

POLICY REVIEW OF GOVERNMENT'S RESPONSE TO THE MACBRIDE CAMPAIGN

Introduction

1. The MacBride Principles are a set of nine principles ostensibly designed to promote fair employment in Northern Ireland. A campaign, in which the prime movers have been extreme Irish American organisations, has been mounted since 1985 to pressurise US companies operating in Northern Ireland into implementing the Principles. So far no company has adopted the Principles (further details of the Principles and the campaign in Annex 1). The British Government has opposed the campaign promoting the MacBride Principles, with considerable success. The DED, our Embassy in Washington, the NIO and FCO co-operate closely in opposing the MacBride campaign; and have only been able to do so because the SDLP and many moderate Irish-Americans (including the leadership of the Congressional Friends of Ireland) remain firmly opposed to the MacBride campaign.
2. It was agreed in 1988 that, once the Fair Employment Act had passed, the policy of opposition should be reviewed. After summarising the background to the campaign, this paper looks at the current position, and then considers what the British Government's future stance on MacBride should be.

Background

3. The prime movers in the MacBride campaign, which took off in earnest in 1985, are extreme Irish-American groups such as the Irish National Caucus, the American-Irish Political Education Committee and Irish American Unity Conference (see glossary), helped by a wider ad hoc coalition (for example liberals, the churches, organised labour and Black groups) in each State. The original nine principles, which almost certainly implied reverse discrimination, were later amplified in order to make them more widely acceptable (though these amplified Principles have only been used in legislation on two occasions so far).

5. The methods used by the campaign have included:

- promoting laws in State and City legislatures and Federally to pressure US companies into adopting the Principles through the leverage of pension fund holdings in their stock and restrictive contracting;
- sponsoring legislation intended to apply the Principles to US imports from Northern Ireland;
- promotion of shareholder resolutions at company AGMs;

6. In response, the Government's objectives have been:

- making direct approaches to companies, shareholders and investment consultants;
- generating negative and misleading publicity about the fair employment situation in Northern Ireland; and
- organising product boycotts.

Further details in Annex 1.

4. It has always been important to distinguish between the campaign's apparent and real objectives. The apparent objectives are to promote fair employment in Northern Ireland, and to ensure that the imbalance between Catholic and Protestant unemployment is reduced. For this reason it has attracted the support of many responsible, representative groups and individuals. For probably the majority of the MacBride campaigners, however, the real aim is to discredit the British Government's policies in Northern Ireland: this comes out clearly at, for example, hearings on State Bills, and in much of the written material produced by the campaign. The campaign is thus not an end in itself: MacBride, with its overtones of the campaigns for civil rights in the United States and against apartheid in South Africa, has been an almost ideal stick with which to beat the Brits over Northern Ireland.

5. Against that background, the campaign has been seen as posing two main threats:
 - (a) damage to existing and potential US investment (further details of such investment are in Annex 2) by creating "hassle" for US companies operating in Northern Ireland; and
 - (b) discrediting in the United States HMG's Northern Ireland policies.
6. In response, the Government's objectives have been:
 - (a) to protect job opportunities in Northern Ireland by minimising the effects of the MacBride campaign on existing and potential investors; and
 - (b) to project and promote British policies on Northern Ireland in general and on fair employment in particular; and to compare the latter with the defects of the MacBride Principles and with the hidden agenda of the campaign.
7. Work already in hand to promote fair employment in Northern Ireland was taken forward (eventually resulting in the Fair Employment Act), and State MacBride legislation was halted or hindered whenever possible. Details of the Act are in Annex 3. Opposition to Bills was significantly strengthened in December 1987, when the Secretary of State for Northern Ireland authorised the limited use of professional lobbyists. A conference held in the Embassy then identified priority States, with a detailed campaign strategy for each. Our efforts have focused on pointing out to State legislators the inadequacy of the Principles set against the Government's own legislation, and the damage which the campaign (with its actual and implied threat of divestment) may do to the Northern Ireland economy and how the campaign is regarded by representative opinion in Northern Ireland.

Individual Northern Ireland citizens have at the DED's suggestion testified against the dangers of the MacBride campaign at State legislative hearings, and they and others have undertaken separate lobbying trips.

8. As can be seen from Annex 1, our opposition has been about as successful as could reasonably have been expected. Since the introduction of professional lobbyists, only one State has passed unamended MacBride legislation. The other six Bills which passed in 1988 and 1989 were substantially watered down. Divestment provisions have been removed on four occasions. 1989 has been our best year to date: MacBride legislation has been successfully blocked in eight states. It seems almost certain that there will be no further activity in Pennsylvania in 1989, bringing the total to nine. And our lobbying efforts have discouraged the introduction of legislation in three other States. The various legislative initiatives that have been taken at Federal level would appear to have been largely tokenistic, intended in the main to placate Irish American constituencies. Despite wild allegations of up to \$120m spent on opposition, the reality is much less: around £400,000 over 4 years. Details are in Annex 4.

