IRRC
Investor Responsibility Research Center, Inc.

Social Issues Service

Proxy Issues Report

1991 Background Report A
Dec. 20, 1990

U.S. CORPORATE ACTIVITY IN NORTHERN IRELAND

SUMMARY OF THE BACKGROUND REPORT

Shareholders at 33 companies will be asked in 1991 to vote on resolutions relating to fair employment in Northern Ireland. Most resolutions concern the MacBride principles of fair employment. The MacBride principles campaign, announced late in 1984, is a U.S.-based effort to influence Northern Ireland employers--particularly those owned by U.S. corporations--to improve equal opportunity practices with regard to religion.

Employment discrimination against Catholics had been an important element in Protestant dominance in Northern Ireland since creation of the entity in 1921, and in the 1980s the legacy of unequal opportunities had left Catholic men two and a half times as likely to be unemployed as Protestant men. At the same time, among some employers and industries, Catholics dominated, and in those cases it did not appear that Protestants had equal opportunity. The MacBride code, modeled on the Sullivan principles for South Africa, sought to attack sectarianism at workplaces, whether Protestants or Catholics were favored. The principles were sponsored by Sean MacBride, a winner of the Nobel and Lenin Peace Prizes and founder of Amnesty International but a controversial figure in Northern Ireland. Laws endorsing the MacBride principles and encouraging state pension funds to use their leverage to support the principles were approved in a number of U.S. states and cities between 1985 and 1989. MacBride supporters have pursued the campaign through shareholder resolutions, and in a few cases through selective contracting and the threat of divestment.

The MacBride principles campaign has proven highly controversial. The British government and opponents in Northern Ireland have argued that the principles could cause companies to contravene the Fair Employment Act in Northern Ireland, which prohibits reverse discrimination. Moreover, opponents of the code say that the campaign and state and local inquiries to U.S. companies

Suite 600 1755 Massachusetts Ave., N.W. Washington, D.C. 20036 (202) 234-7500 Fax: (202) 332-8071

hassles those companies, discouraging investment in an area that desperately needs new investment. They add that Sinn Fein, the political arm of the Irish Republican Army, is the only important political party in Northern Ireland that supports the principles, and that U.S. advocates include Noraid and others with ties to the IRA. MacBride critics argue that some of the MacBride campaigners hope to contribute to further economic destabilization.

MacBride proponents say the code is a moderate statement committing employers to offering equal opportunity; they say nothing in the principles requires reverse discrimination or other actions that would contravene fair employment law. They also do not agree that the principles campaign poses a disincentive to investment.

The MacBride campaign focused attention on fair employment in Northern Ireland and was an important factor in British efforts to strengthen fair employment law in Northern Ireland, culminating with passage of the Fair Employment (Northern Ireland) Act 1989, which went into effect in January 1990. Many people, including the government, formed the view that existing fair employment legislation, enacted in 1976, was not effective. The new act strengthened what is now called the Fair Employment Commission, established a new Fair Employment Tribunal to adjudicate individual complaints, mandated compulsive monitoring of work forces and regular employer review of equal employment practices, and provided for a range of affirmative actions at workplaces where "fair participation" was judged to be lacking. Critics, including Britain's Labour Party, said the range of affirmative action measures was limited and vague, and that the legislation did not go far enough to redress the problem. The government argued that the new law was radical equal employment opportunity legislation, particularly by European standards, and that it provided the right balance in promoting equal opportunity without encouraging reverse discrimination measures that would be unfair and could trigger Protestant backlash. In its first major ruling, in October 1990, the Fair Employment Tribunal dealt the act a setback by declaring that the act made it illegal for companies to reveal information about the religion of specific employees. The government is now seeking a corrective amendment.

MacBride proponents, like the Labour Party, have criticized what they see as shortcomings in the new law. They have added that the MacBride pressure must be kept up so the government does all it can to make the new law as effective as possible. MacBride supporters within Northern Ireland say that it is only "external" pressure that has led to progress in this area.

IRRC

Investor Responsibility Research Center Inc.

Social Issues Service

Proxy Issues Report

1991 Background Report A
Dec. 20, 1990

U.S. CORPORATE ACTIVITY IN NORTHERN IRELAND

For the seventh year, shareholders will vote on resolutions concerning religious discrimination and fair employment practices in Northern Ireland. Shareholders led by the New York City Comptroller's office are submitting 33 resolutions on corporate activity in Northern Ireland for 1991. Other proponents include the New York State Common Retirement Fund and the state of Minnesota, as well as church groups affiliated with the Interfaith Center on Corporate Responsibility.

The shareholder proponents have asked 26 companies to make all possible lawful efforts to implement and/or increase their activity relating to each of the nine MacBride principles of fair employment for their operations in Northern Ireland. The MacBride principles are a set of fair employment standards modeled on the Sullivan principles for South Africa. Another seven companies have been asked to review their operations in Northern Ireland, and to report on their equal opportunity policy and practices, plant location and ways to increase the number of jobs and the (religious) minority representation at their plants.

The companies receiving the Northern Ireland resolutions are as follows:

<u>Implement the MacBride principles</u>

Alexander & Alexander Services
American Home Products
Baker Hughes
Data-Design Laboratories
Dun & Bradstreet
Ford Motor
Fruit of the Loom
General Motors
Interface
IBM
Interpublic Group
James River
Marsh & McLennan
McDonnell Douglas
3M
Mobil
Nacco Industries
NCR
Procter & Gamble
Sara Lee
Sonoco Products
Teleflex
Texaco
Unisys
VF
Xerox

<u>Review and report on Northern Ireland operations</u>

Avery Dennison
Black & Decker
Exxon
General Electric
Illinois Tool Works
Oneida
Security Pacific

Suite 600 1755 Massachusetts Ave. N.W. Washington D.C. 20036 (202) 234-7570 Fax: (202) 332-0971

Company Reports will discuss the resolutions as they relate to each of the companies at which they are pending. As background to the Company Reports, this Background Report covers the following:

Additional background on the issues raised in the resolutions is contained in an IRRC special report, The MacBride Principles and U.S. Companies in Northern Ireland, sent to Social Issues Service subscribers in April 1989. An updated version of this report will be sent to Social Issues Service subscribers early in 1991.

I. History of Catholic-Protestant Conflict in Northern Ireland

Northern Ireland, made up of six of the nine counties of the historic province of Ulster, is about the size of the state of Connecticut. Its population of some 1.6 million is about 40 percent Catholic and 60 percent Protestant. Since 1969, conflict between the two religious communities has resulted in some 2,800 deaths. The conflict, which includes extensive dispute over language and history, is not about religion; rather, it is a clash between the conflicting national identities of Irish-identified Catholic "nationalists" and British-identified Protestant "unionists."

In the early seventeenth century, when English King James I initiated the "plantation of Ulster" and encouraged English and Scottish Protestant settlers to settle in the area that is now Northern Ireland, Ireland was already a conglomeration of cultural and ethnic groups. The majority of the population was Gaelic Irish and Catholic by religion. Earlier expeditions from England had produced settlers and scattered landlords of Norman descent, who were English in origin but still Catholic. Some of the powerful Norman families in Ireland became known for being more Irish than the native Irish themselves. The efforts of Henry VIII and Elizabeth I to spread the Reformation into Ireland had limited success, but some of the aristocracy did belong to the Church of England by the time of James's large scale Protestant settlement in the north.

James intended the plantation of Ulster to help him keep better control over the Irish colony. The king confiscated land in Ulster from nobles who left the country after a failed rebellion and rented it out to landlords in large tracts with the stipulation that they populate it with Protestant tenants to farm the land and build defenses for the crown against the native population. While the rest of the island remained largely Catholic, Ulster

came to be dominated politically, socially and economically by Protestants who maintained strong ties with Britain.

The division of Ireland: The current division of the island into Northern Ireland, which is a part of the United Kingdom, and the independent Republic of Ireland in the south dates to the British parliament's Government of Ireland Act of 1920. This act, passed after a protracted Irish struggle for home rule, established the formal boundaries between the two countries and set up independent governing bodies at Stormont (in the north) and Dublin (in the south). Each government was also given the right to representation in the British parliament at Westminster, which Dublin rejected and the north accepted. The southern part of the island became the Irish Free State and then, in 1949, the Republic of Ireland; Northern Ireland remained a part of the United Kingdom, while retaining the authority to govern its own affairs. Many Protestants in Northern Ireland strongly insist on maintaining their connection to the U.K. (hence the political terms unionist and loyalist) and refuse, under any circumstances, to participate in any all-Irish political arrangement. Many Catholics, on the other hand, insist as strongly on their desire to belong eventually to a united Irish nation (hence the political term nationalist).

During the late 1960s, a movement for Catholic civil rights began in Northern Ireland, focused on discrimination in housing and employment and on voting rights for Catholics. The Northern Ireland prime minister's attempts at reform, partly in response to the protests, eroded his support in his own unionist party, and he was forced to resign. In an atmosphere of demonstrations and increasing sectarian violence, the British army was called in to restore order, and the British government assumed ultimate authority over all security forces in Northern Ireland in August 1969. The British government also recommended a reform program to cover voting rights, legislation for equal employment practices, and more equitable distribution of housing.

The 'troubles': The British reform efforts were unsuccessful in quieting the province, at least in the short term, and violent attacks by radical groups on both sides increased, as did British efforts to crack down.

The Irish Republican Army was revived in this period. The IRA had led the fight against the British in the war that led to establishment of the Irish Free State, and in the Irish civil war of 1922-23, the IRA led the fight against the treaty that partitioned Ireland. The IRA has been visible in various periods since then fighting for a united Irish republic, but in the mid-1960s, it was nearly dormant, at least in a military sense. When the Catholic community in Belfast came under assault from Protestants in 1969, leading many to abandon their homes, Catholics could rely neither on local police forces, dominated by Protestants and frequently sectarian, or the IRA for defense; the graffiti said IRA stood for "I Ran Away."

Galvanized in part by this accusation of impotence, the IRA reemerged in the north of Ireland largely in the form of the Provisional IRA, one of two factions resulting from a split in 1969. The provisional IRA rebuilt the IRA's military capability, in part with support from money and weapons supplied by supporters in the United States. The provisionals would not renounce violence as a means of achieving their goals, as the other wing of the IRA did in 1972. During this same period, the Ulster Defense Association

(UDA) and the Ulster Volunteer Force (UVF) emerged as leaders among Protestant paramilitary groups dedicated to defend and avenge their constituency; in the view of many, these groups often sought their vengeance through random sectarian violence. Supporters of the IRA believe that organization has been more focused and disciplined, conceiving of itself as an army involved in a long-term campaign for a united Ireland, but its violence at times has included efforts to disrupt the economy through the use of terror, and many of its attacks on military and police forces have gone wrong, killing innocent civilians. And deliberate tactics of the IRA and the Irish National Liberation Army (INLA) have included terrorist acts; in perhaps the most notorious, the IRA set off 26 explosions in Belfast on July 21, 1972, "Bloody Friday," killing 11 people and injuring 130. Official statistics indicate that the IRA is responsible for more than 40 percent of the nearly 3,000 deaths caused by the troubles over the last two decades; INLA and other republican groups are responsible for a significant portion of the remaining deaths.

