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Boyle

PSDED 881/87

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

MacBRIDE: AMBASSADOR ACLAND'S LETTER

Purpose

1. In the light of the Secretary of State's visit to the US in September, the Ambassador wrote to the Secretary of State on 6 October offering a Washington view on the way forward on a number of NI issues, but focusing particularly on MacBride. This submission deals with the MacBride aspects.

Ambassador's proposals

2. The Ambassador's letter argues for a new and more positive line on MacBride; for an early statement on the new legislation; and for a formulation to be used to try to amend MacBride Bills which are likely to pass. It also argues for the employment of private lobbyists, an increase in NI witnesses, a greater contribution from US companies and more resources.
3. Few, if any, of the Ambassador's proposals break entirely new ground. The resource implications, however, would be substantial; and before we respond, it is clear that we need to re-assess our policy on MacBride, starting with a re-examination of our objectives, and consider the options now open to us.

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Objectives: Why are we opposing the MacBride Campaign?

4. Our objective at the outset was to support the US companies and so protect existing and future investment in Northern Ireland. This remains an important dimension (arguably still the most important) but the credibility of HMG's commitment to fair employment is also now a major objective. A further objective has been to maintain a defence against the wider, anti-British political motivation of some of those behind the MacBride Campaign, such as INC and Noraid. An important consequence of both the first two objectives has been the need to secure real progress on fair employment on the ground (particularly, but not exclusively among US companies). The MacBride Campaign is both a hindrance in terms of the threat to employment and a lever in getting companies to take the fair employment issue seriously.
5. HMG's initial position on MacBride was that the Principles were unnecessary, illegal and counter-productive. The first 2 objections have proved increasingly difficult to sustain (however many US companies still view the Principles as potentially illegal) and we have been relying increasingly on the "counter-productive" argument.

How successful have we been?

6. The reality is that the Campaign is gathering momentum; we have already lost in a number of US States and Cities; our resources in the US and in NI are severely stretched; but pressure on the US companies is still considerable, and many continue to express anxiety about the Campaign (but yet, even on recent evidence, they are still reluctant to become directly involved in counter-measures). The Campaign is also costly in terms of the diversion of effort from progressing our own new legislation. On the positive side, in a 2½ year period the losses so far have been limited; we have had success in the State Legislatures in California and Florida; all the US companies have held out against

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MacBride; so far as we can judge the impact in investment terms has been minimal, (although it must be pointed out that, for whatever reason, there has been almost no new US investment in Northern Ireland since 1984); most responsible opinion in Northern Ireland is opposed to the Campaign: we are tying up the energy of hostile groups in the US; and the US Administration has been consistent in its support for HMG.

Where should we go from here?

7. Given that we have a continuing imbalance in unemployment; that the MacBride Campaign continues to enjoy legitimacy in the US; and that our most effective counter, new legislation, is still some way off (though even this is unlikely to satisfy the MacBride lobby which seems determined to look for measures which will quickly produce equality of outcome) where do we go from here?

Essentially the many options can be distilled to three main ones:

- (i) seek an accommodation with MacBride;
- (ii) adopt a laissez-faire approach;
- (iii) continue and build on our resistance.

The pros and cons of each are discussed below.

Accommodation with MacBride

8. The principal argument in favour of this course is that it might reduce the pressure on companies and on HMG. But this presupposes that the MacBride protagonists would be willing to treat. For our part, we could not afford to simply accept the MacBride Principles as originally drafted. This would involve a massive loss of face and credibility, would damage our own legislative initiative; Unionists would see it as further evidence of capitulation to Nationalists; US companies would be highly critical as would other supporters of HMG's stance over the last 2½ years, including the US Administration; and it would expose US companies to continuing pressure.

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9. We would have to look for a compromise. The amplification of the Principles published in March 1986 is really not a solution. Even as amplified the Principles are still ambiguous as to what is required in practice with legal doubts (expressed by Senior Counsel) remaining, and they do not overcome the hassle factor which has been the central concern in HMG's opposition. Likewise, the Ford formulation is unlikely to provide a total solution: the reaction to the intervention of Ford at the Illinois House hearing showed that the MacBride lobby will simply not accept the Ford formulation. Moreover, it would still require accountability to a variety of interests outside the US companies, and would not therefore avoid the hassle dimension. More critically, however, there is no indication that the people leading the MacBride Campaign are likely to be interested in giving up an issue which continues to give them a credible platform from which to embarrass HMG.
10. On the face of it, therefore, there seems little mileage in this option.

