

PS/PUS (L)



with enclosures

cc:PS/PUS(B)

① PS/Sir K Bloomfield

Mr Burns

Mr Chesterton

Mr Elliott

Mr Innes

Mr J McConnell

Mr Kirk

Mr Masefield

② NIO 1

BRIEFING FOR SIR JOHN BLELLOCH

As requested, I attach the following briefs for PUS to scrutinise before handing over to his successor: they cover:

- (a) relations with the Republic of Ireland and the Anglo-Irish Agreement; excluding the separate note explaining the genesis of the Agreement which I understand Mr Brennan is preparing, but concentrating instead on the general structure of our relationship with the Republic; what the Agreement says, what it means, and how it has developed in practice;
- (b) the political scene in the Republic of Ireland, including the Ambassador's review for 1987;
- (c) Northern Ireland and the United States (including the campaign against the MacBride Principles and International Fund); and
- (d) extradition (including, indeed predominantly the Backing of Warrants arrangements with the RoI).

2. It is particularly hard to finalise briefing on such subjects when Anglo-Irish relations are under perhaps a greater strain than they have been since the Agreement was signed, or even since well beforehand. And when it is also still unclear whether the relationship will return to the comparative tranquility it had

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attained around Christmas, when the Secretary of State could assert privately that, since the main issues addressed by the Intergovernmental Conference had been resolved in principle, the organs of the Agreement would be essentially 'on a care and maintenance basis' during 1988. My own hope, rather than confident expectation, is that the healing effects of time, a growing acceptance of reality, and the consequences of the measures announced by the Secretary of State this week may ultimately enable us to overcome the various issues identified by Mr Haughey in the Dail on 17 February where there is an 'impasse'. Certain other of the Taoiseach's remarks in the same debate at least indicate this is not an empty possibility: in particular, his emphasis that overall Anglo-Irish relations were not at an impasse, and there must be progress in dealing with other important matters on the agenda between us; also, the importance he continues to attach to improving cross border security cooperation (if only because the Irish have themselves, following the Eksund seizure, woken up to the threat to them presented by the Provisional IRA). In the meantime, however, the attached briefing cannot but reflect the damage done so far to confidence in our policies in Dublin, in the United States, and to our image in the Western world generally (witness the recent condemnatory resolution in the European Parliament).

4. If anything valuable emerges from our present difficulties, I hope that it will be a clearer understanding of the damage to our own interests that can be done if Irish sensitivities are severely bruised. We hope to devise shortly some relatively informal mechanism to ensure that approaching icebergs are identified more clearly in time. But ultimately, serious mishaps will continue to occur unless Ministers collectively see the Anglo-Irish relationship more positively than as a vehicle for enhancing cross border security cooperation, but otherwise, it sometimes seems, as a bit of a nuisance. It is, or ought to be treated, to lapse into jargon, as a 'non zero sum game'.

5. Fortunately there are a number of important areas where there will be great scope (and much self interest) in adopting a constructive and imaginative approach to Dublin, and exploiting the

hope of further progress extended by the Taoiseach (assuming his Government survives much longer). They include: Fair Employment where, as the minimum if our proposals are to enjoy credibility whether amongst northern nationalists, or as evidence of our goodwill in the Republic and USA, we need to secure Irish acceptance that our approach is on the right lines; securing Irish goodwill, and even assistance, in regard to internal political progress in Northern Ireland; and the closely related issue of the Review under Article 11 of the Agreement, which is due by the end of 1988. Sir John will undoubtedly want to explore soon the intimate and indissoluble links between internal Northern Ireland and all Ireland political realities, and the centrality of the Anglo-Irish Agreement and its operation to any rapprochement between the constitutional parties and ultimately to our hopes to securing devolution on a basis of cross community support.

6. I hope it will be possible before too long to let Sir John benefit from our 'policy evaluation', and the SIL Handbook on extradition (now being revised).

(Signed by P N Bell)

P N BELL

19 February 1988

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1. RELATIONS WITH THE REPUBLIC OF IRELAND AND THE ANGLO-IRISH AGREEMENT

Anglo-Irish Relations

1. Relations with the Republic of Ireland have always bulked large in Northern Ireland political life: the Republic and the nationalist minority in the North share a common tradition and identity, and aspire to a United Ireland, while the former has sought to act as the patron and protector of the latter. But the political scene has been dominated in the last 2 years by the Anglo-Irish Agreement. This brief sets the Agreement in the context of our relations with the Republic.

2. Responsibility for the UK's relations with the Republic formally rests with the Foreign and Commonwealth Office. But as Northern Ireland is the most important and difficult factor in relations between the UK and the Republic, the NIO has a major input to UK Government policy regarding the Republic and the operation of the Agreement has been primarily a matter for the Northern Ireland Office, in consultation with the FCO.