The British government has used harsh and at times indiscriminate tactics--and has been accused of serious abridgements of basic civil rights--in its fight against the IRA. Among other British actions that the nationalist community has strongly protested are the use of internment without trial in the 1970s and other abridgements of rights of the accused, as well as the use of plastic bullets in controlling unruly protests. The heavy military presence in west Belfast and other Catholic areas has led to further resentments that perhaps are typical of communities under military occupation. The local Ulster Defense Regiment and the Royal Ulster Constabulary come in for much criticism for alleged harassment of the nationalist community, and many people believe that security forces have at times adopted a shoot-to-kill policy. In 1989, the public learned of a series of leaks of information from security forces to loyalist paramilitary death squads. The leaks apparently led to a number of murders.

British soldiers were welcomed in Catholic communities amidst the chaos of August 1969, when Catholics and Protestants were at war and many people, mostly Catholics, were forced out of their homes. But the perception that British forces were focused primarily on controlling the Catholic community led to increasing estrangement. A notable event contributing to the growing hostility between Catholics and the British military was "Bloody Sunday," in January 1972, when soldiers shot at participants in a Derry Civil Rights Association march and killed 13 people.

Violence peaked in 1972 with 467 deaths related to "the security situation." In March 1972, the British government imposed direct rule and transferred the authority of the Northern Irish parliament at Stormont to the U.K. A number of proposals for the reintroduction of local or "devolved" rule have been made since then, but none has been successful. For a brief time in 1974, direct rule was lifted, and Northern Ireland was governed by a joint executive of moderate Catholics and Protestants. That government was brought down, however, by a 14 day strike by unionist workers. The strikers opposed the power-sharing concept on which the government was based, but more importantly they opposed the Council of Ireland created under the government agreement, which was composed of representatives from both Northern Ireland and the Republic and was supposed to rule on issues of common interest. The Northern Ireland Assembly, established in 1982 and dissolved in 1986, never was seen as legitimate in the Nationalist community, and was boycotted by

both Sinn Fein and the Social Democratic and Labor Party (SDLP), the major nationalist party. As discussed below, a new effort to negotiate a devolved government currently is under way under the auspices of current Secretary of State Peter Brooke.

While violence generally decreased after the mid-1970s, the situation became volatile again during and after the 1980-81 hunger strikes. British efforts to criminalize the IRA, particularly through stripping IRA (and Protestant paramilitary) prisoners of their "special status," eventually led to the hunger strike of 1981, when Bobby Sands and nine other republican prisoners died rather than surrender their claim to be prisoners of war. Sands won much publicity when, while dying on his hunger strike, he won an open parliamentary seat that had been held by a unionist. West Belfast and other areas exploded in protest when Sands died.

Among other things, Sands's election victory helped lead Sinn Fein, the political party associated with the IRA, into national electoral politics, though the party has refused to take any seats it won in the Westminster parliament. (Sinn Fein holds one parliamentary seat, the west Belfast seat of Sinn Fein President Gerry Adams.)

The SDLP, led by John Hume of Derry, wins 60 percent or more of the Catholic vote. In local elections held in 1989, the SDLP won 21 percent of the total vote, compared with 11 percent for Sinn Fein. Hume, a key political figure in Northern Ireland, is a fierce critic of the IRA and of Sinn Fein for supporting in principle the IRA's use of violence.

The major unionist parties are the Ulster Unionist Party (UUP)--also known as the Official Unionist Party (OUP)--led by James Molyneaux, and the Democratic Unionist Party (DUP), led by Rev. Ian Paisley. By most measures the UUP is the largest party in the province. In the 1989 local election, it drew 30 percent of the vote, compared with 19 percent for the DUP. But Paisley is the best known politician in Northern Ireland (and the best known from the province), and he repeatedly wins a large plurality when he stands for election in the province-wide contests for the European Parliament. Moreover, the DUP often seems to set the pace for unionist politics. Other parties include the Alliance Party, a moderate grouping composed of both Protestants and Catholics.

Violence in Northern Ireland decreased considerably after the period of the hunger strikes, but it increased again over the last four years, and particularly in the fall of 1990. The levels of violence are far less than the 1970s, however, and the annual death toll of something under 100 is only half that attributable to highway accidents in the province.

Anglo-Irish agreement: The signing of the Anglo-Irish agreement on Nov. 15, 1985, marked an important shift in Northern Ireland's history. For the first time, the Republic of Ireland recognized British sovereignty over Northern Ireland and agreed that "any change in the status of Northern Ireland would only come about with the consent of a majority of the people of Northern Ireland." In return, the agreement established an intergovernmental conference in which the Irish government could present views and proposals on behalf of the minority community in the province. The agreement, strongly opposed by unionists, may be altered if current "talks about talks" lead to successful negotiations on devolution.

The intergovernmental Anglo-Irish Conference established by the agreement has provided a forum for discussion of political matters, including security concerns, legal matters including the administration of justice, and cross-border cooperation on security, economic, social and cultural matters. Recent Conference discussions have included issues such as the new fair employment legislation, housing and economic development, as well as the security concerns that appear to dominate the British agenda at the Conference. Irish pressure at the Conference to strengthen the fair employment bill, proposed at Westminster in 1988 and adopted as the new Fair Employment Act in 1989, may have been an important factor in alterations to the legislation made by the government. The agreement states that the Conference will deal, among other things, with "measures to recognize and accommodate the rights and identities of the two traditions in Northern Ireland, to protect human rights and to prevent discrimination," including "economic and social discrimination." Thus, for the first time Dublin has a formal (if advisory) role in the public affairs of Northern Ireland. The Republic of Ireland also has civil servants working in Northern Ireland, at the Anglo-Irish Secretariat.

The Anglo-Irish Agreement met vigorous opposition from most unionists, who felt betrayed by Britain's willingness to allow the Republic to have a special role in Northern Irish affairs and feared the long-term implications for British sovereignty. They suspected the intergovernmental council as being yet another trick to bring about Irish unity. Further, unionist politicians deeply resented that they had not been involved and informed on the negotiations. When the accord was presented to parliament, one Northern Ireland MP accused Prime Minister Margaret Thatcher of "treachery." All 15 unionist MPs at Westminster resigned before the end of the year in order to force by-elections in early 1986 that they portrayed as a referendum on the accord. All over the province, unionists painted the slogan "Ulster Says No." The election was not the strong message for which they had hoped; the unionists lost one of the 15 open seats and fell short of the 500,000 votes they had set as their goal.

The first year of the agreement was marked by large anti-agreement demonstrations and parades. Unionist leaders refused to speak with British government ministers until the agreement was abandoned, and unionists boycotted local district councils in an attempt to make Northern Ireland ungovernable under the agreement.

While the agreement remains very unpopular with Protestants, the failure of unionists to block the agreement is seen by some as an important achievement. SDLP leader John Hume argues that unionist politicians "have lost their ascendancy and are now on an equal footing with the rest of us." Then-Northern Ireland Secretary Tom King said in 1988 that unionists "thought they could live permanently behind the protection of a veto and somehow preserve a unionist Orange Card that was always trumps....I think they now have to consider seriously a fair basis on which the government can continue."

While opposition to the Anglo-Irish agreement has been muted recently, support among both Catholics and Protestants is tepid at best. The status of the agreement during any negotiations on devolution has been at issue in the 1990 "talks about talks." Secretary of State Peter Brooke worked out a formula, apparently accepted by the Irish government and various parties, for

temporarily suspending Anglo-Irish discussions under the agreement, and reducing the Anglo-Irish secretariat. Negotiations have been hung up on a disagreement over a timetable for participation of the Irish government in talks. Unionists favor exclusion of Dublin from "internal" talks over political arrangements in Northern Ireland, and would like the republic's participation to be limited to discussions on eliminating (or at least fundamentally altering) the Anglo-Irish agreement. Unionists also are pressing the republic to give up its constitutional claim to the north of Ireland.

II. Fair Employment Law in Northern Ireland

Unemployment is a chronic problem in Northern Ireland. A severe recession in the United Kingdom in the early 1980s hit the province particularly hard because it coincided with the end of an increase in public sector jobs during the mid- and late 1970s. Average unemployment, which topped 20 percent in the first half of the 1980s, currently stands at about 14 percent. It is likely to increase in the coming months as the recession that hit Britain earlier in 1990 spreads to Northern Ireland.

Studies using data from the 1981 Census and more recent government surveys have found that Catholics are twice as likely to be unemployed as Protestants, and that the Catholic male unemployment rate is two and a half times the rate for Protestant males. Some people argue that essentially there are two work forces in Northern Ireland--one Catholic and one Protestant--and that while the Protestant community has in recent years suffered high unemployment rates, those rates are comparable to other areas of the United Kingdom. Catholics, on the other hand, suffered unemployment rates that were much worse than anywhere in England, Scotland or Wales.

Discrimination against Catholics has been part of the political scene since long before the partition of Ireland into Northern Ireland and what became the Republic of Ireland. A series of "penal laws" enacted around the beginning of the 1700s, which were in effect for about a century, prevented Catholics from holding public office, being in the military, practicing law, holding Mass in public, buying property or weapons, and educating their children. These laws also applied to Protestant "Dissenters" from the established Anglican church.

In the years following the Government of Ireland Act of 1920, Catholics were denied rights to housing, employment and voting. Catholics were run out of their homes and jobs by Protestant mobs, and the police not only failed to provide protection, but actively harassed the Catholic community. A not-so-hidden subtext to anti-Catholic discrimination and violence was the desire to drive enough Catholics out to prevent any threat that Catholics could become a majority in the province. As a group, Catholics were suspected of disloyalty to the Northern Ireland government because so many of them were nationalists who objected to the partition of Ireland and considered the existing political arrangement illegitimate. IRA violence played an important role in fanning unionist fears. Unionists, who were the ruling majority in government and the greater proportion of the population, felt that the subversive and sometimes violent anti-state tendency they perceived in the Catholic population justified discrimination against them. During the Depression, the Ulster Protestant League, with the support of many political leaders, urged employers not to hire Catholics.

Fair employment law: When the British assumed direct rule of Northern Ireland in 1972, they appointed a commission to study the problem of employment discrimination. On the basis of the commission's report, the British parliament adopted the Fair Employment (Northern Ireland) Act 1976. The act, it was claimed, would combat discrimination and ensure that all communities in Northern Ireland were provided with equal opportunities for employment. The Fair Employment Agency (FEA) was established to implement its provisions.

Many observers, including the government, eventually came to feel that the 1976 act was ineffective. The law emphasized voluntary action to end discriminatory practices, and enforcement action was concerned with stopping intentional "direct" discrimination. Criticism of the law, and of the underfunded FEA, mounted in the 1980s, particularly after the MacBride principles campaign began in 1984. A 1985 government review of employment statistics found that Catholic men remained two and a half times as likely to be unemployed as were Protestant men. As the government characterized it later, the review showed that:

> despite almost 10 years of anti-discrimination legislation and enforcement, the Catholic community remained at a serious disadvantage in employment in both quantitative and qualitative terms; that this obtained throughout the province (even in areas of relatively high employment); and that it persisted despite progressive convergence of education attainment between Protestant and Catholic communities.

