STATE (B&L)

- cc
- PS/SOS (B&L)
 - PS/PUS (B&L)
 - PS/Mr Bloomfield ✓ 2/1
 - Mr Burns
 - Mr McAllister
 - Mr Chesterton
 - Mr Mayne
 - Mr Gowdy
 - Mr Wolstencroft
 - Mr Bell
 - Mr George, FCO
 - Mr Wilson
 - Mr McConnell, PAB
 - Mr McCartney, DFP

MACBRIDE PRINCIPLES

- 1. The purpose of this submission is to bring Ministers up to date with developments in respect of the MacBride Principles and to seek approval to an updated statement of HMG's position in regard to the Principles.

BACKGROUND

- 2. Ministers are familiar with the campaign in the US to pressurise US companies with plants in Northern Ireland to adopt the MacBride Principles. The campaign has now been running for more than two years. Tactics include shareholder resolutions advocating support for the MacBride Principles; State legislation making State investment conditional on companies' endorsement of the MacBride Principles; proposals for Federal legislation controlling NI imports and linking them with endorsement of the MacBride Principles; encouraging a boycott of Ford products by Irish American Groups. Status reports on each of these aspects are at Annex I.

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3. HMG's policy has been to resist the imposition of the MacBride Principles on US companies and reflects the conclusion that, no matter how packaged, the campaign is largely motivated by political opposition to the constitutional status of Northern Ireland and the desire to embarrass HMG. The main proponent of the campaign is the Irish National Caucus which has a strong ally in Comptroller Goldin of New York and is supported by the more extreme Irish American lobby in the US.
4. Ministers and officials have consistently taken the view that to accede to the MacBride Principles would undermine existing fair employment arrangements in Northern Ireland, and be a tacit admission that HMG's own ideas and provision in this area are inadequate. It would also legitimise monitoring by US interests hostile to HMG. Critically, it would also impose an extra burden on existing, and potential, investors at a time when European competition for a diminished amount of American investment is fierce, and would be a disincentive to locate in Northern Ireland. Vigorous implementation of the Principles could also bring companies into conflict with the law in Northern Ireland.
5. These considerations were reflected in a definitive statement of Government's position (Annex II) which Ministers approved, and which was issued in February 1986 partly for use in a Court hearing involving American Brands (Annex III). In June 1986 the Secretary of State confirmed that, whilst appreciating that there were different legal views about the compatibility of the Principles with Northern Ireland fair employment law, opposition to the MacBride Principles should be maintained.
6. Generally speaking US companies also have taken a forthright view on the MacBride Principles and have resisted any shareholder resolutions which have been tabled. There is no doubt, however, that most companies (but particularly GM and Ford) are concerned about the MacBride campaign.

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NEED FOR UPDATED POLICY STATEMENT

7. With the passage of time there is now a clear need for HMG's 1986 statement to be updated. There are a number of reasons for this:
- (i) the publication in September 1986 of the Consultative Paper on Equality of Opportunity in Employment in Northern Ireland and the draft Revised Guide to Manpower Policy and Practice;
 - (ii) continuing pressure on US companies and the need for HMG to reaffirm its position on MacBride and encourage companies to continue to resist the Principles;
 - (iii) the FCO is urgently seeking an updated statement for use in combating proposed legislation in California, New Jersey and Connecticut;
 - (iv) the tabling of MacBride related legislation in Congress;
 - (v) a decision by the US Conference of Bishops to examine the MacBride Principles;
 - (vi) the change in Administration in the ROI. Mr Haughey is on record as supporting the MacBride Principles.
8. These developments (or the prospect in (vi) above) were discussed by officials at a review meeting on MacBride at the end of last month which included representation from DED, IDB, NIO (both PAB and SIL), DFP legal adviser and the FCO (London and Washington). A report to Ministers on the outcome of officials' deliberations was deferred pending a scheduled visit to the US (now under way) by Mr Mayne, the Under Secretary in DED

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responsible for fair employment matters. However FCO's advice (which is supported by Mr Mayne from the US) that an updated statement on MacBride is required as a matter of urgency necessitates an immediate approach to Ministers.