Irish Attitudes

3. For the Irish, the partition of the island remains at the heart of contemporary politics. While all the main parties oppose the use of violence to achieve reunification, there are differences between them over the way in which unity should be arrived at. Fine Gael, Labour and the Progressive Democrats recognise that the freely-given consent of a majority of the people of Northern Ireland is an essential pre-condition of Irish unity. Fianna Fail has at times (particularly when in opposition) taken a harder line, suggesting that by committing itself to withdraw, and putting pressure on the Unionists, the British could induce Unionist consent for a united Ireland. Mr Haughey was initially strongly critical of the Anglo-Irish Agreement, claiming that Article 1 (which enshrines the principle of reunification only by consent of a majority in the North) was repugnant to Articles 2 and 3 of the Irish Constitution (which asserts the Irish claim to the whole of Ireland). However,

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his opposition proved electorally unpopular, and on becoming Taoiseach Mr Haughey did a volte-face; he said he would operate the Agreement, and has; and he acknowledged that even Article 1 was binding. Even in the wake of Stalker/Sampson he has not reneged on the Agreement. But Anglo-Irish issues (whether north/south, thus within the ambit of the International Conference, or east/west, where the FCO are in the lead), will require very sensitive handling for some time.

The Anglo-Irish Agreement

5. The genesis of the Agreement is dealt with in a separate paper. It was signed on 15 November 1985 at Hillsborough, and came into force (having been approved by the two Parliaments) on 29 November (full text at Annex). The main features, which represent a hard won balance between legitimate Unionist and Nationalist interests and aspirations, are these:

- (a) the two Governments affirm that any change in the status of Northern Ireland would come about only with the consent of a majority; and that the present wish of a majority is for no change. If in the future a majority clearly wished for and formally consented to the establishment of a United Ireland, both Governments would support legislation to give effect to that wish. (Article 1)
- (b) an Intergovernmental Conference is established concerned with Northern Ireland and relations between the two parts of the island, in which the Irish Government will put forward views and proposals on matters relating to Northern Ireland. But any matters which become the responsibility of a devolved administration are excluded from this. (Article 2)
- (c) "Determined efforts are to be made to resolve any differences between the two Governments"; but it is stressed that there is no derogation from the sovereignty of either Government, each of which remains responsible

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for the decisions and administration of government within its jurisdiction. (Article 2)

- (d) The Conference is to meet regularly and frequently at Ministerial level, and special meetings shall be convened if either side requests one. (There have been [16] meetings so far, in London, Belfast and Dublin). The Secretary of State for Northern Ireland and the Irish Foreign Minister are co-Chairmen of Conference meetings at Ministerial level. A joint Secretariat is established to service the Conference composed of British and Irish officials. (Article 3)
- (e) The two Governments declare their support for devolved Government in Northern Ireland on the basis of widespread acceptance throughout the community. (Article 4)
- (f) The Irish Government may comment on a wide range of 'political matters', including those concerning public bodies, eg the Police Authority for Northern Ireland. (Article 5 and 6)
- (g) The Conference is to concern itself with security policy, and the security situation. Special measures are envisaged to improve relations between the security forces and the community, particularly the Nationalist community. (Article 7)
- (h) The Conference is to be concerned with issues of relating to enforcement of the criminal law and extradition. The two Governments agree on the importance of public confidence in the administration of justice. (Article 8)
- (i) There is provision for a programme of work for enhancing cross border security co-operation. The Conference has no operational responsibilities. (Article 9)

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- (j) The two Governments are to co-operate to promote the economic and social development of the areas that have suffered most severely in recent years, and consider the possibility of securing international support. (Article 10) (An independent International Fund has been set up, under the aegis of both Governments, with contributions so far from the USA, Canada and New Zealand.)
- (k) The working of the Conference is to be reviewed by the two Governments after three years, or earlier if either Government so requests. (Article 11)
- (l) The question of establishing an Anglo-Irish Parliamentary Body is stated to be for Parliamentary decision. (Neither Government has in fact attempted to press forward on this issue, though the present Irish government appears enthusiastic.)

How the Agreement has worked

8. The Secretariat has become established as the main channel of communication with the Irish, besides its more formal role of servicing Conference meetings. Its Irish members at first had access at an extremely high level in the Irish Government; and it proved capable of defusing a good many political difficulties of a kind which have bedevilled Anglo-Irish relations previously. Indeed the recent return to 'megaphone diplomacy' show just how valuable it has been. Its centrality has declined somewhat lately; on the Irish side, this perhaps reflects Mr Haughey's mistrust of the DFA keeping all the main decisions to himself and a change in Irish personnel.