A long process of regulatory revision and legal review led the government to propose new legislation in December 1988. The government said that a lesson of the previous failure "is that while it is necessary to prevent direct discrimination, this in itself is not enough to ensure equality of opportunity and a fair spread of jobs. It is not sufficient simply to avoid discrimination: a more positive approach is necessary." MacBride advocates and those on the left within the United Kingdom, along with the Irish government, labor unions and the SDLP, reached (or had reached some time earlier) the same conclusion. But formulating a new equal opportunity framework that could win support of this broad spectrum--from Margaret Thatcher to advocates of strong affirmative action--proved difficult. And even this broad tent excluded the representatives of Northern Ireland's Protestant majority, who were opposed to most of the main elements of reform.

Nevertheless, after a series of steps the government proposed and approved a new law, the Fair Employment (Northern Ireland) Act 1989. The law, which went into effect in January 1990, established a Fair Employment Commission to supersede the FEA, and a separate Fair Employment Tribunal to adjudicate individual cases. The FEC's powers generally were strengthened relative to the FEA, and the legislation authorized the imposition of such affirmative action measures as goals and timetables. The government believes, in the words of one spokesman, that the new law "is by far the most comprehensive and radical anti-discrimination measure ever passed by the United Kingdom and parliament." But the legislation has received sharp criticism in some quarters, particularly from Britain's Labour Party, as is discussed below.

The continuing unemployment differential, a key measure of inequality, is large and very consistent over time and between surveys and the census.

Nobody believes the differential is simply a product of intentional discrimination by employers, however, and some people believe that such overt discrimination has little to do with the problem. Other factors said to account for the differential are regional differences, with Catholics concentrated in the less developed western portion of the province; class differences; alleged differences in attitude to work (allegations possibly rooted in bigotry rather than any social reality); different demographics; differences in education, with Protestants typically having more technical training (schooling is largely segregated); and the supposed reluctance of Catholics and Protestants to apply for jobs in locations outside their own areas. A 1987 study by London's Policy Studies Institute, controlled for various factors said to account for the differential, found that most of the differential remains even after the other factors have been taken into account, suggesting that discrimination plays an important role. While some academics have attacked the study's methodology, another recent study reaches a similar conclusion.

Criticism of the old fair employment law: The Fair Employment Agency, which went out of business Jan. 1, 1990, was authorized to prepare guidance for Northern Ireland employers on how to implement fair employment policies with regard to religion; study employment patterns and practices in particular companies or industries, and conduct research on issues relevant to equality of opportunity in employment; maintain a listing of "equal opportunity employers"; and investigate and adjudicate complaints of discrimination.

Critics said the FEA had inadequate authority to require improvements in fair employment practice, though the agency could mandate certain measures. Many observers felt the agency had insufficient resources; in 1980-81, the agency had a staff of 13, and a budget of only £200,00. The government has substantially stepped up funding since then, increasing the budget for the FEA and its successors to £1.3 million in 1989-90. The FEC staff now numbers nearly 60.

Other critics said the agency pulled its punches too often, in part, perhaps, because of confusion of its various roles, and because of fear of causing difficulties for business in a time of great economic decline. The agency also appeared to lack strong government backing to stake out strong positions in a very controversial area. In a 1981 study done at the request of the agency, Oxford law professor Christopher McCrudden found that the agency had a host of problems, and was "reticent in adopting...full-blooded affirmative action."

A major factor in the lack of substantial progress may have been the 1976 law's reliance on remedy for individual complaints as the wedge to fight discrimination for equal opportunity, say some observers. In this view, the FEA set up shop in 1977, and waited for a flood of official complaints that never materialized.

Reliance on a case-by-case approach depends on complainants coming forward and lodging grievances. If there really is no problem of discrimination, presumably there will be few complaints, but the same outcome can result when discrimination is fierce. Lodging an official complaint of discrimination is always difficult and anxiety-ridden; in Northern Ireland's highly charged environment, a complaint of religious discrimination can be particularly difficult to bring, and might even be regarded as life-endangering.

Moreover, if an employer's religious bias is well-known, job-seekers with other religious or political beliefs may not even apply for work with that employer. Robert Cooper, chairman of the FEA and of the new FEC, noted that "the bulk of complaints...come not from the areas of employment where the grossest imbalances take place but from areas where both communities have access to employment and where therefore such imbalances do not arise."

Even where a complaint is brought, proof can be difficult. The FEA assisted complainants--bringing the agency in for criticism from businesses that felt the agency was at the same time both prosecutor and judge--but even so, an individual pressing a case never had anything like the resources possessed by the state in criminal prosecution. Moreover, hiring and promotion practices can be very informal, leaving little information as to the grounds on which decisions were made. (The new law adopts compulsory monitoring of employers as its fulcrum. It is designed to give employers, the FEC and the government sufficient information to make a systematic attack on unequal employment opportunities. Detailed records are supposed to be available to make decision-making transparent.)

From its inception through 1988, the FEA completed only 605 investigations of individual complaints, with only 52 findings of unlawful discrimination. Complaints have picked up substantially recently, however, rising from 33 in 1982-83 (ending March 30) to 87 in 1987-88. In 1988-89, there were more than 125 complaints; the agency found unlawful discrimination in six of 42 findings it made during the year. FEA chairman Cooper was quoted as saying that "there has been a significant increase in the number of individual complaints of harassment in the workplace, where employees were threatened by other employees and no action was taken by management." (The FEA believes that employers have a responsibility for "ensuring that there is a neutral atmosphere and ethos inside the workplace.") The record rate of complaints in 1988-89 continued in 1990.

Criticism of the FEA, it should be noted, came not only from those who thought it was not aggressive enough. Some businessmen thought the agency acted precipitously at times, without adequate information, and that it could not be trusted, particularly on matters of confidentiality. The FEA also was battered by strong attacks from unionist politicians, who doubted the premise on which the agency was founded, and who believed the agency was more interested in discrimination against Catholics than discrimination against Protestants. Unionists doubt that the unemployment differential is meaningful and argue that the fair employment issue is in substantial measure a propaganda tool to marginalize loyalist Ulstermen internationally and in Britain and Ireland.

Working toward change: In 1986, the government published a consultative paper reviewing its approach to fair employment, and a year later it adopted a new, more extensive fair employment guide for employers. The new guide stressed monitoring and fair employment practices, as against the focus on good intention in the old guide. The guide emphasized affirmative actions as "those special measures that an employer can take to promote a more representative distribution" where one community is underrepresented. The guide attempted to help employers walk the fine line that British officials draw between affirmative action and reverse discrimination.

The Northern Ireland Standing Advisory Commission on Human Rights (SACHR) published a report on fair employment in 1987. The government established the SACHR in 1973 to advise the Secretary of State for Northern Ireland on the adequacy and effectiveness of anti-discrimination law. The commission argued emphatically that both public and private sector employers should have an explicit legal obligation to provide equality of opportunity; that employers' compliance should be reevaluated at least once every three years; that direct and indirect discrimination on the grounds of religious affiliation should be illegal; and that employers should be allowed to target for special training persons from religious groups that are underrepresented in particular occupations. SACHR also recommended replacing the FEA, to give a fresh start with a new agency. The commission argued that individual complaints of religious discrimination should be referred to industrial tribunals in the same way as sex discrimination complaints. SACHR also called for the use of goals and timetables, including an overall goal of reducing the ratio of unemployment between Catholic males and Protestant males from 2.5:1 to 1.5:1 in five years.

Development of the Fair Employment Act 1989: The government's concrete legislative proposals evolved in 1988 through a preliminary statement of proposals, a "White Paper," and the legislation, proposed in December 1988. The proposed new law attempted to frame a positive approach to provision of equal opportunity, while strengthening enforcement powers and mandating extensive new monitoring of religious composition of work forces and of fair employment practices. Critics, including the Labour Party, objected to elements of the bill.

While the Tory government had a large majority in Parliament and all the votes it needed to pass the reform bill, it was unusually concerned to forge a consensus that included Labour and SDLP support. The MacBride principles campaign, and the Irish government's concern with this issue, appeared to give Labour Party Northern Ireland spokesman Kevin McNamara considerable leverage on this issue. The government clearly hoped that the new law would counter the MacBride campaign in the United States, and Labour or SDLP opposition to the reform law would make it more difficult to ease the concerns fueling the MacBride campaign. The government amended the bill in important ways, and won Labour and SDLP support when the measure was approved by the House of Commons in May. But Labour leaders were unhappy with amendments made later in the House of Lords, and while the Commons did not vote again on the bill as a whole, and the party did not take a position, McNamara said "on balance" he opposed the final law. Leaders of both the SDLP and the Irish government endorsed the final law, which won final approval in July.

Provisions of the new law: The new law requires all public sector employers and all private sector employers with more than 10 employees to register with a new Fair Employment Commission, and to submit annual monitoring returns to the FEC that show the religious composition of their work force by job category and by gender. (During a transition period of two years, the private employer threshold is 25 employees.) The detailed information required is similar to the EEO-1 form data that U.S. employers with more than 100 workers are required to submit. Large employers (with more than 250 workers) are required to monitor applications as well current employees. All registered employers are required to review their employment practices at least once every three years.

Employers who fail to file required reports or to comply with FEC directions to improve equality of opportunity are subject to penalties, and may be ruled ineligible for government grants or for public sector tenders. In addition, practices that lead to indirect discrimination in employment ("i.e., unjustified requirements that place members of one community at a disadvantage") are outlawed.

The commission has the authority to inquire into the scope, content and interpretation of monitoring returns and of triennial reviews, and will be able to direct improvements and additions to the reports of a given firm. The FEC also will be enabled to issue affirmative action directions to employers, including the use of goals and timetables for, if the FEC chooses, both applications and appointments. Affirmative action is defined as "(a) the adoption of practices designed to secure fair participation by members of the Protestant, or members of the Roman Catholic community in Northern Ireland, and (b) the modification or abandonment of practices that have or may have the effect of restricting or discouraging such participation." A new Code of Practice, replacing the Guide to Effective Practice, provides a range of policies that the FEC can recommend or mandate, and serves as "the standard by which employers' practice will be judged."

Unlike the Fair Employment Agency, the FEC does not settle disputes between individuals and employers. A new Fair Employment Tribunal (FET) has been created as a modification of the existing industrial tribunal system. Besides adjudicating individual cases, the tribunal has the power to award damages and to order remedial action.

Controversy over the new law: The Labour Party, the SDLP, Sinn Fein and trade union groups including the Northern Ireland Committee of the Irish Congress of Trade Unions criticized the fair employment bill when it was proposed to Parliament, as did the Fair Employment Agency.

Critics of the legislation objected to what they said was a vague definition of affirmative action, and the lack of clear protection of affirmative action practices from accusations of discrimination. Legitimate affirmative action efforts must be treated "as exceptions to the duty not to discriminate," or they may be successfully challenged in court, said Christopher McCrudden, a fellow at Lincoln College, Oxford, and an adviser to McNamara on this issue. Critics also said the bill: provided insufficient penalties for employers and others found guilty of discrimination; was written in overly permissive language that insufficiently clarified the duties of employers or of the government agencies involved; left too many details to a code of practice and the regulations, which would not have the full force of law; lacked explicit authorization for the use of goals and timetables; was marred by weak procedures for use of government contracts and grants to gain compliance from employers; and did not provide for judicial review of national security exceptions to the law. The government moved to satisfy these critics by amending the bill, but some critics said the amendments fell short. Issues raised in the debate include the following:

Affirmative action--Affirmative action in both the initial bill and the final law was defined in terms of an undefined "fair participation," a formulation that McCrudden and the Labour Party felt was vague. Critics argued that the definition provides insufficient guidance on when affirmative

actions are appropriate and when such measures may constitute illegal reverse discrimination. They argued for reference to "underrepresentation," a formulation that would still require a case-by-case evaluation. The Code of Practice defends use of the term "fair participation," arguing that "the determination of what is fair depends on circumstances of each particular case."