Laissez-faire approach

11. We could simply walk away from the issue: take a laissez-faire approach. Under this scenario HMG might register its continuing opposition to MacBride legislation, through the issue of an updated statement, but run down its Belfast-based lobbying work and rely essentially on such efforts as can be mounted by US posts. If considered desirable, and subject to FCO agreement, US posts might even appear at hearings. This would allow the grosser MacBride propaganda to be challenged but would not involve the present level of commitment let alone the level of effort needed to promote amendments to the legislation. (We could of course continue to press the Federal Administration to challenge the constitutionality of MacBride legislation as State interference in foreign policy.)
12. This option is based on the premise that the impact of MacBride on companies will continue to be fairly limited in real terms, and that whatever we do the MacBride Campaign will continue to run (and is

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likely to be successful); that it is consuming an enormous (and, if the Ambassador's views were followed, a growing) amount of resources which could be more productively employed; and that we should be concentrating our resources on the central requirement of progressing our new legislation, (although Goldin's aide, Patrick Doherty has recently indicated that even new legislation will not end the Campaign: its backers will wish to see real results - by which they mean something approaching equality of outcome).

13. The other side of the coin is the need to consider whether we can afford to give MacBride a clear run. The reality is that the MacBride lobby has a very good platform for "Brit-Bashing" and is unlikely to want to give it up. We are aware that they intend to extend their campaign into at least a further 20 States and if they achieve coast-to-coast State legislation this is likely to dent the confidence of most US companies and potential investors in Northern Ireland. It may also encourage the INC to use the platform for other political issues.
14. The arguments on this option are more finely balanced. The Ambassador's letter is fairly cautious about our prospects of defeating MacBride, even with a significant increase in resources. Moreover, we may not see any real effect from further State legislation. However, the risks of failing to mount a serious challenge to the MacBride campaign may in practice be significant in both political and investment terms.

Continue to press HMG's case

15. This option is based on the premise that the MacBride Campaign is so potentially damaging that we have no option but to fight it as hard as we can, and if we cannot defeat it we should at least seek to limit the damage. It would involve a beefed-up policy statement; working the State Legislature system to defeat or amend MacBride legislation; the establishment of an acceptable centralised monitoring mechanism

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involving the FEA (and perhaps an internationally reputable management consultancy) to reduce the hassle to companies; pressing US companies to become more actively involved (and by their own practice to put themselves ahead of the game); enhanced lobbying arrangements including professional lobbyists and an increase in NI witnesses. It would also mean considerably more resources.

16. This option is already favoured by the Ambassador; is consistent with, and builds on, our approach to date; prevents HMG's case from going by default; and may keep the MacBride protagonists from other things. It is also supportive of companies whilst making demands of them in terms of improved practice.
17. Against this option, is the very significant cost in money and manpower (which will be very difficult to accommodate, in both Programme, and DRC terms) and the possibility that, notwithstanding the increased commitment, we will continue to lose. No matter what we say we will not satisfy the MacBride lobby. It may be better simply to put the resources into our fair employment effort in Northern Ireland. An approach which joins us in amendments to State legislation also compromises our position on encouraging the US Administration to challenge the unconstitutionality of State legislation in this area.
18. The major point is the resource cost: we cannot afford to look for a cheap approach to lobbying: it would damage our credibility and case. If we go down the lobbying route, it could mean a lobbyist in each State unless we conclude some States are not worth fighting. We have attempted, in Annex I, some costings, from which it will be seen that lobbyists alone could cost £1m in the next year; and other means of beefing up the effort could add up to a further £400,000. The use of an international management consultancy to audit the FEA's monitoring of US companies is a further, so far unquantified, cost.

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19. To be realistic, we must also recognise that in circumstances where MacBride legislation is likely to pass by a significant majority, any attempt to seek to remove the MacBride Principles themselves from the legislation or have them replaced by some other set of Principles (eg Ford) or even our own proposed Declaration of Practice is hardly likely to be acceptable to legislators who have been persuaded that the only way to bring about action on fair employment by HMG is to put State legislation in place which will embarrass HMG. But an amendment which left the MacBride Principles in situ while attaching the condition that US companies would have to account for themselves only to the FEA (which would then be a reference point for the various State organisations and could have its figures "audited" by an internationally renowned management consultancy) might have a better prospect of success and should, in practice, draw the teeth of the MacBride lobby. A rider that nothing in the statutes should be taken as requiring US companies to act in breach of Northern Ireland law also would be a bonus.