9. Meetings of the Conference under the FF Government have been rather less frequent than under the last government. Mr Lenihan the Irish Foreign Minister, and Mr Collins the Minister for Justice have generally attended.

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10. Several official sub-groups have been established. The "quadripartite" security group - the two police chiefs and senior officials from the NIO and the Department of Justice - has met regularly although the last meeting planned was cancelled by the Irish following the Attorney General's decision on Stalker/Sampson. Two working groups of officials, established in the early days of the Agreement concerned with the administration of justice and with extradition, now meet less frequently. A short account of the Irish machinery and personnel of Anglo-Irish relations is at Annex B.

Developments under the Agreement

11. The first years of the Agreement have seen a good many disputes between the two governments. These have been, however, much more often conducted in private, in contrast to the acrimonious exchanges through the public media which were often a feature of relations in the past. On both sides, restraint was observed not least out of anxiety not to imperil the Agreement itself. This was to an extent true even of the recent dispute over the decision not to bring further prosecutions in the wake of the Stalker/Sampson report: on past form, Mr Haughey might have been tempted to "play the green card" for all it was worth in this case, to distract attention from his harsh economic policies, in fact he showed comparative restraint.

12. Much of the work of the Conference has been concerned with security co-operation. (The two police chiefs have regularly attended.) There have been regular discussions also of many issues of particular interest to the minority. There have been many government decisions in the field, presented by the Irish and the SDLP as "Agreement measures", by us, being anxious to emphasise the Conference makes no decisions, as 'measures taken since the Agreement'. They include repeal of the Flags and Emblems Act, changes in the police complaints machinery, changes in administration of justice (for example, to reduce pre-trial delays) and electoral reforms.

13. The chief running sore has been administration of justice. The Irish from the start were anxious for changes in the Diplock

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courts. They insisted on a reference to mixed courts in Article 8; but, realising that those would be almost impossible for us to concede, instead proposed the replacement of the single Diplock judge with three (not, in fact, a demand with much popular following in Northern Ireland). The Irish appeared at times to be linking the issues with ratification of the European Convention on the Suppression of Terrorism, their intention to accede to which is mentioned in para 7 of the communique issued when the Agreement was signed (printed at the back the copy at Annex A). Told at the end of 1986 that we were "not at present persuaded" of the case for three judge courts, Dr FitzGerald nonetheless, with difficulty, had legislation passed permitting ratification of ECST; but only but only coming into effect a year later. As the end of the year approached, last Autumn the three judge court debate was resurrected; we stood firm. Mr Haughey under party pressure toyed with the idea of not ratifying, until the Enniskillen bomb. Further legislation was then passed, leaving open the way to ratification, but imposing 'safeguards' which gravely complicate the extradition system. The extradition brief deals with this in more depth. The unattractiveness of three judge courts as a remedy should not obscure real concerns in the nationalist community about the criminal justice system despite the numerous improvements recently made.

14. Officials have been working on a 'policy evaluation' of the first years of the Agreement. It will shortly be available for PUS to see.

15. The shadow of the Stalker dispute hangs over the future of the Agreement. If it lifts, the Irish may return to their old predilections for further improvements in the administration of justice, improving equality of opportunity in employment (where they will try to give changes in our proposed legislation) and North/South economic co-operation.

16. The review of the working of the Conference due, three years after signature under Article 11 of the Conference will increasingly occupy attention. The review excludes Article 1 of the Agreement,

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and its fundamental structure. Beyond that it is for the parties to decide its ambit. There have been no formal exchanges yet with the Irish; not inconceivably Mr Haughey, who is not emotionally committed to the Agreement and hankers after securing his own place in the history books, may seek to widen its scope. We are likely to favour a minimalist approach.

17. Other major issues which could affect Anglo-Irish relations in the short or medium term include:

- (a) Devolution. The Haughey government has declared its support for devolution. We have so far told them little about talks about talks; but any devolution scheme has clear implications for the Agreement. Indeed this issue may impinge significantly on the review.
- (b) A possible legal challenge in the Southern courts to the constitutionality of the Agreement is being mounted by Dr McGimpsey, a mavenick Unionist. The courts' decision, whilst not capable of invalidating the Agreement, might bring its operation to a halt; and even if it does not come to that, the terms in which the Irish government make their defence may affect the way Unionists, in particular, see it. The case has yet to come to court; the Irish have shown us their proposed defence, and in light of our comments, are reconsidering it. A detailed note is available on this issue.