Government amendments to the bill did protect a range of affirmative action measures from accusations of indirect discrimination, and provided some other clarifications of the purposes and scope of appropriate affirmative action. For example, said a government minister, one clause "makes it clear that steps to encourage more applications from an underrepresented group in pursuance of affirmative action are not to be held to be unlawful."

Affirmative action in training proved to be a difficult issue in this controversy. McNamara argued that employers need legal protection for training programs specifically targeted on (but not limited to) one community, if they are undertaken for affirmative action purposes, or the employers would run afoul of the prohibition against direct discrimination, defined as the treatment of one person less favorably than another because of religion. Peter Viggers MP, then the industry minister, eventually agreed that the bill could be clarified on this point, but his amendment did not satisfy McNamara, who described training as "the kernel of the bill." The government rejected the idea that it should protect programs simply because they are undertaken in the name of affirmative action, and instead tried to come up with categories that served as proxies for religion. The government amended the bill to protect affirmative action training facilities that are in an area that may favor the underrepresented community, or that are geared to "a particular class" defined in other than religious terms. McNamara contested this indirect approach, arguing that "affirmative action programs designed to rectify religious imbalances in the work force must inevitably contain an element of direct discrimination on religious grounds." McNamara's concerns on this point may have been addressed to some extent by the Code of Practice.

Goals and timetables--The government agreed to the Labour Party and SDLP argument to authorize explicitly, in the legislation, the use of goals and timetables. The amendment makes clear that employers may of their own accord use goals and timetables for affirmative action purposes, and that the FEC may mandate them. Labour and the SDLP were happy with the amendment. The unionist parties, however, were not pleased. DUP deputy leader Peter Robinson MP argued that the goals and timetables provisions help create de facto quotas, since employers will do what needs to be done to meet the goals.

Penalties/remedies--Penalties of up to £30,000 may be assessed for failure to comply with monitoring requirements or failure to respond (or providing false information) to FEC inquiries. The government agreed to the same limit for individual cases, though the original bill called for a much lower limit.

In addition to fines, the commission has power to serve a notice of disqualification on a noncompliant employer, leaving the employer subject to debarment from all public sector contracts and government grants. This penalty applies, among other things, to failure to comply with an order of the tribunal. Some critics were not happy with this provision, arguing that firms that fail to comply should automatically be barred from government contracts and grants. They said the mechanisms in the bill would make it difficult for the FEC actually to carry out this threat.

Individual complaints--The SDLP, in particular, was concerned that the bill provided for less support for individual complainants than did the 1976 law, and all the opposition parties, including the unionists, felt that remedy of individual complaints should continue to be a significant lever for fair employment, even if the government was attempting to make the commission and its monitoring and enforcement powers the center of action. While the government did not agree to the SDLP's proposed changes, it did agree to require the FEC to provide questionnaires to those who want to file complaints, and to provide advice to complainants except where complaints are deemed "frivolous."

The Labour Party said it was concerned that, because of recent case law in the United Kingdom, language in the bill defining an occurrence of indirect discrimination was too narrow. The individual grievance part of the bill states that discrimination has occurred when a person places a "requirement or condition" that affects the two communities differently. Courts have interpreted this to mean that discrimination cannot be found unless there is an absolute requirement or prohibition. On this reading, an employer's stated preference against hiring someone from the (Catholic) Falls area of Belfast would not be discriminatory; discrimination could be found only if the employer categorically refused to hire anyone from the Falls. The government said this language made the law consistent with other equal employment laws, and that, in any case, the broad mandate given the Fair Employment Commission in another section of the bill would allow it to address such a problem, even if an individual failed to prove his complaint.

An October 1990 Fair Employment Tribunal decision raised a major difficulty with the new individual complaints process. In its first major decision, the Tribunal ruled that it is illegal for employers to reveal information about the religion of specific employees and applicants even when that information is necessary to pursue employment discrimination claims. The ruling, discussed in section V below, was an embarrassment to the government and stopped work on virtually all discrimination cases brought under the new law. (By October, there had been upward of 200 such cases.) In a consultative document published in November, the government laid out two alternatives for changing the law to allow cases to go forward, including the option of scrapping a section making it unlawful for employers to disclose information that could help determine the religion of individuals. The government asked for comments by Dec. 14, and said it would make a proposal for revision soon after that date.

Government's view: The government believes that its differences with Labour have been exaggerated by McNamara and others. Clive Gowdy, then the Under Secretary of the Northern Ireland Department of Economic Development, wrote late in 1989 that there were many areas of agreement to begin with, and that the government "made more than 20 significant amendments to meet the

opposition's concerns, in addition to giving commitments on a number of other non-legislative points." Gowdy and some other observers, including an SDLP spokesman, said that some of Labour's concerns were over points of detail, and, in the SDLP spokesman's word, "over-legalistic."

Evaluation: Gowdy wrote that "The government is...committed both to continuous evaluation of the act, and to an in-depth review after five years by a central policy unit reporting to the Secretary of State direct." The government's community relations unit--set up in 1987 to review the impact of all government policies on the two communities (providing something like environmental impact statements), and to develop innovative policies--is providing ongoing evaluation and planning for the five-year review, with help from an academic advisory panel. Despite this commitment to evaluation, some critics believe it was a mistake for the government to decline SACHR's suggestion of establishing a goal of reducing the unemployment ratio of Catholics to Protestants to 1.5:1 within five years.

Duties on employers: The new Code of Practice identifies key duties for private employers and recommendations for good fair employment practices. Monitoring, as one expert put it, is the "fulcrum" of the legislation, and the code emphasizes that all employers, including those with fewer than 25 workers, need to know the community background of the work force in order to evaluate the impact of personnel practices on fair employment, and to measure progress. Registered employers are required annually to submit monitoring returns, broken down by gender and by job category, to the FEC. Only employers with more than 250 workers have to file monitoring returns on applicants as well as employees, but all registered employers must collect information on the religious background of applicants. The code makes a series of recommendations for "good practice," including widespread advertising of job openings to both communities; the use of systematic and objective recruitment, hiring and promotion procedures including application forms, detailed job descriptions and advertised statements that applications are welcome from both communities; avoidance of standing lists; avoidance of procedures that identify prospective employees through existing workers, trade unions "or any other restricted group"; selection and promotion based on potential as well as experience; use of panels with at least two people to do interviews; and extensive documentation of the hiring process.

Disclosure: The FEC decided to keep first-year monitoring returns confidential, but said it will make returns public beginning in 1991. If the commission releases all the information on specific employers available to it, observers will have access to religious composition data by job category, by gender and, the commission hopes, by site. (Monitoring forms in 1990 did not require a breakdown by site.) Information on applicants at employers with more than 250 workers also would be disclosed. Based on current law, the commission will have to aggregate categories in some cases to ensure that the religion of specific individuals is not disclosed.

Assessment of the new law: It is too early to assess the success of the new law, though it thus far has had one important success and thrown up one important stumbling block. The potentially difficult first-year effort to get firms with more than 25 employees to comply with monitoring requirements is the big success. There was little reported resistance to the requirements either by workers or employers, and all but 28 private sector firms (out of 1,700) complied with monitoring requirements, as did all public sector

employers. The firms that failed to comply all are smaller employers, according to the FEC, which initiated action against some of the laggards in November.

The major difficulty was the Fair Employment Tribunal ruling that the law as written prevents employers from disclosing the religion of individual employees even when it is required to adjudicate individual complaints of discrimination. This derailed the Fair Employment Act's procedures for investigating and judging complaints. The government promised to move quickly in changing the legislation, but it is unclear at this date whether the government will be able to satisfy requirements of the complaint process while preserving privacy for individuals. (This is discussed in Section V of this report.)

III. The MacBride Principles

The MacBride principles, announced in 1984, came about as the result of increasing concern over anti-Catholic discrimination in employment. The principles were inspired by and modeled after the Sullivan principles, a similar code of fair employment practices for U.S. firms operating in South Africa. The principles were sponsored by Sean MacBride, the Nobel Peace Prize winner in 1974 and founder of Amnesty International. In addition to MacBride, three other individuals sponsored the principles: Dr. John Robb, a prominent surgeon in Northern Ireland; Inez McCormick, a trade unionist and former member of the Fair Employment Agency; and Father Brian Brady, an Irish civil rights activist. Robb and McCormick are Protestants.

In 1986, in response to arguments by U.S. companies and by the British government that implementing the principles would cause companies to contravene the Fair Employment Act, MacBride issued a set of amplified principles with a short commentary on each principle elaborating on the way in which it was intended to be used. The amplified version of the principles follows.

1. Increasing the representation of individuals from underrepresented religious groups in the work force including managerial, supervisory, administrative, clerical and technical jobs.

A work force that is severely unbalanced may indicate prima facie that full equality of opportunity is not being afforded all segments of the community in Northern Ireland. Each signatory to the MacBride principles must make every reasonable lawful effort to increase the representation of underrepresented religious groups at all levels of its operations in Northern Ireland.

2. Adequate security for the protection of minority employees both at the workplace and while traveling to and from work.

While total security can be guaranteed nowhere today in Northern Ireland, each signatory to the MacBride principles must make reasonable good faith efforts to protect workers against intimidation and physical abuse at the workplace. Signatories must also make reasonable good faith efforts to ensure that applicants are not deterred from seeking employment because of fear for personal safety at the workplace or while traveling to and from work.

3. The banning of provocative religious or political emblems from the workplace.

Each signatory to the MacBride principles must make reasonable good faith efforts to prevent the display of provocative sectarian emblems at their plants in Northern Ireland.

4. All job openings should be publicly advertised and special recruitment efforts should be made to attract applicants from underrepresented religious groups.

Signatories to the MacBride principles must exert special efforts to attract employment applications from the sectarian community that is substantially underrepresented in the work force. This should not be construed to imply a diminution of opportunity for other applications.

5. Layoff, recall and termination procedures should not in practice favor particular religious groupings.

Each signatory to the MacBride principles must make reasonable good faith efforts to ensure that layoff, recall and termination procedures do not penalize a particular religious group disproportionately. Layoff and termination practices that involve seniority solely can result in discrimination against a particular religious group if the bulk of employees with greatest seniority are disproportionately from another religious group.

6. The abolition of job reservations, apprenticeship restrictions, and differential employment criteria, which discriminate on the basis of religion or ethnic origin.

Signatories to the MacBride principles must make reasonable good faith efforts to abolish all differential employment criteria whose effect is discrimination on the basis of religion. For example, job reservations and apprenticeship regulations that favor relatives of current or former employees can, in practice, promote religious discrimination if the company's work force has historically been disproportionately drawn from another religious group.

7. The development of training programs that will prepare substantial numbers of current minority employees for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of minority employees.

This does not imply that such programs should not be open to all members of the work force equally.

8. The establishment of procedures to assess, identify and actively recruit minority employees with potential for further advancement.

This section does not imply that such procedures should not apply to all employees equally.

9. The appointment of a senior management staff member to oversee the company's affirmative action efforts and the setting up of timetables to carry out affirmative action principles.