9. In summary the January review by officials confirmed that the pressure on US companies, including legislative pressure, was likely to continue; that Government should continue to resist the MacBride Principles and encourage US companies to do likewise; that in extremis ie where legislation looks certain, replacement in that legislation of the Principles by the requirements in the draft Declaration of Practice in the Consultative Paper (Annex IV) or qualification of the Principles by the requirement that they be operated in a manner compatible with Northern Ireland law, could be suggested. It was also agreed that Government should focus on its own policies and major on the unnecessary and counter productive nature of the MacBride Principles in resisting their adoption. The difference of legal opinion on the Principles and the prospect of conflict with Northern Ireland law should also feature but should not be overplayed. The presentation of HMG's opposition should be flexible, depending on the circumstances, but should be consistent in policy terms.
10. Officials are agreed that US companies' experience of the Sullivan Principles suggests that acceptance of the MacBride Principles or any other set of Principles as a gloss on HMG's own policies would provide a platform for ever increasing demands on companies, including regular monitoring and remedial action, and would legitimise outside interference in UK affairs, which could be extended to other policy areas.
11. Interest by some US companies (particularly GM and possibly Ford) in a further development of our proposed Declaration of Practice as part of their resistance to the MacBride campaign was also discussed and I believe that

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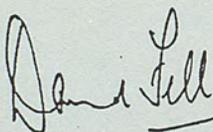
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this may provide us with a very useful addition to our weaponry. However, I will report more fully on this aspect on Mr Mayne's return from the US. Any developments in this regard, however, are unlikely to conflict with the unanimous view of officials at the review meeting that HMG should continue to resist the MacBride Principles.

12. It is against this background, therefore, that officials have sought to update HMG's 1986 statement on fair employment and the MacBride Principles. The re-draft (copy attached at Annex V) builds on the 1986 statement, and retains some of the earlier wording for consistency's sake. The re-draft drops previous references to Dr Fitzgerald and Mr Spring but now includes an extract from Mr Hume's address at the SDLP Conference in November 1986.

CONCLUSION

13. Mr Viggers and the Secretary of State are invited to approve the statement at Annex V as a statement of HMG's views on the MacBride Principles and authorise its immediate use in combating the MacBride campaign.



DAVID FELL
26 February 1987

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MACBRIDE PRINCIPLES: SHAREHOLDER RESOLUTIONS

1. In 1986 shareholder resolutions in support of the MacBride Principles were put down with seven companies, American Brands (Gallaher) (see Annex II), Ford (see Annex ID), Fruehauf, General Motors (Fisher Body), TRW, Hughes Tool and VF Corporation. The New York City Employees' Retirement System (NYCERS) and the New York Teachers' Retirement System (NYTRS) - in effect Mr Goldin - were involved in all the resolutions. None of the resolutions succeeded.
2. In 1987 it is expected that the seven companies at para 1 together with a further six American Home Products, Armco, Ball Corporation (Kent Plastics), Du Pont, Oneida and United Technologies will be the subject of shareholder resolutions.
3. It is understood that Comptroller Goldin expects wider support because of the Bills passed in New York State and Massachusetts. Mr Doherty has claimed that NYCERS and NYTRS have had considerable success so far in that while no company AGM has actually approved the Principles, most of them have already asked their subsidiaries for detailed reports on hiring and promotion procedures.

MACBRIDE PRINCIPLES: STATE ACTIVITY

New York Consular District

1. Legislation was passed in New York State on 31 May 1986 and the first report by the State Comptroller (required by the law) was due by January 1987. In Connecticut disinvestment legislation was defeated in 1986 for the fourth straight year but has come up again in 1987 and is expected to go through in the next few weeks. No legislation has emerged in Pennsylvania, although there were abortive efforts to get an initiative going. A Bill which was introduced in New Jersey early last year was held up in Committee, but was re-introduced in 1987 (an election year), and seems likely to succeed. The MacBride campaign has been strongest in the New York area - coalition of Irish-American and trades union groups, directly targetting legislators and companies. Mr Eccles visited New Jersey and Connecticut in week commencing 16 February to lobby against their Bills.