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IRISH MACHINERY FOR ANGLO-IRISH RELATIONS

Though the Department of Foreign Affairs is the lead department on Anglo-Irish relations, Mr Haughey distrusts it and, as under previous administrations led by him, the Department of the Taoiseach occupies a prominent position. Mr Dermot Nally, the Secretary to the Government anyway has considerable personal authority as co-Chairman of the group that produced the Agreement. Mr Martin Mansergh, who has been a political adviser to Mr Haughey for some years, is probably also influential.

The present Secretary of the DFA, Mr Noel Dorr, was Ambassador in London during negotiation of the Agreement, and also implemental in it. The Anglo-Irish Division in the Department is headed by Mr Dermot Gallagher, a recent arrival (in our terms, an Under-Secretary). He is assisted by four Counsellors. The Irish side of the Secretariat does not report to Mr Gallagher; indeed its head, Mr Sean O hUiginn (pron Higeen) also a recent arrival is slightly higher^{in grade}. There are two Counsellors in the Secretariat, Mr Padraig Collins, recently arrived, and Mr Noel Ryan of the Department of Justice, who has been there from the early days.

The Irish Embassy in London is not now an important element in the North-South process. It was for a long time without an Ambassador or Minister. Mr Andrew o'Rourke and Mr Pat Connor now occupy those posts.

2. THE POLITICAL SCENE IN THE REPUBLIC

The Irish Political Scene

1. The main political parties in the Republic are Fianna Fail (FF), led by Mr Charles Haughey; Fine Gael (FG) (Mr Alan Dukes); the Labour Party (Mr Dick Spring); and the Progressive Democrats formed in 1985, mainly from defectors from FF, and led by Mr Des O'Malley, a long-time opponent of Mr Haughey). [Personality notes on the four leaders, and other notable political figures are at Annex A]. The Fine Gael/Labour coalition lost power in March last year following a split over the budget. The new FF administration led by Mr Haughey is three seats short of an absolute majority but has survived easily to date: no-one wants an election. (A short note on the Republic of Ireland system of Government, including the pronunciation of Gaelic terms, is at Annex B).

2. Mr Haughey has tried to concentrate on the economy: he has adopted a policy of considerable severity to set right the damage done by earlier administrations including his own. Northern Ireland has been a rather unwelcome distraction from this. His first nine months are dealt with in detail in the attached despatch from the Ambassador in Dublin (Annex C) which is well worth reading.

3. The Taoiseach has probably gained in standing from his handling of the Stalker aftermath, which has appeared resolute but well-considered. So far as the Agreement, which has been highly popular in the South, has been damaged, he has certainly not been seen as the culprit. While he, in common with the overwhelming majority of his compatriots, is not satisfied at the action we (including and especially the Attorney-General and Appeal Court) have taken, and spoke strongly in the Dail on 17 February on extradition, he was at pains to stress 'overall Anglo-Irish relations were not at an impasse', and that there must be progress in such areas as fair employment.

3. NORTHERN IRELAND AND THE UNITED STATES OF AMERICA

1. Up to 40 million Americans claim Irish ancestry. Within this community there are differing views. A minority are sympathetic to the aims and methods of the IRA, and are virulently anti-British; while the majority take a more moderate view, rejecting violence but still favouring the nationalist cause. There is a widespread tendency towards a simplistic view of history which suggests that the Northern Ireland problem stems from the 'British' presence and ignores the position and strength of Unionists (who have no significant pressure group in the US). Lack of appreciation of the basic facts is widespread.

2. The leaders of the Irish-American community exert influence which no prudent politician (including the President) can ignore. Irish affairs are thus a continuing theme in domestic US politics and this is particularly true during an election year like 1988. For some leading politicians (especially Democrats) Irish issues are particularly important, both in Congress and in States with large ethnic Irish components. Whatever the impact of our arguments intellectually, many politicians who depend on Irish-American votes know they will lose votes if they are not seen to support nationalist causes. The significance of American opinion and of the attitude of the US Government to the UK means that the US will remain a factor in Northern Ireland policy. The US also remains the largest overseas source of inward investment and US attitudes towards such investment is therefore important for economic reasons.

3. There is little prospect of influencing the views of the extreme members of the Irish-American community. But effort directed toward moderate opinion formers and those politicians listened to by the moderate or largely uninterested members of the Irish-American community can usefully increase understanding of Northern Ireland. The NIO works closely with the FCO in this area. We continue to draw on American hostility to terrorism especially if the terrorists have left wing connections or links with international terrorist movements.

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4. Until Stalker/Sampson, our Embassy in Washington consistently reported that since the Anglo-Irish Agreement, Northern Ireland had ceased to be an issue in Anglo-Irish relations (MacBride Principles apart - see below). American Irish and wider US opinion was prepared to give us the benefit of the doubt wherever needed, and we and the RoI could present a (more or less) common front. That "honeymoon" is now over.