> In addition to the above, each signatory to the MacBride principles is required to report annually to an independent monitoring agency on its progress in the implementation of these principles.

Since the late 1970s, the Northern Ireland fair employment issue had been raised in the United States by the Irish National Caucus (INC), a U.S. advocacy group. The first "statement of principles" for fair employment practice in Northern Ireland appeared in congressional legislation introduced in 1983 by then Rep. Richard Ottinger (D-N.Y.). The Ottinger principles were modeled on the Sullivan principles for South Africa, and in some respects--particularly in the inclusion of comparable worth language--were more sweeping than the MacBride principles. The MacBride code, with substantial changes from the original Ottinger bill, was developed in 1984 by the INC and by the office of then New York City Comptroller Harrison Goldin, who led the shareholder campaign for the principles until his retirement in 1990. (The campaign for the principles has had substantial degree of success, at least by some measures, and the proverb that success has many fathers may apply; authorship is in dispute.) MacBride had been associated with the INC since 1979, and he enthusiastically embraced the principles and campaigned for them. MacBride died in 1988.

MacBride, the son of famous Republican parents, had been chief of staff of the IRA in the early 1930s, a fact that contributed to opposition to the principles among unionists and the British government, even though MacBride had long since renounced the use of violence and broken with the IRA. British Labour Party MP Peter Archer, the former Solicitor General and a friend of MacBride, said, "For Protestants, he was a terrorist, and that tended to tell against it." The MacBride principles are an emotive issue, to use a word heard frequently in the north of Ireland. Discussions about the principles sometimes are fierce even when they seem to have little to do with any content of the principles. That the MacBride code is a lightning rod is partly a result of MacBride's sponsorship.

MacBride attracts allegiance and draws hackles for more than his IRA involvement 50 years ago. As a politician who had rejected the violence of the IRA, MacBride was identified, as one academic puts it, with "the Republican fringes of constitutional politics." The emotionalism of the MacBride issue for some people is compounded by the fact that the principles are in large measure part of an effort begun by the Irish National Caucus, and because the campaign has been in substantial measure sustained by the Caucus and other groups (such as the Irish American Unity Caucus) regarded as sympathetic to Irish Republicanism. Moreover, the principles won support from Noraid, a North American group closely identified with the provisional IRA, and eventually from Sinn Fein.

Father Sean McManus, National Director of the INC, is one of the controversial figures involved in the MacBride campaign. McManus at one time supported the IRA, but he emphasizes that he and the caucus have rejected violence. (This led, among other things, to a break with Noraid.) In the view espoused by McManus and some other MacBride supporters, shifting the focus from violence to such political and social issues as fair employment is

way to use peaceful strategies to achieve change. (Some of their critics doubt this, and believe the MacBride campaign has the effect--and was intended to have the effect--of harming the Northern Ireland economy.) In recent years, the IRA and Sinn Fein have pursued their goals through "the armalite and the ballot-box." But there is evidence that force and politics do not always easily commingle, and that there may be considerable debate within Sinn Fein over the uses of violence. In the United States, Noraid suffered a split in 1989, reportedly because hard-line supporters of the necessity of force in Northern Ireland were distressed at the new emphasis of the organization on support for social and political initiatives, particularly MacBride, not related (directly at least) to Irish unification.

Advocates see the principles as being a modest assertion of basic civil rights. Many of these advocates believe that the campaign for the principles contributes to eventual Irish unification, but that it does so by exposing inequalities that are endemic in a divided Ireland. Some advocates believe that reform of fair employment laws cannot work in a divided Ireland, and that showing chronic inequality therefore is a winning political issue for Sinn Fein in the long run. Others believe that reform can work or at least may alleviate difficulties faced by Catholics, and that therefore it is worthwhile seeking reform through such tactics as the MacBride principles. At least some of these people believe that reducing inequality will ease tensions within Northern Ireland, whatever the implications for Irish unification, and that on that basis the principles are worthy of support. Some fair employment advocates in Northern Ireland saw little progress over many years, and seized on the principles as an effective way to bring "external pressure" to bear, and they believe recent efforts to strengthen fair employment law are to a great degree a response to their efforts. The importance of the MacBride principles in pushing the government to adopt new legislation is clear from the frequent references to American investment and the MacBride principles in parliamentary debate over the new fair employment law.

The crux of the emotionalism surrounding the MacBride principles may be this: Where, on the one hand, advocates see the campaign for MacBride as a method of waging peace, opponents see it as but another lever in support of the goals of the IRA, and, by implication, IRA violence. Where advocates portray the <u>principles</u> as furthering reconciliation and as contributions to an economy that offers equal opportunities, opponents portray the <u>campaign</u> as divisive and as intentionally instigated as an impediment to U.S. investment in Northern Ireland.

Only one company has signed the principles. Belleek Pottery Ltd., a northern Irish company principally owned by California businessman George Moore, agreed to become a signatory in November 1990. Five other companies have agreed to implement the principles, though they would not formally sign or endorse them. (See Section V.)

<u>Legality of the MacBride principles:</u> One of the principal controversies over the MacBride principles has been whether their implementation would violate the law in Northern Ireland. Some officials of the British government, the Fair Employment Agency and the companies receiving the resolutions have objected that certain principles may require positive discrimination and that to adopt them would give certain employees a prima facie case of religious discrimination against a company. The proponents of the principles, on the

other hand, argue that the principles, if implemented as they are intended to be, are wholly consistent with the Fair Employment Act. Both sides cite legal opinions in their favor.

Controversy over whether the principles are legal has lessened in America since May 1986, when a case on the legality of the MacBride principles was heard in a U.S. district court, as a result of a dispute over a ruling on a shareholder resolution by the Securities and Exchange Commission staff. In a ruling for the U.S. district court for the Southern District of New York, Judge Robert Carter said that, "although MacBride principles 1, 7 and 8 [those in dispute between the company and the proponents] may be viewed as calling for affirmative action, they do not call for discrimination against anyone. The MacBride principles, akin to the Fair Employment Act, look to underrepresented minority employees, applicants and potential applicants who are underrepresented in the workplace by virtue of their membership in the minority religion and encourage employers to undertake voluntary positive steps in addressing this underrepresentation." The judge stated that "voluntary compliance with this goal of equal opportunity was meant to be the backbone of the FEA, rather than an illegal act in violation of the FEA." Carter cited cases in his affidavit in which employers instituted "affirmative action" programs, "either established or condoned by the FEA." The judge concluded that the New York City Employees' Retirement System, which had brought the case, had made "a strong showing of the likelihood of success on the merits--that upon a full trial it could prove that all nine of the MacBride principles could be legally implemented by management in its Northern Ireland facility." No British court has ruled on the legality of the MacBride principles.

Despite Judge Carter's conclusion that the MacBride principles do not require positive discrimination, the assertion that such positive discrimination is (or may be) implied continues to be made by many people, particularly among U.S. companies. Part of the problem may be that MacBride advocates sometimes suggest actions that do imply quotas or other actions which would clearly constitute illegal reverse discrimination. Moreover, unlike the South Africa Statement of Principles (formerly Sullivan principles), it is not clear who would judge compliance with the MacBride principles. Without a mechanism spelled out, said one DED official in 1990, companies should be concerned that they potentially are turning over part of their fair employment policy to some vague entity with a view on legal issues at variance with the company's view.

Even if one accepts the arguments made by the British in 1986, it would appear that the claimed legal conflicts between MacBride and the law are narrowed or eliminated by the changes made by the new fair employment law. The legal objections to MacBride have focused on principles 1, 7 and 8, and sometimes 4 and 5. The British legal objections have centered on the original, unexpanded principles, which were (and continue to be) used in almost all U.S. state legislation on the MacBride principles and in all shareholder resolutions. The amplifications, among other things, clarify that the principles are meant to be consistent with the law, and MacBride proponents argue that for both MacBride and Sullivan, amplifications are incorporated by reference to the codes.

Any legal objections to principles 4 and 5 are eliminated by the new law, which is very similar to MacBride in supporting outreach to the

nderrepresented group in recruitment, and in opposing layoff procedures which favor a particular group. Principle 1, which calls for "increasing the representation of underrepresented religious groups," appears consistent with the new law, which clearly embraces affirmative action measures to improve the position of the underrepresented. Government spokesman Viggers said in committee that affirmative action "requires pro-active measures by employers to encourage and assist underrepresented groups to take up job opportunities." The first MacBride principle would appear to be unlawful only if it is interpreted in an absolute sense (and contradicting the amplification) as requiring increased numbers of the underrepresented group, no matter what.

Principle 7 calls for training programs "that will prepare substantial numbers of current minority employees for skilled jobs." There may be a difficulty here and in principle 8 in the use of the term "minority." It is not clear if this refers to the particular workplace or to the minority in the community at large. In Northern Ireland people generally use "minority" to refer to the Catholic community. The framework of both old and new fair employment laws presumes that discrimination runs in both directions (even if more severely overall against Catholics), and that fair employment as a principle should work in favor of whichever group has been victimized or is underrepresented.

Patrick Doherty of the New York City Comptroller's office says that the term "minority" should be read in its context as referring to the minority in the particular workplace; he notes that the MacBride campaign has advocated affirmative action programs for Protestants at firms with overrepresentations of Catholics, and that the MacBride code is framed in terms of fairness to both communities. If the term "minority" is read to mean "underrepresented," then principle 7, like principle 1, appears to conflict with the new law only if the spin given in the amplification is totally reversed, and the MacBride code is read as somehow requiring training programs that are restricted to the underrepresented group. Such a reading would seem to distort the plain meaning of the words.

The same is true for principle 8, which calls for procedures to recruit minority employees with the potential for advancement. With the amplification, the principle does not violate either the 1976 act or the 1989 act. Even without the amplification, industry minister Viggers seemed to make the same point in committee discussion of the fair employment bill:

> In saying that the merit principles should prevail, we emphasize that merit does not merely mean the best person for the job at that time. Employers should take account also of potential and of the fact that certain people might have had the opportunity of training and background that should make them suitable for employment at that time whereas others, for various reasons, might have lacked that opportunity.

The British government continues to say that the principles may conflict with the law, though their argument has been toned down.

Views on MacBride

What follows are summaries of the views of several major actors in the controversy over the principles: the British and Irish governments, the FEA,

the proponents, political parties in the Northern Ireland and the U.S. government.

The British government: The British government has conducted an energetic campaign against the MacBride principles. It says it opposes the MacBride campaign on two main grounds. First, it argues that the principles "are a set of superficial 'feel-good' slogans, which fail to get at the root of the problem." The government adds:

> At best the principles are divisive and confusing. At worst they could mislead an employer into illegal action. Either way, they are positively harmful to the prospects of creating equal job opportunities for all in Northern Ireland.

The second "and even more important" reason for its opposition, says the government, is its belief "that the overall effect of the MacBride campaign is to discourage new job-creating U.S. investment in Northern Ireland."

> Threats of divestment, shareholder resolutions, product boycotts and burdensome reporting requirements with attendant political hassle are part and parcel of the MacBride campaign. Forcing U.S. companies to comply with dozens of differing requirements from several different state legislatures, on top of the stringent requirements of Northern Ireland fair employment law, only deters firms from investing there. New investment is the key to more jobs, and more jobs are the key to reducing unemployment.