Chicago Consular District

2. A MacBride/Northern Ireland amendment was added to a South African disinvestment Bill in the Illinois House of Representatives early in 1986, but was defeated. It is possible that something will be re-introduced early in 1987. In May 1986 the Chicago City Council passed a declaratory resolution condemning alleged discrimination in Northern Ireland and discouraging investment and trade there by city institutions. Generally, however, lobbying activity and continues at present at a low and largely personal level. No indications of concern on the part of US companies in the area with Northern Ireland investments. Outside Illinois, there has been no legislative activity.

San Francisco Consular District

3. It is expected that MacBride related legislation modelled on the New York pattern will be tabled in the California State Capital, Sacramento this session by Assemblyman Tom Hayden, husband of actress Jane Fonda. There is some suggestion also that the Teamsters Union has raised \$15,000 to lobby in support of MacBride in California. A non-binding resolution on Northern Ireland, passed in Montana in 1985, referred to MacBride but there has been no further action.

Boston Consular District

4. Legislation has already been passed in Massachusetts. There is no sign that it will be amended or repealed. Legislation was also introduced in Rhode Island in 1986 but ran out of time before it could be heard. The likelihood is that it will be re-introduced in 1987.

Cleveland Consular District

5. The only State in which legislation was tabled in 1986 was Michigan and the Bill may be re-tabled this year. Lobbying activity has so far been at a fairly low level.

Atlanta Consular District

6. In the South East there is very little interest outside Florida where draft legislation failed earlier this year. It is likely something will also be re-tabled for this year's session.

MACBRIDE PRINCIPLES: FEDERAL LEGISLATIVE PROPOSALS

1. From time to time attempts have been made to incorporate the MacBride Principles into Federal legislation. Invariably the sponsors have strong Irish-American constituencies.
2. Early in 1986 Congressman Biaggi attempted without success to link support for the MacBride Principles to the US contribution to the International Fund. More recently (October 1986) legislation was introduced in the Senate (Senator D'Amato) and in the House of Representatives (Congressman Fish) with two main provisions:
 - (i) a proposed ban on imports from NI produced by companies not adhering to the MacBride Principles; and
 - (ii) compliance with the MacBride Principles by US-owned firms operating in NI.
3. The Bills fell at the end of the last session of Congress but have been re-introduced this year. The Fish Bill has 25 co-sponsors some of whom (eg Feighan, Frank and Schroeder) have Friends of Ireland associations although most are members of the Biaggi group.
4. A change of attitude by the RoI could have an impact on progress as could the passing of further state legislation.
5. NIO has been asked to explore the international trade aspect of the import restriction provisions in the D'Amato Bill.

As part of the MacBride campaign the Irish National Caucus, the Ancient Order of Hibernians and other Irish-American groups have advocated a boycott campaign against Ford in an attempt to put further pressure on the company. They have organised a direct mail campaign against Ford which has resulted in some 1,500 circular letters being sent to the President of the company in Detroit.

Despite the assertions of Father McManus the campaign has not been particularly successful to date. The company has not experienced any drop in sales and there has been no weakening of their resolve to reject the MacBride campaign. The INC has received little publicity for its campaign in the US and has resorted to publishing letters and trying to secure articles in sympathetic journals.

The general campaign is, of course, of great nuisance value to the company. IDB and DED have been keeping close to Ford and the others both in the US and here in the UK. We understand that Ford are proposing to conduct an internal review of their employment practices in Northern Ireland to ensure that they are in a fully defensible position.

