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cc Mr Fell
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Mr Mayne
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Mr George RID FCO
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MACBRIDE - BRIEFING FOR INTERGOVERNMENTAL CONFERENCE

1. Thank you for sight of the draft briefing on MacBride for use in the forthcoming IG Conference, which I have now discussed with Mr Fell.
2. We are not entirely happy with the proposed material and have re-drafted the Speaking Notes and the defensive material to sharpen up the presentation and more accurately convey the purpose of State legislation on MacBride. The re-draft (copy attached) has been approved by Mr Fell.

R. Wilson

R WILSON

14 April 1987

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SPEAKING NOTES

We believe that the MacBride campaign needs to be resisted for the following reasons:

- Its detrimental effects on investor confidence in NI. Pressure on US companies through shareholder resolutions and legislation linking State investment to a company's adherence to the MacBride Principles is likely to prejudice NI's competitiveness for new investment and put existing investment at risk. Economic boycott (as in Ford) is also damaging. Bad for job prospects of Catholics and Protestants alike.
- It is unnecessary. The British Government is already tackling the problem of inequality in employment. Discrimination is illegal and HMG is intent on further action as evidenced by the consultative paper proposals. The Principles will not assist this process.
- It confuses the issue. Important in this area to give the right lead. The Principles undermine the role of the FEA and confuse companies. This is counterproductive.
- Many of the backers (the Irish National Caucus and Noraid in particular) are not primarily interested in equality of opportunity and will use the Principles to make trouble and damage Northern Ireland.

John Hume has now expressed clear opposition to the campaign. Although he has no objection to the Principles as principles, he is alive to the damaging effect of the MacBride campaign on investment and jobs in NI.

We do not expect the Irish to refrain in any way from using their rights under the Conference to seek changes to the law on equality of opportunity in employment, (which we intend to change in the light of the current consultation on the matter - Consultative Paper issued September 1986).

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But neither community will benefit from ill-informed - and at times malign - influence from the other side of the Atlantic. Consequently HMG would welcome help from the Irish Government in responding to the MacBride campaign.

Without Irish help legislation in Congress and in various states is more likely to get onto the statute book. It would be helpful if Irish diplomatic staff in the US could reinforce the detrimental effects of such legislation in consultation with HMG posts and if the Irish Government could make known its opposition to the campaign generally.

In particular we would welcome:

- support against State legislation with a disinvestment dimension (this is particularly important in California at the moment);
- backing for John Hume's recent statement;
- Irish Government encouragement of opinion-makers in Ireland, and in the US, to take a similar stance.

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DEFENSIVE RESPONSES TO IRISH ARGUMENTS

- (a) "The Irish Government could not oppose Principles which are entirely unexceptionable in themselves"

We are not asking the Irish Government to oppose the Principles themselves (although we regard them as highly deficient as does the FEA) but the detrimental effect on investment and job opportunities in Northern Ireland. The attempt to secure their acceptance by pressurising US companies and threatening disinvestment (notably through State legislation) is likely to deter future investments and prejudice existing investment. The Ford boycott campaign organised by the INC and the AOH can only prejudice Ford's commitment to Northern Ireland. John Hume recognises this.

- (b) "The British Government should show more flexibility. It is wrong to oppose such ostensibly reasonable demands. You should reach an accommodation with the promoters"

We are committed to fair employment. We do not believe that principles based on comparisons with South Africa, and promoted on that basis and subjecting US companies to open-ended monitoring by a variety of interests, some exceedingly hostile to HMG, provide a sound basis for a credible fair employment programme in NI. The whole tenor of the MacBride campaign has been prejudicial to investment and employment prospects in Northern Ireland and we see little room for an accommodation with those behind the campaign.

- (c) "The British Government should not say that the Principles are illegal. The NYCERS Court ruling has disproved that"

Ultimately, only the NI Courts can rule definitively on the law in Northern Ireland. In the first instance, however, the FEA is the arbiter of what is, and is not compatible with the Fair Employment Act. The US

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District Court ruling is not binding in Northern Ireland and appears to be somewhat perverse in that it omitted any reference to an affidavit from the Chairman of the FEA which stated that "some of the Principles, in particular one, seven and eight, insofar as they appear to recognise that preferential treatment should be given to minority employees, are inconsistent with the Fair Employment Act and therefore unlawful." We were very surprised when the Judge stated that "the Fair Employment Agency as a body has apparently produced no formal statement of its construction of the FEA (Fair Employment Act) in terms of its consistency with the MacBride Principles."

In fact the case lends some weight to fears about MacBride. In their evidence "NYCERS" admitted that the MacBride Principles could be implemented in a manner which would contravene Northern Ireland fair employment law. We believe it is unreasonable to saddle US companies with ambiguous and confusing principles which, as the FEA has indicated, could bring them into conflict with Northern Ireland law; and which they would be under pressure to adopt. The fact that senior lawyers disagree about the compatibility of the Principles with NI law simply underscores our fears that companies will be confused.

[The background is that in an action taken by the New York City Employees Retirement System ie NYCERS, but effectively Comptroller Goldin, following a refusal by American Brands to circulate a shareholder resolution on MacBride the US District Court in New York ruled that the MacBride Principles were capable of being implemented without contravening Northern Ireland law. American Brands had earlier obtained Securities Exchange Commission's support for refusal to circulate the resolution on the grounds that it required the companies to act unlawfully. American Brands were unhappy with the ruling and thought it open to challenge but decided not to appeal. NYCERS were supported by an opinion from Mr P Archer QC MP to the effect that the MacBride Principles could be implemented within NI law.]

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