US Irish Organisations

4. There are a plethora of groups in the USA which concern themselves with Irish matters. The three most significant are:

i) The Congressional 'Friends of Ireland': Senior moderate Irish-American political leaders with the greatest political influence on the administration. Chief amongst them are Senators Kennedy, Moynihan and Dodds and Congressmen Foley and Donnelly. They are influenced by John Hume and the Irish Government (though relations with Dr FitzGerald were perhaps closer than with Mr Haughey). They oppose violence and US support for violence but favour Irish unity as a long term goal. For electoral reasons they have occasionally criticised UK security policy or picked on particular issues such as employment discrimination, but in private they have tended to be supportive, particularly if satisfied that the position of the minority is being protected, and therefore especially since the signing of the Anglo-Irish Agreement. The backwash from the Stalker/Sampson affair has however somewhat estranged this group, and it is likely (despite the Embassy's efforts to dissuade them) that the Friends will include strong criticism of HMG's handling of this issue in this year's St Patrick's Day Statement.

ii) Irish National Caucus: Main opposition to the Friends of Ireland in Congress. An umbrella organisation representing various Irish-American societies and Congressmen Biaggi's ad hoc Congressional group on Irish affairs. It provides an easy way for Congressmen to show interest in Irish matters in a bid for the

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ethnic vote. INC leaders have in the past expressed support for the PIRA but now profess to oppose violence. They concentrate on alleged human rights violations by UK authorities and have a role in the 'MacBride Campaign' (see below). Biaggia himself has fallen on hard times: he is about to go to prison for corruption.

iii) NORAIID: The most extreme group, small but vociferous and well organised. It highlights alleged human rights abuses and raises money for PIRA, in some instances engaging in gun running on its behalf. It has been found by the US courts to be an 'agent' of PIRA and has filed the financial records that this decision makes obligatory. They reveal little, save that less than 50% of the money NORAIID claim to collect is remitted to Northern Ireland. This money is allegedly spent on welfare payments to the families of IRA prisoners. Leading NORAIID figures have been implicated in gun-running, while in 1984 Martin Galvin, the Publicity Director of NORAIID was banned from entering Northern Ireland after he had welcomed the murder of a British soldier. He entered Northern Ireland illegally and when the police tried to arrest him at an illegal rally, a rioter was killed by a plastic bullet. (A policeman was subsequently acquitted of manslaughter).

CURRENT ISSUES IN THE USA

5. These include the following:

i) A major campaign is in progress aimed at forcing United States companies operating in Northern Ireland to apply a code known as the MacBride Principles to their employment practices there. Please see Annex A.

ii) The UK/US Supplementary Extradition Treaty was ratified in December 1986, following lengthy negotiations. The Treaty means that those fugitives accused or convicted of a wide range of serious offences will no longer be able to avoid extradition by claiming that their crimes were politically motivated. The Treaty has yet to be tested in the courts.

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iii) The United States Government has since 1979 operated an embargo on arms exports for the RUC. Following consistent pressure by Irish American interests in Congress, the then Carter administration ordered State Department to undertake a review of the supply of US firearms to the force and in the meantime not to issue export licences for that purpose. That remains the position - the review is still (theoretically) continuing. Despite this the RUC still manage to obtain a restricted supply of the US firearms they need, principally Ruger revolvers, via a dealer in Harrogate. It is believed that supplies would be better if the embargo were lifted. But the Embassy advise against campaigning for this on the grounds that they would rather their use their credit with the Administration and Congress in other ways, that an attempt to lift the embargo would quite possibly fail, and that it could expose the current back-door arrangements. This last would be disastrous. In a US election year, this is an issue best left alone.

iv) Gerry Adams has recently applied for an entry visa to the US, for a "speaking tour" in March. (If it came off this would coincide with Mr Stanley's visit - see para 9 below). The State Department has been firm in refusing previous applications, but a recent change in the law makes it less easy to refuse Adams this time. State have, however, assured us that they will do everything in their power to block his entry. An initial decision to refuse a visa is likely to spark off legal proceedings (according to the US Ambassador to the UK, Adams expects this and has already hired an attorney in the US to fight his case). We are providing as much material as possible to the State Department to help them reach the right decision.

6. The Reagan Administration has been consistently helpful over Northern Ireland, calling for an end to violence and increased inward investment while reiterating that the US has no direct role to play. Following the signing of the Anglo-Irish Agreement in 1985, President Reagan issued a statement of support in which he spoke of finding 'tangible ways' of helping. Prompted by Speaker O'Neill (a leading member of the Friends of Ireland, now retired) Congress agreed to provide a total of \$120 million in three

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instalments from fiscal years 1986 to 1988, to help set up the International Fund for Ireland. This is an international organisation established by the British and Irish Governments (but independent of them) with the objective of promoting reconciliation and economic advance in Northern Ireland and the six border counties of the Republic. Its chairman is Charles Brett, a Belfast solicitor.