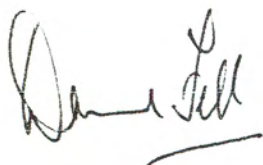
Conclusions

20. Of the three options outlined, officials consider that the first is the least attractive. In reality, only options (ii) and (iii) appear tenable and there are difficulties attaching to both. Essentially a political decision is required. If, as officials would favour, we go for option (iii), which is a natural extension of our current position, it will be costly, and require resources for which we do not presently have public expenditure cover.
21. Whether we pursue option (ii) or (iii) we will, as the Ambassador has noted, require a revised statement of HMG's position. Such a restatement is contained in Draft at Annex II, which builds on the Ambassador's own draft. Annex III is a draft reply to the Ambassador's letter on the basis of option (ii): Annex IV is a reply on the basis of option (iii).

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22. We would welcome a discussion with the Secretary of State on the basis of this submission.

A handwritten signature in dark ink, appearing to read 'David Fell', with a stylized flourish at the end.

DAVID FELL

16 November 1987

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ANNEX I

RESOURCE COSTS

1. Professional lobbyists costs of between \$100 and \$300 Dollars per hour have been quoted. Since it would only be appropriate for Her Majesty's Government to be associated with high grade operators an average of \$250 Dollars per hour would seem to be a realistic estimate. Assuming a 10 hour working week this costs out at \$10,000 per month. Lobbyists normally operate on a single State basis since their work involves building an indepth knowledge of the local legislative scene and its personalities.
2.
 - (i) Officials are aware that Bills are pending in 8 States.
 - (ii) MacBride proponents have indicated that they are promoting legislation in a further 13 States.
 - (iii) Legislation is already in place in 5 States and activity to amend and strengthen it cannot be ruled out.
3. Assuming lengthy opposition by HMG in the 8 States mentioned at (i) the total cost of lobbying could amount to \$720,000 per (9 month) year. This estimate is based on experience of the fight earlier this year to hold off legislation in California. Assuming a short sharp contest resulting in outright defeat or deferment a lobbyist could be employed for 1-3 months -giving an estimated figure for the 13 States at (ii) of another \$715,000, based on 7 States at \$25,000 and the remaining 6 at \$90,000. If lobbyists were also to be deployed in the 5 States at (iii) to keep a watching brief and, where appropriate, to promote the introduction of amendments to negate the impact of the legislation, another \$200,000 could be added as a conservative estimate.

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4. If action is to be taken on all 3 fronts (and assuming no unforeseen developments in the other States) total costs are in the order of \$1,635,000 (£1,000,000) in the coming 12 months. Variations in the Dollar exchange rate will of course have an impact on the overall cost.
5. Experience of funding Northern Ireland speakers at US State hearings shows an average cost of £8,000 per hearing, allowing for 4 speakers attending for 4 days. Assuming only one hearing in the 8 States at 2(i) above, costs would amount to £64,000 approximately. Adding a further 13 hearings in the States at 2(ii) above would produce a total figure of £168,000. If we heed the Ambassador's request for more Northern Ireland witnesses to be in attendance the figure could easily double.
6. Further provision would need to be built in to fund back up to the lobbying activity in the shape of hospitality and inward visits by US decision makers. £37,000 was allowed for this in the coming year.
7. The above takes no account of the Embassy request to plug into a legislative tracking service (for which costings are not yet available). It may be that professional lobbyists would pursue this issue.
8. The total programme costs for 12 months, calculated as above, are as follows:-

£1,000,000	- professional lobbyists
£336,000	- Northern Ireland witnesses
£37,000	- hospitality and inward visits
<hr/> £1,373,000	

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ANNEX II

FAIR EMPLOYMENT: THE BRITISH GOVERNMENT'S VIEW

1. Equality of opportunity in employment is a vital concern in Northern Ireland. It is at the core of the process of reconciliation between 2 divided communities, it represents the best use of individual talent and is essential for economic prosperity. More importantly, however, it is central to personal dignity and fundamental to a democratic society. This is why the British Government attaches the highest political priority to its effective practice: it is a basic right of every citizen to be judged on merit and not on the basis of religious belief or political opinion.
2. As Prime Minister of the United Kingdom of Great Britain and Northern Ireland, Mrs Margaret Thatcher has expressed her firm commitment to equality of employment opportunity between Catholics and Protestants in Northern Ireland and has given an assurance that the British Government will take whatever steps are required to secure this objective. Discrimination and unfair employment practices in Northern Ireland are simply not acceptable to the British Government.
3. Discrimination in employment on grounds of religion or politics is already illegal in Northern Ireland. There is an independent agency (the Fair Employment Agency) responsible for investigating individual complaints and carrying out investigations into employment practices. The Agency can enforce its decision through the Courts; and it can require employers to take affirmative action to remedy the effect of past practices.
4. Substantial progress has been made in the public sector which accounts for 42% of the work force in Northern Ireland. But the British Government wants to see further progress, both in the public and in the private sector. That is why, building on existing legislation and arrangements to combat discrimination, the British Government continues to take important initiatives in this field and is committed to new legislation which will:

- (i) improve the arrangements for the promotion, investigation and adjudication of fair employment practices;
- (ii) strengthen the statutory duty on employers to practice equality of opportunity in employment;
- (iii) stipulate what employers must do to ensure equality of opportunity;
- (iv) provide for tough sanctions in respect of discrimination and failure to practice equality of opportunity.