Current Position

9. The current position on British objectives (details in Annex 5) is as follows:

- (a) Protecting jobs in Northern Ireland

US firms operating in Northern Ireland have been given regular support and advice, including information on HMG policy and objectives, through ongoing contacts with Ministers and officials. Most of the companies have been subjected to shareholder resolutions, and have received questionnaires on their fair employment

practices from States which have passed MacBride legislation. While the number of shareholder resolutions has grown annually, support for them though showing some increase remains, on average, less than 10%. Response to the questionnaires varies from company to company. The fact that the FE Act will require detailed information to be kept on workforce composition could arguably make it easier to respond to questionnaires based on MacBride legislation but conversely might make it more difficult for companies to refuse to do so. The US companies already in Northern Ireland seem, with HMG's support, to be coping with the campaign and any accompanying legislation, but Connecticut's decision on whether to carry out the divestment provisions of their legislation in May 1990 will prove an interesting test case. The "hassle" factor thus does not yet seem to have been enough to cause firms to re-consider their investment in Northern Ireland. There have, however, been suggestions that GM's decision to sell their Belfast plant was at least partly due to MacBride pressures. A marked increase in restrictive contracting or divestment provisions would give cause for concern. On potential investment, the impact of the campaign is almost impossible to assess: a negative cannot be proven. Reasons for not investing in Northern Ireland are rarely given to the IDB. Nevertheless, there have been suggestions that MacBride has been a factor in one or two US corporations' decisions not to locate in Northern Ireland. And, as awareness of MacBride spreads through the US investment and corporate communities, it is likely to become a more significant negative factor for US companies looking for sites in European post 1992.

(b) Projecting and promoting British policies in Northern Ireland

The central aim of the campaign has been to discredit British policy in Northern Ireland. Fair employment is the campaigners' best weapon. We have accepted that there are short-comings in this field and the facts are undeniable. The campaign has not entered the American political mainstream. So far, the damage done to HMG's image in the US has been confined to Northern Ireland policy, and has had little effect on the Government's general standing with Americans (though reaction in California after the Governor's veto of the MacBride bill there was such as to suggest some dislike of our "throwing our weight around"). Paradoxically, MacBride has provided an unprecedented range of opportunities to inform large numbers of Americans citizens on the true (encouraging) aspects of the NI situation.

Options for Future Policy

10. As indicated above, the passage of the Fair Employment Act, and its entry into force on 1 January 1990, offer an opportunity for HMG to adjust its policy on opposition to MacBride legislation. Until now, our policy has been to oppose on grounds of principle to the best of our ability any attempt by US State or City legislatures to force American companies operating in Northern Ireland to subscribe to the MacBride principles: on grounds, first, that no company can actually implement the letter of the principles; and, second, that any interference by US local government in Northern Ireland imposes unwelcome additional burdens on existing US investors in the Province. US companies in Northern Ireland already have to comply with differing requirements from up to 12 separate State legislatures: our aim has been to keep any addition to that burden to an absolute minimum. Indications are that the MacBride proponents do not intend to give up the fight, despite the passing of the Fair Employment (NI) Act 1989. Already signs are evident of efforts to have Bills

(including a divestment measure) put forward in 1990 in three mid West States where legislation was discouraged or failed to pass this year. There are moves afoot to have stronger Bills introduced in three Eastern States which already have legislation in force and four States with biennial legislative systems have Bills with them which could still be considered.

11. Against that background, the central question which Ministers have therefore to decide seems to be this:

14. Of Is HMG now prepared, in some circumstances, (as it has not been so far) to accept the passing in the US of legislation and ordinances relating to fair employment in Northern Ireland, provided these meet certain conditions? If so, should we try to work with legislators, the FEC, and the companies themselves to devise legislative language and monitoring mechanisms consistent with those conditions?

12. There are thus three broad options for future policy:

(a) no change in the present policy of haltering or hindering MacBride legislation to the best of our ability;

(b) some adjustment in the present policy, probably in terms of not opposing State legislation which we believed was (or could be made) consistent with Northern Ireland law; or

(c) ending all but token opposition to MacBride legislation.

13. In deciding which option to go for, we need to bear in mind that opposing MacBride will always be a matter of horses for courses. This is the approach we have taken since 1987. In

America, perhaps more than anywhere else in the world, all politics is local; and issues which carry weight in Augusta, Maine, are likely to be very different from those which influence legislators in Lincoln, Nebraska. For example, in 1989 the mere threat of a visit to Salt Lake City by the Vice Consul in Los Angeles was enough to persuade the sponsor of the MacBride bill in Utah to withdraw that bill: in Sacramento, on the other hand, we were obliged to fight a full scale battle which ended only when we succeeded in persuading the Governor to veto the bill.