Government officials believe the new law makes the MacBride principles redundant in any case. They say:

> The new law imposes important additional duties on all employers in Northern Ireland, not just U.S. companies. It requires them to monitor their work forces, and regularly review their employment practices. It provides for mandatory affirmative action programs, including the setting of goals and timetables....This is not only by far the toughest anti-discrimination law ever passed in the United Kingdom; it is also a practical, workable program for dealing with discrimination.

Government officials believe the MacBride campaign has damaged investment in Northern Ireland. One official cites General Motors, which sold an 80 percent interest in its Northern Ireland operation late in 1988, after apparently threatening to do so at a MacBride hearing earlier that year. (Some GM executives have denied that MacBride was a factor in the decision.)

There are reasons to think that a government led by the Labour Party might be less opposed to the principles. Peter Archer MP, former Solicitor General in a Labour government, has supported the principles, and Northern Ireland spokesman Kevin McNamara MP said that "the MacBride principles embody the type of affirmative action which I regard as necessary if unacceptable levels of inequality of opportunity are to be reduced."

FEA/FEC: The Fair Employment Agency opposed the MacBride principles, arguing that they impede progress on equal employment opportunity because of their ambiguity. The agency stated: "If employers generally are to adopt the type of equality of opportunity programmes which the agency has been demanding, it

s crucially important that there should be total clarity about where the dividing line is between permissible and impermissible recruitment activities....The agency believes that the MacBride principles...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." FEA Chairman Robert Cooper said that if the agency received a complaint of reverse discrimination against a company that had adopted the principles, "the agency would inevitably have to treat as circumstances from which unlawful discrimination could be inferred the fact that the company had adopted the MacBride principles."

In 1988, Cooper said that American companies had a good record on fair employment, and are not the problem. Of complaints to the FEA, he said, "very few of those about general patterns of inequality involve American companies, and indeed the majority of complaints are from the leaders of the Protestant community, who consider that some of the American companies employ too few Protestants. The extent to which existing American companies can bring about further improvements in the position of Catholics in Northern Ireland is minimal."

To IRRC's knowledge, the FEC as a body has made no official statements on the MacBride principles.

Irish government: Irish Prime Minister Charles Haughey has said that the MacBride principles are "totally acceptable," and he praised Americans who focused attention on the fair employment problem through the MacBride campaign. A government official told New York City Comptroller Elizabeth Holtzman in 1990 that the existence of the new law will not necessarily guarantee adequate enforcement, and that, in Holtzman's words, "continued oversight from the U.S. could have beneficial effects."

The proponents: The New York City Comptroller's office is one of the moving forces behind the campaign for the MacBride principles. A spokesman for the office, which controls several large New York City pension funds, has told IRRC that the MacBride principles "represent proposals whose adoption will help to redress inequalities in employment in Northern Ireland. They have caused U.S. multinationals to seriously examine the performance of their Irish subsidiaries in providing equality of opportunity and have also effectively pressured the British government to move more vigorously to combat religious discrimination." Former Comptroller Harrison J. Goldin, in a 1987 interview with An Gael, said the principles represented "a very important peaceful resource for the ultimate resolution of the Northern Irish question." He criticized the Northern Irish Social Democratic and Labour Party's position on the principles (see below) in the An Gael interview: "John Hume operates under the mistaken assumption that if the MacBride principles would only go away, the floodgates of American investment would open for Northern Ireland. The fact is that Americans are very skeptical about increasing their financial exposure in Northern Ireland unless we can establish the conditions that offer reasonable prospects for peace. Chief among those conditions is the elimination of the enormous irritant of unequitable economic treatment."

Current Comptroller Elizabeth Holtzman has continued the pro-MacBride campaign initiated by Goldin, and her office in 1990 reached agreement with four companies that said they were implementing the MacBride principles. In

a November report, she said "There has been some real progress made through the MacBride principles campaign." Holtzman met with officials in Northern Ireland, Britain and the Republic of Ireland in July 1990. In her report on that visit, she questioned the government's emphasis on "merit" in hiring and promotion decisions, saying that "this can be used to make it difficult to implement affirmative action polices." At the same time, Holtzman added, "the government's condemnation of what it describes as 'reverse discrimination' may make it difficult for an employer acting in good faith to move forcefully to redress inequalities."

The religious shareholder groups that are sponsoring MacBride-related resolutions believe that one of the main strengths of the principles is that they offer a positive, nonviolent alternative to the current state of affairs. Sister Regina Murphy, the coordinator of the religious shareholders' campaign for the principles, notes that church groups became involved in supporting the MacBride principles as a result of their "basic commitment to the idea of justice in the world and a fair share for everyone, whether that is fair employment or fair access to resources or anything else....To those of us who have been in the corporate responsibility movement for a long time," she told IRRC, "it seems that we need not only to denounce the injustice but to articulate a positive vision....[The MacBride principles] are a nonviolent program to try to effect some change, and there are not that many nonviolent solutions for Northern Ireland being presented."

Sister Regina called the argument that the principles are creating a disincentive to investment "specious." Patrick Doherty of the Comptroller's office agrees, pointing to significant new investment by U.S. companies announced recently, when the MacBride campaign has been most visible. He says that the attention given to Northern Ireland by the MacBride campaign makes it difficult for U.S. companies to leave without fear of protest, and he adds that MacBride pressure may have been a factor in the actions of Ford Motor Co. to help bring Montupet, a French subcontractor for Ford, to the Belfast area for a new 1,000-employee operation.

The proponents, and their supporters in Northern Ireland, believe the MacBride principles have been effective in moving government and society toward addressing fair employment issues, after years of little progress. MacBride sponsor Inez McCormick notes that fair employment was a principal goal of the civil rights movement. She says the issue had not been effectively addressed within the Northern Ireland/British context, and that the only effective strategy for change on this issue has been resort to "external" pressure, principally through the MacBride campaign. MacBride supporters say continued pressure from America is necessary to support tough enforcement of the new Fair Employment Act, and to ensure that equal employment remains a priority.

Political parties in Northern Ireland:

Sinn Fein--Sinn Fein, generally described as the political wing of the IRA, is the only major party in Northern Ireland that supports the MacBride principles. Sinn Fein leader Gerry Adams has described the principles as "an effective first step towards equality of opportunity" and "the only realistic challenge to the institutionalized inequality of the six-county state." Adams argues that the Fair Employment Act and the FEA were cosmetic gestures that were not intended to be effective.

In October 1989, Sinn Fein economic spokesman Mitchell McLaughlin mocked British assertions that passage of the new law resolves the fair employment debate, and he emphasized that Sinn Fein does want new investment. The new law is "fundamentally flawed and is inadequate for the task publicly set for it by the British government." Arguing that the measure of success of any anti-discrimination law must be reduction of the unemployment differential, McLaughlin noted that the act fails to set a timetable for such reduction. McLaughlin continued:

> Twenty years after the civil rights movement marched for an end to discrimination in employment, and 17 years after Britain took direct control of affairs in the six counties, structured political discrimination against Catholics is getting worse! The MacBride campaign is a genuine attempt to introduce regulations which will end discrimination against nationalists in the north. The British government's new legislation has more to do with defusing the MacBride campaign in the United States than seriously confronting the fundamental evil of discrimination.

SDLP--Some leaders of the Social Democratic and Labour Party have criticized the MacBride campaign, although the party itself has no official position and some within the party are sympathetic. Party leader John Hume has been a principal critic of the campaign, suggesting that for some advocates, the principles were an extension of what he believes is a continued IRA campaign of economic disruption. He questioned Sinn Fein support for the principles--particularly the principle on worker security--when IRA members "which they support have engaged in a kill-a-worker campaign [and] when they have murdered people in their workplaces, traveling to and from their workplaces or in their homes on the spurious grounds that their employment made them legitimate targets."

More recently, Hume seems to have moderated his criticism of the MacBride campaign, expressing concern primarily about U.S. MacBride laws that threaten divestment. In 1989, Hume said:

> we have judged the MacBride principles to be worthy in themselves but ill-drafted and inadequate as a response to our employment problems. We have also been concerned that aspects of the campaign for the MacBride principles could have the effect of discouraging investment. The fact that some of those speaking in support of the principles did so with a disinvestment pitch reinforced these worries. I have been reassured, however, by the approach of several prominent supporters of the campaign such as Mayor Flynn of Boston and AFL-CIO leaders which has been sensitive to the need for job-creating investment as part of an effective program. But the divestment dimension to some MacBride resolutions give us a residual doubt about the net efficacy of the campaign so focused on the MacBride principles.

In a March 1990 Irish Echo article, Hume suggested the MacBride principles are now irrelevant, since the new fair employment law "would cover...all of the MacBride principles, except the one which calls for employers to guarantee the safety of workers going to and from work," a guarantee which Hume says no employer can provide. (MacBride advocates dispute that the principles ask for such a "guarantee.") Hume said that neither the

principles or the law address only part of the problem; in his view the more pressing issue is the need to encourage private investment and job creation in areas of high unemployment. Hume wrote that "it is the possible effects of the MacBride campaign" on this objective that concerns him. Noting that Northern Ireland is in competition for American investment with other areas of Europe, Hume said American companies may be concerned because the MacBride campaign singles out the north of Ireland "as a place where they might have extra problems." Common sense suggests "the likelihood that they will wish to avoid what they see as extra hassle and go elsewhere," he concluded.

Unionist parties--Leaders of the Ulster Unionist Party and the Democratic Unionist Party have denounced the MacBride principles. Some unionists see the principles as designed "to advance the interests of one section of the community at the expense of the other," as three members of the Standing Advisory Commission on Human Rights put it in a 1987 dissenting report. In opposing the 1989 fair employment bill, UUP MP Roy Beggs complained that aspects of the bill "will be perceived as closely related to the MacBride principles, which had a lot of publicity, but which are not, and never will be, acceptable to the majority community in Northern Ireland." Unionist leaders such as Peter Robinson of the DUP vigorously oppose quotas, and believe the MacBride principles and provisions of the Fair Employment (1989) Act will lead employers to use quotas. Moreover, unionists argue that the focus on fair employment issues caused by the MacBride campaign has reinforced sectarian identities and heightened tensions in the workplace.

Unionist leaders believe the extent of employment discrimination in Northern Ireland is exaggerated, and that international perceptions underplay the extent to which discrimination runs in both directions, against both Protestants and Catholics. Some leaders have accused both the FEA and the FEC of being more concerned with anti-Catholic discrimination than with Protestant victimization. Unionists also argue that the issue of intimidating flags and emblems in the workplace is overblown. Robinson said that if there is any distinction between flying the U.S. flag at American plants and waving the Union Jack and posting pictures of the queen in Northern Ireland, "it is only that a section of the community in Northern Ireland do not respect her Majesty or look up to the flag, but look to the leaders and the flag of another country to which to offer their allegiance."

Finally, there is clear resentment among unionists at American interference in Northern Ireland. Robinson complains that the MacBride lobby is "the usual one of people of the Republican tradition in Northern Ireland applying pressure on those of Irish American stock. They in turn applied pressure on American firms and politicians, who then applied pressure on firms in Northern Ireland."

Alliance--The non-sectarian Alliance Party opposes the principles, claiming that they "in reality are proposing reverse discrimination in employment."

The Legislative Campaign for the MacBride Principles

State and local legislation: During 1985-88, laws endorsing the MacBride principles were approved in fairly rapid succession by 10 states and a number of local governments. MacBride momentum slowed after 1988, with only two states adopting binding MacBride laws in 1989 and none in 1990. The

egislatures of California and Virginia did adopt resolutions on the fair employment issue in 1990, however.