7. The United States contribution has not is been received but its watertight (the final tranche of \$35 million was safeguarded despite considerable US budgetary difficulties). As well as the USA contribution, Canada (Canada \$10 million over ten years) and New Zealand (NZ\$300,000) have given to the Fund. The European Community has not contributed. The Irish Government has asked them to but we have not joined in this approach owing to our policy of seeking to reduce EC expenditure, the complication of the additionality rules and the prospect that we could in practice end up financing the bulk of the contribution.

8. The International Fund has set up seven main programmes, each administered by a Government Department (North and South), which assesses applications on strict guidelines set by the Board of the Fund and makes grants (or refuses them) on its behalf. For instance, the Fund's tourism programme is run by DED in the North and Bord An Failte in the South. The Fund also has a large number of priority projects outside its main programme - eg purchase of a fisheries research vessel, and support for business development in West Belfast and Londonderry. The Fund has come in for criticism from some nationalist and US observers who believe that the right uses are not being made of the money. It will be important for the Fund to counter this criticism if, as is hoped, it is to lobby successfully for further United States money (though the chances of getting more are not great without contributions from other international sources).

VISITS

9. Ministers and senior officials regularly visit the United States. The Secretary of State last went in September 1987 - Mr Stanley is to go in March. Mr Viggers is planning an inward investment visit in May. Sir Kenneth Bloomfield visited in December. Mr Stanley's visit in the run-up to St Patrick's Day will be particularly testing: he is likely to be closely questioned on Stalker/Sampson in particular.

THE MACBRIDE PRINCIPLES

ANNEX A

Since late 1984 United States companies with Northern Ireland plants have been under pressure to adopt a set of employment demands known as the MacBride Principles. (They are named after Sean MacBride, who died recently in Dublin. MacBride was a former IRA Chief of Staff, Irish Foreign Minister in the late 1940s, a winner of the Nobel and Lenin Peace Prizes and a co-founder of Amnesty International). The declared purpose of the Principles is to redress the imbalance - which we accept exists - between the minority (Catholic) employment rate and that of the majority community. The main proponents of the Principles in the United States are the Irish National Caucus, the Ancient Order of Hibernians, NORAIID and Comptroller Goldin of New York City. The Fair Employment Trust (a Northern Ireland pressure group with a decidedly nationalist flavour) and Sinn Fein are both active in promoting the Principles in Northern Ireland and abroad.

2. MacBride legislation has been passed in Connecticut, Massachusetts (where a second, stronger law has recently gone through), New Jersey, New York State and Rhode Island. Bills are under consideration in a number of other States - for instance Illinois, Maine, Minnesota, Vermont, and Wisconsin. These generally threaten the withdrawal of State investments, pension funds etc from US firms operating in Northern Ireland if they do not adopt the Principles by a set date. (There are 26 US firms in Northern Ireland employing in total over 10,000 people.

3. A number of cities have passed similar ordinances, and the companies are increasingly faced with MacBride resolutions at shareholder meetings. But a campaign for MacBride in Congress has got nowhere - and HMG had a victory in California recently when State legislation proposed by Assembly Tom Hayden - husband of Jane Fonda - collapsed (at least temporarily). We have also had a success in New Hampshire recently. However the pace is hotting up as the 1988 Presidential election race goes on. Massachusetts Governor Dukakis, a Democratic front runner, has publicly endorsed MacBride. And, in the wake of Stalker/Sampson and the Birmingham Six, the Embassy report moves within Congress to take the Bill there out of cold storage.

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4. We oppose the MacBride Campaign partly because of the hostile motives of those who promote it and partly because of its adverse consequences for investment and employment generally in Northern Ireland. The Campaign would place unreasonable burdens on United States firms, subjecting them to monitoring by a multiplicity of sources. It discourages new investment - and, coincidentally or not, no United States firm has opened up in Northern Ireland since the campaign began in 1984 despite the boom (until recently) in the United States economy. Beyond that, the Principles are to some extent impracticable and one or two of them might in practice be unlawful in Northern Ireland. No United States company has in any sense 'adopted' the Principles, or got anywhere near to doing so.

5. HMG opposition to the MacBride Campaign takes the form of lobbying against it, both in those State legislatures where it rears its head and in Washington. The lobbyists are usually people who are independent of Government - eg trade unionists, FEA people, SDLP or Alliance politicians, and academics. This activity is orchestrated principally by DED, with help from the Embassy and Consulates, IDB, British Information Services and SIL. A major conference of these parties was held in Washington in December (Mr Chesterton attended from NIO(L)). On Embassy advice attention is now being given to the retention of paid local lobbyists in the key States: these contributed importantly to our successes in California and New Hampshire.