14. Of the three options identified in paragraph 12, (c) - ending our opposition to MacBride - would have the major advantage of enabling us to take the high moral ground, having effectively stemmed the tide of MacBride legislative efforts and delivered on our commitment to enact tough new fair employment laws. Clearly, however a decision by HMG to end all but token opposition to MacBride would invite a flood of new bills right across the Union, and probably also measures to strengthen those which had already been passed, far in excess of MacBride Bills already anticipated. Such a decision would also be regarded as a major U-turn, and perhaps even a betrayal, by the companies and by our allies in the MacBride campaign on both sides of the Atlantic and might well have negative effects in policy areas beyond MacBride and fair employment.

15. Option (b) - adjusting the present policy - is more complicated, and more attractive. Much would depend on the exact nature of the adjustment. One possible line which might be taken would be as follows:

HMG thinks the Principles are redundant in the face of the new FE Act; however, should your concern for Northern Ireland and the political pressure being exerted on you from your constituency be such that you feel the need to support the Bill, take that concern one step further and improve the Bill by: (in order of priority)

- (d) [removing divestment language];
[recognising the existence of the FE Act and its potential as the standard against which fair employment practices could be assessed];
[including some practical support for investment in areas of high unemployment in Northern Ireland];
[replacing whenever possible a listing of the Principles with wording along the lines used in Mayor Flynn's initiative];
- (e) [including the amplifications to the Principles in any instances where they are cited].

16. Arguments in favour of such a course include:

- (a) if we do not seize the opportunity of the Fair Employment Act to change course, then we will be stuck on the hook of opposing MacBride for the foreseeable future, appearing to lack conviction about the potential effectiveness of our legislation and being unnecessarily concerned about the now irrelevant MacBride Principles;
- (b) a decision by HMG to offer only selective opposition to bills which were inconsistent with Northern Ireland law should effectively neutralise the biggest stick which our opponents in Irish America have to beat us with;
- (c) the monitoring requirements imposed by the new fair employment legislation might mean that there would be no significant additional hassle for US companies in Northern Ireland if they were obliged, perhaps through some central clearing house such as the Fair Employment Commission, to report to all the US states which had passed MacBride legislation.
- (d) a policy of negotiated amendment would not be new to us. It has been deployed to varying degrees in situations where unstoppable MacBride Bills have been watered down;

- (e) by not engaging in outright opposition we might to some extent be able to avoid the need for NI people to give evidence at hearings, thus lessening whatever problems may be generated next year by a requirement to register under the US Foreign Agents Registration Act 1938.

Conversely however:

- (a) a failed attempt to negotiate amendments to proposed legislation could be more damaging to HMG's credibility than no attempt at all;
- (b) negotiation by HMG on selected provisions of a Bill could undermine our position by implying acquiescence in or endorsement of more extreme clauses. A recent and very relevant example of such a clause was provided by Major Flynn of Boston who, although generally regarded as a friend of Northern Ireland, found it politically expedient to include in the preamble to his City Executive Order a reference to the British Government's "failure to enact fair employment legislation that provides in actual substance for affirmative action and for the setting of goals and timetables for the hiring of more members of the Catholic community." This together with a clause prohibiting the purchase of goods and services from US companies with interests in NI, is substantially at odds with the Mayor's ostensibly positive motives and, significantly, HMG was given no opportunity to comment or advise on the initiative.
- (c) any proposed coming to terms by HMG with the MacBride Campaign could very easily be misunderstood by the companies which have to a considerable extent taken their lead from HMG in rejecting MacBride overtures.

(d) the information produced in response to the monitoring requirements of the Fair Employment Act will not necessarily satisfy, in detail or quantity, the demands of the MacBride Campaigners and indeed we could expect to see an increased number of requests for more comprehensive information.

17. Option (a) - continuing our present policy of trying to keep MacBride legislation to an absolute minimum by opposing all such legislation on grounds of principle - is also attractive, for the following reasons:

(a) it is working; as our opposition becomes more effective, especially following the passage of the Fair Employment Act, the campaign is making less and less headway. As the campaign moves out of the Irish American heartlands, it has been finding the going progressively harder. Now is not the time to abandon a policy which, in one or two years' time, may effectively have neutralised the MacBride campaign;

(b) the Fair Employment Act has not yet even come into force, and HMG needs to do all it can to ensure that its provisions are accepted as the only authoritative standards for fair employment in Northern Ireland. There are already clear indications that MacBride proponents are dismissive of the Fair Employment Act and remain intent on using the campaign as a vehicle for attacking HMG policies on Northern Ireland. The Act is the centrepiece of our efforts to ensure that all employers in Northern Ireland practice fair employment, and we should not do anything to undermine it;

Recommendations

18. Our policy of opposing MacBride should be as flexible and pragmatic as possible. HMG's overall objective should remain to keep the passage of any MacBride legislation to an absolute minimum; anything else would be to neglect the Government's duty to those who have already invested in the

- (c) any addition to the burdens imposed on US companies investing in Northern Ireland should be kept to an absolute minimum: nothing has happened which should change that policy;
- (d) a change of course now would not be understood by the US companies, or by those from Northern Ireland and around the United States, who have helped argue against the passage of MacBride legislation; and
- (e) even if the MacBride proponents are prepared to water down their legislation to ensure that it complies with Northern Ireland law, and it is by no means certain that they would be prepared to compromise in this way, the hassle factor - and the threat of sanctions, and of double jeopardy, - will remain.