A finding of discriminatory practice at the Dunmurry plant by the Fair Employment Agency over an incident when some Protestant workers were allowed time off when some Catholic workers were not is damaging to the company. The company insist that this was an error rather than an example of discrimination but it has given the MacBride campaigners a useful weapon in their attack on the company. Ford, however, intend to demonstrate by their internal review that they are beyond suspicion and they have assured us that they have no intention of making any concession to the MacBride campaign.

FAIR EMPLOYMENT IN NORTHERN IRELAND AND THE MACBRIDE PRINCIPLES

1. This note provides a summary of the British Government's views on the MacBride Principles, which are being canvassed by the Irish National Caucus and certain groups in the United States.
2. The British Government is totally committed to the promotion of equality of opportunity in employment in Northern Ireland and has taken positive steps to give effect to this policy, including the introduction of fair employment legislation - the Fair Employment (Northern Ireland) Act 1976. The guiding principles of the Northern Ireland law are equality of opportunity, no discrimination on religious or political grounds and recruitment solely on merit.
3. Enforcement of the law is in the hands of an independent statutory body, the Fair Employment Agency for Northern Ireland. Agency rulings are legally enforceable.
4. The British Government has repeatedly made clear its commitment to achieving further progress in fair employment in Northern Ireland and is always mindful of the need to continually review its own stance on this difficult issue. The Fair Employment Agency is to receive additional resources and officials have reported recently on how existing policies might be made more comprehensive, consistent and effective. The way forward is now being considered in the light of that report. In addition the Anglo-Irish Agreement of November 1985 provides for the Irish Government to put forward in the Intergovernmental Conference views and proposals on the role of the Fair Employment Agency and other bodies involved in this field.
5. In view of the progress already made in the provision of fair employment in Northern Ireland, the existing legal requirements and Government's determination to secure further progress, the British Government considers the MacBride Principles to be unnecessary and their adoption undesirable. The Fair Employment

Agency, as the body responsible for enforcement of the law in this area, has indicated that whilst a number of the Principles are consistent with Northern Ireland law, others (in particular Principles 7 and 8 and depending on the manner of implementation, possible Principle 1) are objectionable as requiring preferential and discriminatory treatment, and companies operating such principles would be held to be acting unlawfully.

6. To seek to superimpose the MacBride Principles on existing fair employment law in Northern Ireland therefore would create confusion and make difficulties for companies operating there. The Government is concerned that attempts to compel US firms to apply the MacBride Principles will damage the climate for badly needed US investment in Northern Ireland. In doing so they threaten to reduce employment opportunities for Catholic and Protestant alike. What Northern Ireland needs are more jobs, not a confusing variety of rules.

7. In May 1985 the Irish Prime Minister, Dr Fitzgerald, indicated that there was a campaign under way aimed at discouraging American investment in Northern Ireland and that those pursuing the campaign were inflicting "a grave injustice on both communities, nationalist and unionist". Similarly, the Deputy Prime Minister of the Irish Republic, Mr Spring, in a reference to what he described as the campaign "to force American money to be withdrawn from any firms operating here in which discrimination against the minority population is alleged to exist", expressed the view that "there are those who have a vested interest in seeing the total destruction of society in Northern Ireland and their campaign may be designed at depriving the people of Northern Ireland of much needed investment rather than any concern about discrimination".

8. Pressure for adoption of the MacBride Principles also obscures the progress already made in fair employment in Northern Ireland and distorts the record of American firms located there. In his statement of 15 November 1985 welcoming

the Anglo-Irish Agreement, President Reagan said, "I am proud that Northern Ireland enterprises in which American money is involved are among the most progressive in promoting equal opportunity for all".

AMERICAN BRANDS - THE MACBRIDE PRINCIPLES

1. The compatibility of the Principles with NI law was considered by a US District Court early last year in an action taken by the New York City Employees' Retirement System (NYCERS - but effectively Comptroller Goldin) following a refusal by American Brands (which owns Gallaher's cigarette manufacturing plant in NI) to circulate a shareholder resolution on MacBride as put down by Comptroller Goldin. American Brands had obtained Securities Exchange Commission support for the refusal on the grounds that the resolution would put the Company into conflict with NI law.