6. The US Administration supports our stance but the Irish Government is at the best ambivalent. Mr Haughey said late last year that his Government would not oppose the MacBride Campaign and that Irish diplomats in the USA had no business to be lobbying against it (which - to the best of our knowledge - they were not). The key factor now will be our own Fair Employment legislation. Both its timing and its substance are important and will need a hard sell if our interests are not to be seriously damaged as the vociferous Irish-American interests behind MacBride exert their muscle in Presidential election year. A detailed announcement on the legislation will be made before the end of February.

4. EXTRADITION/BACKING OF WARRANTS

General

Extradition arrangements between the UK - including Northern Ireland - and the Republic are in theory based on a simple procedure by which arrest warrants issued in one jurisdiction may be "backed" and acted upon in the other. The relevant legislation is the Backing of Warrants (Republic of Ireland) Act 1965 and Part III of the Irish Extradition Act of the same year. The process is under the control of the police and the prosecuting authorities; the Secretary of State has no direct locus. The Irish higher courts, however, have traditionally held that terrorist fugitives were "political offenders" and overturned such warrants. Although there have been encouraging developments in reversing this trend (eg McGlinchey Shannon and Russell) the practice of Irish lower courts is to scrutinise minutely every aspect of any arrest warrants for suspected terrorists sent from the UK and throwing out any which contain the slightest error or are inconsistent with their current interpretation of Irish procedures. This has led in the past to embarrassing failures of some extradition attempts (eg Glenholmes and MacIntyre).

Progress under the Agreement

2. A Legal Affairs Working Group was set up under Article 8 of the Anglo-Irish Agreement to review the relevant policy issues (NIO Co-Chairman, Mr Chesterton); and the UK and Irish Attorneys-General have set up a joint working party to try and ensure that procedural points do not create any further difficulties. Progress is continuing in a number of areas (eg the setting up of a procedural checklist), but the new Irish Government's position on some key issues (eg RUC questioning of suspects in the Republic) is still unclear.

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3. The Irish Government allowed, in the event, the Irish Extradition (ECST) Act to come into force on 1 December 1987 as planned. This put domestic Irish law on all fours with the European Convention on the Suppression of Terrorism which prevents terrorists from using the "political defence" in respect of certain crimes. In fact, the list of offences covered is pretty restricted and by no means covers the whole range of PIRA activity. Although the Irish have not yet laid their instrument of ratification in Strasbourg, they are already bound by the terms of the Convention.

4. However, in order to ensure his backbenchers support for this Act coming into force, the Taoiseach felt impelled to introduce what is now the Extradition (Amendment) Act which was signed into law on 14 December 1987. This inserted certain 'safeguards' into the backing of warrants procedure.

5. The Irish Act requires their Attorney, before a warrant can be backed, to take a view as to whether:-

a. there is an intention in the UK to prosecute the
fugitive;

and

b. that intention is founded on sufficient evidence.

6. If he is not satisfied on either count, a warrant cannot be backed. The Irish have sought to build into the legislation provision to prevent their courts questioning the grounds on which their Attorney reaches his view.

7. The Taoiseach assured our Ambassador that the Irish Attorney would form his view on the basis solely of a certificate from our Attorney to the effect that the prosecuting authority (the DPP (NI) or the Crown Prosecution Service) has formed a clear intention to prosecute founded on a sufficiency of admissible evidence. Mr Haughey's assurance was given without consulting his Attorney. However, the Irish have subsequently made it clear that their

Attorney will require more than this, and possibly even a summary of the evidence itself. This latter our Attorney is not prepared to give. No new cases can therefore be set in train, although warrants already in the Republic will be honoured.

8. Our Attorney has now reluctantly agreed to move some way to meeting the Irish by proposing to offer a statement of the relevant facts of the case and a note containing an assurance that evidence is available to substantiate the facts set out in the statement. We hope that such information will enable the Irish Attorney to reach a view as to the sufficiency of evidence, thus breaking the deadlock and allowing extradition to proceed once more. However, before making any such offer to the Irish, we would seek (on present plans) two key assurances from them: that if this material were provided, the Irish Attorney would allow warrants to be backed and there would be no question of our being asked for anything more even if he were challenged as to the basis on which he formed his view about the sufficiency of evidence; and that if, despite our having provided the material, a challenge were mounted and were successful, the Irish Government would accept that their new law was causing the kind of difficulties that demanded amendment. (Provision for a review of the new arrangements after 12 months is built in to the Act.)