The British Government has, through a Consultative document, sought the views of those most directly affected by these proposals: the people of Northern Ireland. Within the framework of the Anglo-Irish Agreement, the Government of the Republic of Ireland has welcomed the British Government's proposals

5. In addition, the Government has:

- (i) published (in September 1987) a new Guide to Effective Practice which gives very specific advice to employers on how to ensure fairness in employment practices. The Fair Employment Agency is required by law to take the Guide's recommendations into account in determining whether or not equality of opportunity is being provided.
- (ii) increased Agency resources by 33% in 1986/87 and a further 34% in 1987/88.
- (iii) sponsored a series of seminars on good employment practice for all employers; and
- (iv) agreed to provide financial assistance for employers in the private sector to advance the development of good personnel practice and organisation.

The MacBride Principles

6. The British Government therefore shares the underlying fair employment aim of the MacBride Principles. But the British Government believes that the campaign to require US companies to adopt the MacBride Principles is based on a grave misunderstanding of its effects in Northern Ireland. In reality it damages, rather than assists, employment prospects. Threats of disinvestment, stockholder resolutions, product boycotts, troublesome legislation with the attendant political hassle have served to undermine Northern Ireland's position a location for American investment. The fact is that, with unemployment in Northern Ireland currently around 18-19%, new jobs are desperately required as a complement to the Government's tough but fair, approach to equality of opportunity in employment. Withdrawal of American investment will reduce job opportunities; but Northern Ireland needs jobs more than multinational corporations need Northern Ireland. The MacBride Campaign erects barriers to new investment and therefore new jobs: it damages the Northern Ireland economy and harms the prospect of greater progress in achieving fair employment in practice.

7. This is not only the British Government's view. Mr John Hume MP (Leader of the Social Democratic and Labour Party in Northern Ireland, which speaks for the majority of the Catholic community) said on 24 September 1987:

"My advice to our friends in the United States was and is, if you really want to help us, then encourage investment in areas of high unemployment in Northern Ireland. That is a positive thing to do. The effect of the MacBride Principles Campaign, whether people like to admit it or not, is to stop investment coming in and that is bad for us."

8. In fact the MacBride Principles have been overtaken by Government's own proposals which are a great deal more radical and comprehensive than the MacBride Principles and which will provide a better basis for securing fair employment without destroying jobs. Specific advice to employers as provided in the Government's Guide to Effective Practice and to be reinforced in new legislation is better than vague

generalities which disregard reality or which confuse employers. (Principle 2 of the MacBride Principles - security for minority employees travelling to or from, and at work - is not within the powers of any employer and the Fair Employment Agency has indicated that Principles 1, 7 and 8, which smack of preferential individual treatment depending on religious belief, are at best divisive and at worst illegal: employment on merit without regard to religion is the law in Northern Ireland).

9. Northern Ireland is not South Africa. In Northern Ireland discrimination is illegal: in South Africa, discrimination is official Government policy. Any analogy between the MacBride and Sullivan Principles is both false and offensive.
10. The only political party in Northern Ireland to support the campaign for the MacBride Principles is Sinn Fein, the political wing of the terrorist IRA whose registered agents in the United States - NORAIID - are leading protagonists in the MacBride Campaign in North America. The IRA have clearly demonstrated that they have no interest in improving economic conditions in Northern Ireland. They, and their agents, demean the sincerely held views of those supporters of the MacBride Principles who genuinely seek fair employment.
11. Ending employment discrimination in Northern Ireland is part of a continuous process. Of the original objectives of the Civil Rights Campaign in Northern Ireland in the late 1960s, discrimination in the allocation of houses, and in voting rights, has been effectively tackled. Progress has also been made in tackling discrimination in employment, particularly in the public sector. More progress is needed and the British Government has given firm commitments to remedy this. The British Government welcomes constructive assistance. More US investment would certainly assist the process of providing more jobs, which will be available to all in Northern Ireland.
12. The vast majority of people in Northern Ireland (Catholics and Protestants alike) want to live and work in peace together. It is they who are penalised by legislation or other pressure on companies in support of the MacBride Principles. It is their interests which should be paramount.