Of the 14 state laws and resolutions, four include provisions that appear to authorize fiduciaries for state funds to make investment decisions based in part on conformance with the MacBride code, and one state, Connecticut, mandates divestiture of stock in companies that have not adopted and implemented the principles. Eleven state laws and one legislative resolution have called for corporate surveys and/or shareholder actions on issues raised by the principles.

The states that have passed MacBride principles laws include Connecticut, Massachusetts, New Jersey, New York, Rhode Island, Florida, Maine, Minnesota, Illinois (whose law has now expired), Michigan, New Hampshire and Vermont. Ordinances and legislation supporting the MacBride principles have been passed by more than 20 local governments. Laws in place in Philadelphia, St. Paul, Minneapolis and Burlington, Vt., mandate divestment of stock in firms that do not adhere to MacBride. Boston, Detroit and Wilmington have legislation authorizing the discretionary use of investment policy to encourage adherence to the MacBride principles. A number of local laws and policies call for shareholder actions in support of the MacBride principles and/or call for investigation of corporate compliance with the principles. Boston; Rochester, N.Y.; Scranton, Pa.; and Lackawanna County, Pa., have laws or executive orders providing that government contractors active in Northern Ireland should comply with fair employment standards. The first application of Boston's 1989 executive order on selective contracting took place when Nynex, up for an $11 million city contract, wrote to the city to indicate that it adheres to the standards described in the Boston selective contracting order, including "guarantees of nondiscrimination in employment and freedom of workplace opportunity, including those embodied in the MacBride principles."

Two New York City funds were the first to take action on the issue, in 1985. The boards of trustees of the retirement systems adopted resolutions directing the comptroller to survey U.S. companies operating in Northern Ireland on the composition of their work forces, the history of their treatment of minority employees, their adherence to existing fair employment guidelines and their willingness to adopt the MacBride principles. The resolutions also instructed the comptroller to encourage companies in the retirement systems' portfolios to adopt and implement the MacBride principles and "where necessary and appropriate to initiate or support shareholder initiatives requiring such corporate action."

Congressional action: Congressional activity on the MacBride bill has focused on the Fair Employment Practices Act, a bill that would (1) restrict the import of goods from Northern Ireland unless the manufacturer documented that it was in compliance with the MacBride principles; and (2) require any U.S. company doing business and employing more than 20 persons in Northern Ireland to comply with the principles. Principal sponsors are Rep. Hamilton Fish (R-N.Y.) and Sen. Alfonse D'Amato (R-N.Y.). No hearings have been held.

In 1988, Rep. Brian Donnelly (D-Mass.) introduced a bill that would use a carrot and stick approach to encourage employment of Catholics in Northern Ireland. The bill would amend the Internal Revenue Code to remove limitations on the amount of foreign tax credit available for income

generated by a manufacturing facility in a high unemployment area of Northern Ireland, if 40 percent or more of the facility's employees are members of a religious minority. The "stick" is that the legislation would reduce the foreign tax credits for entities with operations in Northern Ireland that do not follow fair employment principles.

IV. U.S. Companies in Northern Ireland

Subsidiaries and minority-owned affiliates of U.S. companies employ more than 11,000 people in Northern Ireland. U.S. firms are said to employ about 10 percent of manufacturing workers. U.S. investment in Northern Ireland declined in the early- and mid-1980s, but has picked up somewhat within the last two years.

IRRC has identified 37 publicly held U.S. companies with subsidiaries or affiliates (10 to 50 percent owned by the identified company) that have more than 10 employees in Northern Ireland. Majority or wholly owned subsidiaries of public U.S. companies employ about 8,200 people, while minority-owned affiliates employ another 1,400. Northern Ireland employers owned by private American corporations or individuals employ about 2,000 workers.

The largest employers are **Du Pont** (1,680 employees) and **American Brands** (1,677). Thirteen other publicly held U.S. companies have wholly owned subsidiaries that employ 100 or more: **American Home Products** (306 employees), **Baker Hughes** (283), **Ball** (137), **Data-Design Laboratories** (310), **Federal Express** (110), **Ford Motor** (711), **Interface** (142), **3M** (264), **Nacco Industries** (461), **Nynex** (120), **Teleflex** (256), **United Technologies** (600) and **VF** (450). Three private U.S. companies also employ more than 100 workers in Northern Ireland: **Lummus Industries Inc.** (800), **Synthetic Industries L.P.** (170) and **Warnaco Inc.** (500). In addition, California businessman George Moore is the principal owner of Belleek Pottery Ltd., a company that employs 113 people. **Fruit of the Loom Inc.**, a publicly held company, is making a major new investment in Northern Ireland that will add it to the list of large U.S. employers in 1991. The company plans to hire more than 500 workers at two plants in Derry; the first plant is scheduled to open by mid-year.

Another 18 public companies have been identified as employing between 10 and 100 workers: **AM International, Data General, Digital Equipment, Dun & Bradstreet, Exxon, IBM, Interpublic Group of Cos., Marquette Electronics, Marsh & McLennan Cos., McDonnell Douglas, NCR, Oneida, Pitney Bowes, Procter & Gamble** (with about 12 employees but no investment or branch office), **Sonoco Products, Texaco, Unisys** and **Xerox**.

General Motors owns 20 percent of European Components Corp., a company that used to be a GM subsidiary that employs 1,033 people in Northern Ireland. GM also owns 26.5 percent of Avis Europe, which employs 17 workers there. **James River** holds 25 percent of the equity in Invercon Papermills, which employs about 250 in Larne, Northern Ireland, and **Terex** owns 33 percent of a company that employs 70 people in the province.

Among the dozen or more U.S. companies with 10 or fewer employees in Northern Ireland are eight that are slated to receive shareholder resolutions: **Alexander & Alexander Services, Avery Dennison, Black & Decker, General Electric, Illinois Tool Works, Mobil, Sara Lee** and **Security Pacific.**

Private U.S. companies in Northern Ireland with fewer than 100 employees include Harris Technology Group Inc., Neotech Industries Inc., Paper Manufacturers Co., Printpack Inc., Science Typographers Inc. and Stockham Valves and Fittings Inc.

The Industrial Development Board for Northern Ireland, established to attract foreign investment to the region, offers significant incentives for investment. These incentives include "30 percent grants towards the cost of building and equipping plants, with discretionary powers to increase these to 50 percent; generous training grants, including funding the training of Ulster workers at parent plants in the United States; relocation expenses of incoming key personnel; management incentive grants towards the recruitment of top-grade executives; and total exemption from real estate taxes." Many U.S. companies in Northern Ireland have taken advantage of these incentives.

V. Recent Developments: 1990 in Review

The major development in 1990 for those interested in the fair employment issue occurred on Jan. 1, when the Fair Employment (1989) Act became law. On a broader front, the most significant development may be progress made by Northern Ireland Secretary of State Peter Brooke in pursuing "talks about talks" on new political arrangements for Northern Ireland.

Fair Employment Act: The Fair Employment Act and the new Code of Practice it authorized came into force in January 1990 after much debate and controversy. Britain's Tory government said the new act represented a strong new approach to the old problem of religious discrimination in employment in Northern Ireland, and would provide the tools needed to provide equal opportunity. The Fair Employment Commission said the act got off to a good start when virtually all employers within reach of the law registered with the commission, as required. The same 1,700 employers were required to submit monitoring returns to the FEC by June 6, and all but about 30 smaller employers did so, reports the commission. There appeared to be grumbling by some workers and employers over monitoring requirements, but there was no organized resistance. FEC Chairman Bob Cooper remarked in October that the major strategic provisions of the act "have worked remarkably smoothly."

In its first major ruling, however, the Fair Employment Tribunal delivered a body blow to the act by deciding that the act made it illegal for employers to reveal information about the religion of specific employees and applicants when that information is necessary to investigate employment discrimination claims. The ruling, said Cooper, had "an initial devastating effect" on the act's provisions dealing with individual complaints. The government undertook to seek a corrective amendment "at the earliest possible date," publishing in November a consultative document describing possible solutions to the problem.

The Tribunal ruling was based on a technicality, but fundamentally resulted from a larger contradiction in the government's new approach to job discrimination complaints. The broader issue arose from a conflict between new public procedures and a commitment to maintain confidentiality. Cooper wrote:

> We have got into this mess because the government--having taken the view that there was no reason why religious discrimination complaints should not be subject to an adversarial procedure in open tribunal--then introduced confidentiality procedures which have no counterpart in either sex or race legislation. In reality, there were only two possible procedures that could be used....Such complaints could be investigated under the 1976 provisions by the Fair Employment Commission in private, or they could be heard in public, except in exceptional circumstances, in an adversarial procedure with all relevant information being made available to the Tribunal and the complainant's representatives. There is no middle way.

In November, the government consultative document said there were two options for addressing the problem: 1) simple repeal of the relevant section limiting disclosure, and 2) amendment of parts of the legislation "to allow disclosure of information in certain defined circumstances." The comment period on the options outlined in the document ran until Dec. 14.

Brooke initiative: Between January and July, Secretary of State Brooke made surprising progress in an effort to bring the constitutional parties of Northern Ireland to the table to discuss new political arrangements. The "talks about talks" stalled between July and December over a dispute on Dublin's participation, but there appears to have been some movement in recent days. In the fall of 1989 and again late in 1990, Brooke also signaled a slight opening toward Republicans. He indicated that Sinn Fein could participate in talks down the line if it renounced violence, and he declared in forceful terms that the British government is neutral on the question of eventual Irish unity, believing only that the issue should be decided by the people of Northern Ireland.

Brooke began his talks effort in earnest last January, suggesting that there was "common ground" shared by northern Irish politicians that could support moves toward devolution of powers from London back to Northern Ireland. In an important signal to unionists, he said that any devolved political arrangements would have "significant implications" for the Anglo-Irish Agreement. At the same time, he reassured Dublin and the SDLP that any new arrangement would have to embrace a north-south dimension and provide for continued dialogue between Britain and Ireland.

By late June, Brooke appeared to have forged a consensus behind a plan for a sequence of talks. Under the plan, while constitutional parties in Northern Ireland began negotiations over new political arrangements, London and Dublin would discuss their future relationship. The talks would take place during a suspension of the Anglo-Irish Agreement, and the secretariat established by the agreement would be temporarily wound down. An impasse developed when Brooke could not win agreement on the timing for Dublin's entry into the talks; Dublin apparently was not willing to let talks on "internal" political arrangements in the north proceed indefinitely without the Republic's participation. Apparently there was progress on this issue early in December when Brooke met with Irish Foreign Minister Gerry Collins.

Increased violence, security review: The fall was marked by an upswing in violence, particularly by the IRA. Earlier in the year the IRA had increased violent attacks in Britain and Europe, including the killing of Conservative MP Ian Gow, a close associate of Prime Minister Thatcher. On Oct. 24, an IRA

attack on army checkpoints resulted in the deaths of six soldiers and a civilian forced to transport an IRA bomb. The tactic of forcing civilians to drive bombs to their deaths at checkpoints brought another round of denunciations of the IRA. The year also saw continued death squad activity by loyalist paramilitaries, and a series of tit-for-tat sectarian killings.