9. We are thus at the time of writing in a state of flux. The chances of a successful and speedy resolution are not helped by difficulties with the Irish on other fronts. But we are (and have been for some time) pressing the Irish hard to agree to a meeting of officials to see whether and how the problems can be overcome. Despite unhelpful, and almost certainly 'leaked' reports from Dublin, it is not us who have been unreasonable or dragging our feet.

10. At Annex A is a summary of the position on backed warrants in the Republic.

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EXTRADITION

11. There are far fewer cases in which we seek the extradition of fugitive terrorists from foreign States. Extradition law in the UK is still governed primarily by the Extradition Act 1870 under which bilateral treaties are concluded with various States with which we have extradition arrangements.

The law will be updated by UK ratification of the European Convention on Extradition following the passage of the current Criminal Justice bill which will, among other things, abolish the need to prove a prima facie case. Of particular sensitivity in the extradition process is the use by the defence of the political offence exception. In recent years extradition caselaw has shown that courts' interpretation of what can and cannot constitute a political offence has narrowed significantly. The new US/UK Supplementary Extradition treaty should help to narrow the political exception still further. This treaty was ratified in December 1986, following lengthy negotiations. The Treaty means that those fugitives accused or convicted of a wide range of serious offences will no longer be able to avoid extradition by claiming that their crimes were politically motivated. (A humanitarian safeguard was inserted into the Treaty by which fugitives can avoid extradition if they can prove that the request was made with the intent of persecuting them). The Treaty has yet to be tested in the courts, although McMullen (a GB case) is now before the American courts and there is a possibility that Doherty, an NI case, will be activated shortly.

At Annex B is a summary of successful cases.

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ANNEX A: BACKING OF WARRANTS CURRENT POSITION

PERSONS IN CUSTODY ON FOOT OF RUC WARRANTS

D Finucane:
extradition on
(possession of

firearms and
ammunition -
Maze escaper)

District Court ordered his

18 December 1987. Appeal to
High Court
pending.

G Harte:

(possession of

firearms) pending.

High Court ordered
extradition Appeal to
Supreme Court using political
defence,

P A Kane: Extradition hearing still before District Court.
(Maze escaper)

Has been adjourned whilst
seeking legal aid. Habeas
Corpus application failed in
District Court appealing to
High Court.

R P Russell:

(attempted 14 January 1988. Will be returned in August
murder - Maze

escaper)

Extradition ordered by
Supreme Court on
1988 on completion of
sentence imposed in
Republic.

J J McClafferty:

Arrested 21 January 1988.
Still before District Court.

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PERSONS IN CUSTODY IN REPUBLIC OF IRELAND FOR OFFENCES COMMITTED
THERE, FOR WHOM BACKED RUC WARRANTS ARE IN THE REPUBLIC.

J P Clarke: Attempted murder (Maze escaper)

S J Clarke: Murder (Maze escaper)

A Kelly: Murder (Maze escaper)

PERSONS WHO ARE AT LIBERTY FOR WHOM BACKED RUC WARRANTS ARE IN THE
REPUBLIC.

K B Artt: Murder (Maze escaper)

P Brennan: Possession of explosives (Maze escape)

S Campbell: Murder

O G Carron: Possession of firearms

J G Donnelly: Maze escaper

J C Fryers: Armed robbery (Maze escaper)

T D Kirby: Murder (Maze escaper)

P MacI tyre: Attempted murder (Maze escaper)

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A McAllister: Murder (Maze escaper)
K M McCormack: Possession of explosives
D J McNally: Causing explosion (Maze escape)
M Mulvenna: Conspiracy to murder
J J Smyth: Attempted murder (Maze escaper)

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ANNEX B: SUCCESSFUL AND PENDING EXTRADITION CASES

Kelly and McFarlane - Netherlands Extradition

This was the first time an NIO extradition application to a foreign country other than the Republic of Ireland was successful. A Dutch Supreme Court Judgement on 21 October 1986 found both Gerard Kelly and Brendan McFarlane to be extraditable and both men are now back in Northern Ireland custody awaiting judgment in the Maze escape trial. Cooperation with the Dutch Government throughout the proceedings was close and cordial and the result represented a major blow to PIRA.

Flynn - French Extradition

Flynn is in custody in France for offences committed there. He is due to be released in the summer of 1988. We are about to make a formal extradition request seeking his return to face an armed robbery charge.

Doherty - American Extradition

Doherty is in custody in the USA. Should his attempts to be deported to the Republic of Ireland succeed, we will seek his extradition from the UAA to complete a sentence imposed for murder. This will be the second case under the new supplementary treaty. We understand Doherty's lawyers are considering reactivating a political asylum request.

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