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ANNEX III

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Sir Antony Acland
HM Ambassador
British Embassy
WASHINGTON DC 20008

November 1987

MacBRIDE: OUR NEXT STEPS IN THE UNITED STATES

Thank you for your letter of 6 October which raised a number of important issues on our handling of the MacBride Campaign, not least whether we can afford the resources required to resist MacBride on a wider front without any guarantee of success.

I do not believe that we can go down the path you suggest without considering the likely return on our efforts. Having rehearsed all the arguments I am not convinced that even with the very significant resources for which you have asked (we could not afford to do this by half measure) we are likely to significantly contain the MacBride Campaign. All the indications are that the MacBride lobby will not give up the issue and I would rather put the resources into our fair employment effort in Northern Ireland than dissipate them further to no good effect in the US.

On this basis I have concluded that we should now adopt a more laissez-faire approach to the issue. I would, of course, expect us to continue to register our opposition to MacBride legislation through US posts but relying essentially on a written statement of objection. If it was considered desirable, and subject to FCO agreement, US posts could also appear at hearings. This would allow the grosser MacBride propaganda to be challenged but would not involve the present level of commitment, let alone the level of effort needed to prosecute

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the campaign in the terms suggested in your letter. We could continue to press the US Administration to challenge the constitutionality of MacBride legislation as State interference in foreign policy. I attach a copy of a revised HMG statement which could be used by US posts.

I recognise that there are risks in this approach, including the possibility that the campaign will run throughout the US, but I know that you will recognise the pragmatism of my decision, which should also allow US posts to address other priorities which increasingly have been deferred by reason of MacBride work. Obviously I would wish the close liaison between the Embassy and my officials in DED and in NIO to continue.

As you already know I am very grateful for the way in which the Embassy and FCO posts in the United States have risen to the task of combatting MacBride. However, I believe that we have come to a point where the return on our effort is not worth the investment of time and resources required.

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ANNEX IV

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Sir Antony Acland
HM Ambassador
British Embassy
WASHINGTON DC 20008

November 1987

MacBRIDE: OUR NEXT STEPS IN THE UNITED STATES

Thank you for your letter of 6 October which raised a number of important issues on our handling of the MacBride Campaign, not least whether we can afford the resources required to resist MacBride on a wider front without any guarantee of success.

Having considered the matter, I have concluded that we should continue to fight. I agree, also, that we should proceed broadly as you suggest and I have approved the attached statement for use in the future. Your initial draft was very helpful.

As regards the amendment of State legislation, it is hardly realistic in circumstances where we conclude that MacBride is likely to succeed to believe that the MacBride camp will accept amendments which delete the Principles and so remove their whole platform. But an amendment which left the Principles in situ while attaching a condition that US companies would have to account for themselves only to the Fair Employment Agency (which would then become a reference point for the various State organisations) might have a better prospect of success and should, in practice, draw the teeth of the MacBride statutes. We are also considering the possibility that the FEA's monitoring

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would be audited by an internationally reputable management consultancy, which would, I think, have considerable presentational advantages in the USA. A rider that nothing in the statutes should be taken as requiring US companies to act in breach of Northern Ireland law would be an additional bonus.

New fair employment legislation in Northern Ireland would clearly help our case immeasurably but it is still some way off. You can be assured, however, that I will make the strongest possible statement both of intent to legislate and of the likely content of legislation as soon as practicable. This is likely to be early in 1988.

On the company front DED officials are already embarked on a programme which includes visits to local plants and to the parent companies in the US, to encourage a more active approach both to fair employment in Northern Ireland, and to lobbying against MacBride in the USA.

I am prepared to approve the engagement of private lobbyists but I do not believe that we can afford to be associated with second rate people. This will clearly affect the cost, though much depends on a number of States for which we need lobbying provision. We have had some preliminary costings from the Embassy but I would like these firmed up. Mr Donald Burns (the California lobbyist who has been so helpful to us on a pro bono basis) has offered to help in this regard and I have asked DED officials to follow this up in conjunction with the Embassy and the Consul General in California. The question of additional resources for our own people based in New York is, I think, a matter for the Foreign and Commonwealth Office.

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I have asked DED officials to pursue the detail of these various decisions and the other logistical matters, such as the need for secure communications facilities, directly with the Embassy, liaising with the FCO in London and the NIO as necessary.

I am copying this letter to Sir Geoffrey Howe.

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