The government was reviewing security legislation at the end of the year, under pressure (as always) from unionists to toughen its approach to political violence. At the same time, others (including the opposition Labour Party) supported an increased regard for civil rights and liberties.

Security concerns, said the government, led it to cut off funding for the west Belfast section of Glor nan Gael, an Irish language group, during the summer. The move brought widespread denunciation of the government in the nationalist community and abroad; Labour Northern Ireland spokesman Kevin McNamara said the government was handing over the Irish language issue to the IRA.

Robinson in, Thatcher out: Changes in political leadership in Dublin and London may have some long-term impact on the problems of Northern Ireland. Mary Robinson, a left-wing lawyer nominated by Ireland's Labor Party and the Workers' Party, won a stunning victory in November for the Irish Presidency. While the office she won is symbolic and largely without direct political power, Robinson's election may reflect significant change in the politics of the Republic. Robinson has supported liberalization of Ireland's conservative social policies--heavily influenced by the Catholic church--including legalization of divorce. Married to a Protestant, she is one of the few national leaders who has expressed strong interest in some unionist positions. She opposed the Anglo-Irish Agreement in 1985 because she did not believe it took into account unionist views, and she has supported changes in the Irish constitutional provisions that proclaim the Dublin government's de jure right to rule the whole island. Irish Prime Minister Charles Haughey reacted to Robinson's election by proposing a reconsideration of various social policies in the Republic, including the ban on divorce and the criminalization of homosexuality.

Margaret Thatcher's resignation as British prime minister in November also could have an impact, though the views on Northern Ireland of her successor, John Major, are not well known. Thatcher was perceived as a hard-liner on the IRA, particularly with her refusal to respond substantively to the 1981 hunger strike, but she also was co-signatory of the Anglo-Irish Agreement, an action that will never be forgiven by many unionists. Prime Minister Major signaled continuity in his first action on Northern Ireland when he said that Brooke would remain on as Northern Ireland Secretary of State.

New York City agreements on MacBride: New York City Comptroller Elizabeth Holtzman agreed to withdraw five shareholder resolutions in 1990 when companies agreed to implement the MacBride principles or support EEO efforts. Four companies in Northern Ireland--Federal Express, Nynex, Pitney Bowes and Honeywell--agreed, as Nynex put it, to make "all possible lawful efforts to implement the fair employment practices embodied in the MacBride principles." Lockheed agreed to write to two Northern Ireland subcontractors to ask them to follow that company's EEO policy. The significance of these agreements was open to question. They may be a sign of conciliation between proponents and companies on this issue, but Pitney Bowes and Honeywell have

few employees in Northern Ireland, and Nynex had reached agreement on similar language in 1989 with the city of Boston. None of the companies formally adopted or endorsed the principles. In November, however, Belleek Pottery Ltd., a Fermanagh company owned by American businessman George Moore, did agree to become a formal signatory to the principles. Belleek is the first company formally to adopt the principles.

VI. IRRC Analysis

This analysis mainly applies to those resolutions asking companies to implement the MacBride principles. Additional commentary on the seven report resolutions will be included in the Supplements published for each company receiving that resolution.

The resolution asking companies to implement the MacBride principles raises the following issues:

- Is the fair employment law in Northern Ireland adequate?

- What would be the effect on the company if it were to adopt the MacBride principles? What would be the effect on Northern Ireland?

Adequacy of fair employment law: Proponents of the MacBride principles have argued that progress toward equal employment was not forthcoming under the old Fair Employment Act, and they remain unconvinced that changes in the new law will make a decisive difference. They believe pressure created by the MacBride campaign, and by the British desire to defuse the campaign, has resulted in putting employment equity back near the top of the agenda; they site a wide range of observers who credit the MacBride campaign for the government's attention to this issue. MacBride advocates add that pressure must be kept up in order to strengthen the government's will to tackle the problem. They believe that the Fair Employment Agency did not do a good job of enforcing the (faulty) old law, and they say it is not yet clear that the new Fair Employment Commission will become an aggressive enforcement agency. Therefore, they argue, it is particularly appropriate for shareholders to intervene to try to make sure their companies are equal opportunity employers in Northern Ireland, given the seriousness of religious discrimination there.

MacBride advocates note that a key measure of unequal employment opportunities--the unemployment differential between Protestants and Catholics--has not improved after more than a dozen years of effort. Catholic males remain two-and-one-half times as likely to be unemployed as Protestant males, and a lesser disadvantage persists among Catholic women compared with Protestant women. They also note the record number of discrimination complaints recently filed with the FEA and FEC, and suggest that these complaints are surfacing because of visibility of the fair employment issue resulting from the pressures brought to bear by the MacBride effort.

The British government believes that the MacBride campaign has exaggerated the inadequacies of the old law and of the Fair Employment Agency. The government does concede that progress under the old law was insufficient, however, and the more important point is the government's contention that it has responded to the problems with strong legislation and the commitment of substantial new resources. The government notes that it has been

strengthening fair employment efforts ever since data became available in 1985 indicating that the unemployment differential was not lessening. With compulsory monitoring in place for all Northern Ireland employees, with affirmative action remedies available to employers and to the FEC to impose, and with a ban on indirect as well as direct discrimination, the British do not believe that American companies need a second vague and possibly confusing fair employment code such as the MacBride principles. U.S. companies in general are thought to be fair employers in any case, say government representatives, and the law is there to lead or compel any that may not offer equal employment opportunities to change their practices.

It is too early to assess the impact of the new legal framework, although the immediate difficulty that the new complaints process ran into is not a good sign. The Fair Employment Tribunal decision in October that temporarily derailed adjudication of individual complaints will further delay any evaluation of how the tribunal and U.K. courts interpret the law and any challenges to it. Expert opinion among advocates of affirmative action is split. Oxford law professor Christopher McCrudden, adviser to the Labour Party on the new law and someone who has done much study on the workings of the old law, fears the new law may be fatally flawed. He does not believe the law offers clear (and clearly protected) guidelines for employers, who need to know exactly what they are supposed to do. In the heated Northern Ireland environment, and with difficult distinctions between needed affirmative action and inappropriate discrimination, the lack of clarity in the law will make it difficult to get employers to take positive action; they more likely will sit tight, he believes. He feels that, in that atmosphere, the FEC will have to be very aggressive if there is to be hope of progress, but the commission is likely to be tied up in litigation, and may not have the tools (such as effective contract compliance mechanisms) to do the job.

Some experts emphasize that the monitoring requirements at the center of the new bill will for the first time give the enforcement agency and the government the information needed to identify where there are problems; without such information, it is very difficult for the enforcement agency to proceed with confidence, and this has been a major reason for the difficulties of the FEA. IRRC's examination of U.S. companies in Northern Ireland suggests that there is some force to this view; evaluation is difficult without good comparative information and without good data on local populations, labor availability and other issues. Defenders of the new law add that the FEC will have the financial wherewithal to proceed against those failing to afford equal opportunity. These people believe the data and resources now available to the commission will enable it to do the job, and will make the crucial difference between success and failure. Critics, on the other hand, question whether information and resources are sufficient, particularly if the legislation is deficient in other ways. They say the most important factor is the willingness of the government to tackle the problem in a serious and sustained way.

While the FEC has taken some actions that advocates of tough enforcement probably like--including the decision to disclose monitoring information by employer beginning in 1991 and aggressive court action against firms that failed to comply with monitoring requirements--it has yet to take significant enforcement action on the main substantive elements of the new law.

It should be noted that people on both sides of the issue say that equal employment law and fair employment principles address only a part of the problem. Other issues, particularly education and industrial location, may be even more important in reducing the unemployment differential.

Effect on the company: If a company were to adopt and implement the MacBride principles, its actions could have the effect of reassuring the minority community in the areas where its plants are located that the company is serious in its commitment to equality of opportunity in employment. On the other hand, the majority community in those areas might feel that the principles would be detrimental to their chances of obtaining employment at the company. Moreover, employees from the majority community could become concerned about the possibility that they will receive less favorable treatment. Given the high levels of unemployment for both religious communities in Northern Ireland, support for the MacBride principles might lead to greater division in the workplace and even strikes or other labor unrest. In addition, adoption of the MacBride principles could open companies to charges of reverse discrimination. When the old law was in force, FEA Chairman Cooper said that if charges of reverse discrimination were brought against a company, the fact that it had adopted the MacBride principles would, on the face of it, support that charge.

MacBride principles advocates argue that in the long-term it is important for employers to stand up for fair treatment to both communities, and that the MacBride principles do that. Concerns raised by Protestants worried over their loss of status may not be valid, and the company's own self-interest may be better served by facing down unjustified assaults on equal employment and affirmative action policies, say the advocates. They note that several companies, notably Short Brothers aircraft, have successfully implemented new fair employment policies--including the elimination of intimidating banners and emblems--by insisting on the policies despite initial challenges by some unionist employees.

To date, five companies have indicated in one form or another that they would make (or already were making) lawful efforts to implement the MacBride principles, and another company has formally endorsed the code. While the first five companies did not actually adopt the MacBride principles, they were widely and inaccurately reported to have done so by media in Northern Ireland, and to IRRC's knowledge the companies do not appear to have suffered any adverse effect.

To be effective, the MacBride principles would have to walk a thin line between being inside the realm of legal employment practices, on the one hand, and supplementing existing laws, on the other. They would also have to balance offering employment and advancement opportunities to those who might not have had them in the past with not denying opportunities to those who are in the majority. Shareholders who believe that the principles do not walk this line, and are either illegal or unnecessary, may oppose the resolution or see no need for it. Shareholders who agree with the proponents that a company policy that embraces the MacBride principles would go further to show the company's commitment to equality of opportunity may see merit in the resolution. Shareholders who want to register their concern over the employment situation in Northern Ireland may wish to consider whether a vote for the resolution would be an appropriate way to encourage companies to examine their employment practices more thoroughly.

Effect on Northern Ireland: Proponents of the MacBride principles believe they will have the effect of stabilizing the employment situation there, thus encouraging foreign investment. For the British government and some other opponents of the MacBride principles, though, a major concern is that adoption of the principles would be counterproductive for Northern Ireland. They argue that the negative publicity and compliance hassle would encourage companies to leave and discourage others from locating there, thereby worsening the already serious unemployment situation. Though the British government notes that the Republic of Ireland has had much greater success attracting investment in recent years, there is not much good evidence to evaluate this issue. MacBride advocates believe the attention the campaign has brought to Northern Ireland and employment issues actually puts pressure on companies to maintain their investments as a part of good corporate social policy.

If a U.S. company were to adopt the MacBride principles, it might lead others to follow. Commitment to the principles might lead some companies to intensify their efforts to implement good fair employment practices, and the acceptance of the code by a number of companies could help strong commitment to affirmative action become more the norm among employers in Northern Ireland. Improvement of equal employment opportunity, and lessening of sectarian intimidation in the workplace, could help promote the reconciliation of the two communities in Northern Ireland. On the other hand, as the British government points out, equal employment is a highly sensitive issue, and if MacBride pressures led companies to practice reverse discrimination--favoring members of the underrepresented group at the point of selection in order to meet a numerical goal--the effect would be a violation of the law. Such actions, if perceived by workers, also could cast doubt on the qualifications of many employees in the underrepresented group, and exacerbate sectarian tensions. It is also possible that a widespread decision on the part of companies to adopt the MacBride principles would make a splash for a time, but that they would make little practical difference.