The passage of the Fair Employment Act should enhance our ability to achieve positive results under our present policy but it must be acknowledged that there would be a downside to operating in the new environment. As a flood of information about fair employment in Northern Ireland becomes available under the new monitoring system, Irish Americans are likely to be able to assemble even more detailed information on employment imbalances in Northern Ireland which will generate pressure for yet further sanctions against US companies in the Province. Our opponents will undoubtedly portray our support for the Act as a defence of undeniably negative situations and our opposition to MacBride as an effort to maintain the status quo. Continued activity by HMG would provide a focus for such attacks.

Recommendations

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Province, or who might consider doing so in the future. Options (a) and (b) are not however mutually exclusive and those managing our opposition to the MacBride campaign should have the discretion, where passage of a MacBride bill seems inevitable and with the agreement of the Department of Economic Development, to seek to encourage amendments to the bill to make it compatible with Northern Ireland law, and on the lines suggested in paragraph (15) above, while ensuring that as far as appropriate the initiative is explained and justified to US companies and our other supporters.

The Fair Employment Act is based on a set of principles, it goes well beyond the simple idea that it sets out very clearly and states that Northern Ireland must take it as a condition of membership of the EEC. It introduces significant reforms and provides a framework for the enforcement of the Act which will ensure the equality of employment opportunity.

We have a genuine commitment to ensure that the Act will work. We are determined that it will deliver equality of opportunity. I have no doubt that it will succeed in ensuring a fair distribution of jobs. Unemployment is running at 15% in Northern Ireland and unless we bring that level, unless we can generate more jobs, the Fair Employment Act cannot be as successful as it could otherwise be. We must try to bring additional employment to Northern Ireland without that significant numbers of our people are going to continue to be unemployed and the Fair Employment Act will not be able to help them.

But the campaign surrounding the MacBride Principles is causing us to re-examine our position. It is generating jobs in Northern Ireland such as difficult.



LINE TO TAKE ON THE MACBRIDE CAMPAIGN

Our main concern is not with the MacBride Principles themselves. Of course we do have some difficulties with them; for example, Principle 2 requires an employer to ensure the safety of his workforce outside of the workplace, and that is something that is beyond the employer's power, just as much in Belfast as in Boston. But to the extent that the MacBride Principles represent a statement in favour of fair employment, and opposition to discrimination, that is exactly the position of the British Government. Our recent Fair Employment Act is based on a commitment to such a policy. But of course that Act goes well beyond a mere statement of faith in a set of principles: it goes well beyond the MacBride Principles, in that it sets out very clearly the action that employers in Northern Ireland must take if they are to be fair employers, and has real teeth: it introduces significant economic and criminal sanctions against those who do discriminate, and those who do not offer equality of employment opportunity.

We have a genuine commitment to ensure that the Act will work: we are determined that it will deliver equality of opportunity. I have no doubt that it will succeed in ensuring a fair distribution of jobs. But unemployment is running at 15% in Northern Ireland and unless we can reduce that level, unless we can generate more jobs, the Fair Employment Act cannot be as successful as it could otherwise be. We must try to bring additional employment to Northern Ireland: without that, significant numbers of our people are going to continue to be unemployed, and the Fair Employment Act will not be able to help them.

But the campaign surrounding the MacBride Principles is making one means of generating jobs in Northern Ireland much more difficult. The



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campaign is based on adoption of legislation enshrining the Principles in US State and City Legislatures, monitoring of companies by State and City authorities, shareholder resolutions, and boycotts. All of this adds up to "hassle" for US companies operating in Northern Ireland, and is a deterrent to others who might invest in Northern Ireland, bringing the jobs that we so much need, if there is to be equality of opportunity for all, and especially those who are unfortunate enough to be unemployed. That is why I hope that those who lead the MacBride campaign in the USA will accept that what they are doing is hindering the achievement of equal opportunities for all in Northern Ireland, by deterring American investment there and the jobs it will bring. They should recognise that we have a tough Fair Employment Act on the statute book, and we are determined that it will work. We have the commitment to make it work. But we want help - not hindrance - from those who care about the issue, to bring additional employment to Northern Ireland.



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