2. In a decision which American Brands considered perverse the US District Court ruled that the MacBride Principles were capable of being implemented without contravening NI Law. NYCERS were supported in the action by an affidavit from Mr P Archer QC MP. NYCERS American Brands resolution was subsequently defeated at the Company's AGM. A further shareholder resolution has been tabled for the shareholders' meeting on 8 May 1987 and the Department, in response to a recent request, has written to the Company's solicitors reaffirming Government policy. The Company believes the resolution will be defeated.

DECLARATION OF PRACTICE (ILLUSTRATIVE DRAFT - RELIGION)

[This body] recognising the importance of equality of opportunity in employment on the basis of merit alone declares that it practises such equality of opportunity and further declares that it:-

- (a) welcomes, and takes positive steps to encourage, applications for all vacancies from suitably qualified persons irrespective of their religious affiliation;
- (b) is committed to recruitment, selection, training and promotion on the basis of merit alone;
- (c) monitors the outcome of its recruitment, selection, training and promotion procedures and the composition of its workforce so far as practicable in terms of religious affiliation;
- (d) identifies any inconsistencies between the composition of a group of job applicants and those actually appointed and between those eligible for promotion and those actually promoted;
- (e) seeks to identify, so far as practicable, the cause of any imbalance or distortion;
- (f) takes whatever remedial action is deemed necessary to eliminate any imbalance or distortion;
- (g) retains records on the religious affiliation of applicants and employees so far as practicable in order to establish trends in its recruitment, selection, training and promotion procedures;
- (h) keeps its recruitment, selection, training and promotion procedures under review and works co-operatively with [Commission] in promoting equality of opportunity in employment;
- (i) observes the strictest confidentiality with regard to the disclosure of personal information obtained from individuals in furtherance of its policy of promoting equality of opportunity in employment.

UPDATED HMG STATEMENT DRAFT (2)

FAIR EMPLOYMENT IN NORTHERN IRELAND AND THE MACBRIDE PRINCIPLES

1. This note summarises British Government Policy on fair employment and its views on the MacBride Principles, which are being canvassed by certain groups in the United States, including the Irish National Caucus:

GOVERNMENT POLICY

2. The British Government is totally committed to the promotion of equality of opportunity in employment in Northern Ireland and has taken positive steps to give effect to this policy. The NI Constitution Act 1973 outlaws discrimination on the ground of religious belief or political opinion in legislation and by public authorities. In 1976 Government introduced the Fair Employment (Northern Ireland) Act 1976 which outlaws such discrimination in employment. The guiding principles of the 1976 Act are equality of opportunity, no discrimination on religious or political grounds and recruitment solely on merit.
3. Enforcement of fair employment law is in the hands of a statutory body, the Fair Employment Agency for Northern Ireland, which is independent of Government. The Agency is under a duty to promote equality of opportunity in employment and to investigate individual complaints of discrimination. There is no cost to an individual complainant. It can also investigate employment practices generally. Agency rulings are legally enforceable. Funding for the Agency has been significantly increased in recent years.
4. In addition Government publishes a fair employment Guide to Manpower Policy and Practice which is targeted at employers and trade unions. A new version of the Guide will be published in 1987 and will include advice on monitoring and the essential elements of an equality of opportunity programme.

FURTHER DEVELOPMENTS

5. As part of its ongoing commitment to achieving further progress on fair employment the British Government has recently conducted a comprehensive review of law and practice in Northern Ireland as a result of which a Consultative Paper on equality of opportunity in employment, containing

a number of major proposals for change, was published in September 1986. The proposals in the Paper include tough economic sanctions against any possible default in the private sector; the imposition of a statutory duty on the public sector; more vigorous law enforcement through systematic monitoring of employment practices allied to the introduction of a Declaration of Fair Employment Practice and the provision of a more effective organisational framework. These proposals demonstrate beyond doubt the British Government's determination to achieve equality of opportunity in the workplace.

THE ANGLO-IRISH AGREEMENT

6. The Anglo-Irish Agreement provides for the Irish Government to put forward, in the Intergovernmental Conference, views on proposals for major legislation and on major policy issues where the interests of the minority community are significantly or especially affected. In particular they may also put forward views and proposals on the role and composition of the Fair Employment Agency. The Irish Government has welcomed the British Government's Consultative Paper on equality of opportunity and has forwarded preliminary views for consideration.

THE MACBRIDE PRINCIPLES

7. In view of the progress already made in the provision of fair employment in Northern Ireland, the existing legal requirements and Government's determination to secure further progress, the British Government considers the MacBride Principles to be unnecessary and their adoption undesirable.
8. The Government is concerned moreover that attempts to compel US companies to apply the MacBride Principles will damage the climate for badly needed investment and employment in Northern Ireland. The US companies in Northern Ireland already operate under the terms of the fair employment legislation and are subject to the oversight of the independent Fair Employment Agency. Attempts to force them to adopt principles which could potentially put them in conflict with this legislation and to account to a variety of other bodies, will do little to encourage their continued investment in the Province. Nor will it persuade other companies of the value of putting new investment into Northern Ireland. These attempts therefore threaten the employment opportunities for Catholic and Protestant alike and it is important to note that what Northern Ireland needs is more US investment rather than counter-productive efforts to impose unnecessary employment conditions.

9. The promoters of the MacBride Principles claim that they can be given effect within Northern Ireland fair employment laws. If so, they do not add to the protection already afforded under Northern Ireland law: they are not needed. Instead, employers in Northern Ireland who are anxious to provide equality of opportunity in employment should, and do, look to the Fair Employment Agency, which is the responsible statutory body, under the Fair Employment (Northern Ireland) Act 1976, for advice and guidance regarding what is, and is not, acceptable under the law. The reality is that the Fair Employment Agency has indicated that whilst a number of the Principles are consistent with Northern Ireland law, others (in particular Principles 7 and 8 and, depending on the manner of implementation, possibly Principle 1) are objectionable as requiring preferential and discriminatory treatment, and companies operating such principles would be held to be acting unlawfully.

10. In its Tenth Annual Report (page 18) the Agency further stated:-

"If employers generally are to adopt the type of equality of opportunity programmes which the Agency has been demanding, it is crucially important that there should be total clarity about where the dividing line is between permissible and impermissible recruitment activities. It is for this reason that the Agency believes that the MacBride Principles, currently much debated in the United States of America, are likely to have a detrimental effect because, in the view of the Agency, they at worst stray over the line, and at best cause confusion and doubt^{about} where the line is."

11. Few of those who support the MacBride Principles appear to appreciate the damage they will cause to those whom they apparently wish to help. To threaten US companies operating in Northern Ireland with withdrawal of investment is of no assistance whatsoever. The best way to end inequality in employment in Northern Ireland is to increase the prospects of jobs by further encouraging investment and by supporting existing efforts to achieve progress in Northern Ireland itself. As the leader of the Social Democratic and Labour Party (SDLP), the main Catholic party in Northern Ireland, Mr John Hume, MP, said at his Party's Annual Conference on 22 November 1986:-

"The task of ensuring fair employment in normal economic times is difficult enough but we should have no illusions about its difficulty in circumstances of continuing job losses and rising unemployment. That is why we are so strongly opposed to any effort to promote fair employment by promoting disinvestment. Disinvestment is an attack on jobs, it is a means of ensuring that jobs do not come; it considerably weakens the struggle for fair employment. Unemployment is no answer to discrimination. Rather do we call on all people of good will, particularly those abroad who wish to help, to use instead their considerable influence to encourage investment and job creation in areas of high unemployment. Job creation is vital to the struggle for fair employment and an essential part of that struggle, but it is one side of the equation. Ensuring fairness is the other."

12. Job creation and fairness in employment are central parts of British Government policy in Northern Ireland.