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Your reference

Our reference

Date 13 April 1987

Dear David

MACBRIDE PRINCIPLES: STATE DEPARTMENT'S VIEWS

1. I enclosed with my letter of 5 March a copy of the State Department's draft letter to the Chairman of the House Foreign Affairs Committee on the draft MacBride legislation introduced by Congressman Fish. This has since been refined, and I now enclose a copy of the final version of the letter which issued last week. It seems to me to make all the main points extremely effectively. You will wish to note, in particular, that the final paragraph describes our Autumn 1986 proposals as offering the best way forward on fair employment in Northern Ireland.

2. As you know (my letter of 7 April), the State Department also wrote recently to the California state legislature. Consuls General, to whom I am copying this, will wish to bear this in mind in case a letter from the State Department would be helpful in state legislatures in their parish in which MacBride legislation has been introduced.

Yours
Nigel

N E Sheinwald

cc: (with enclosure)

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United States Department of State

Washington, D.C. 20520

HTP
(1)

Dear Mr. Chairman:

The following information is in response to your letter of February 10 requesting the Department of State's comments on HR 722, which would require adherence to the MacBride Principles by all firms wishing to export to the United States.

The Department has consistently opposed legislation that would require adherence to the MacBride Principles, on legal as well as foreign policy grounds. As you may recall, a similar bill was introduced in 1986 and unsuccessful efforts were made to include adherence to the MacBride Principles as part of the legislation for the US contribution to the International Fund for Ireland.

Northern Ireland has a long history of employment discrimination and this remains a problem today. The burden of discrimination has fallen in great measure, but not exclusively, on Catholics. The impact of this inequity has worsened in recent years due to the economic decline of Northern Ireland. While we recognize the concerns of the bill's sponsors regarding employment discrimination in Northern Ireland, we differ on the best way to improve the situation.

Discrimination on religious grounds is prohibited by law in the United Kingdom. In addition, the 1976 Fair Employment Act specifically guarantees fair employment protection in Northern Ireland. These laws impose substantially the same fair employment obligations on American firms operating in Northern Ireland as they would be subject to in the United States. These include the obligation of employers not to practice discrimination in hiring or training and to exert reasonable efforts to prevent harassment in and around the workplace. In instances where religious discrimination is alleged, plaintiffs have access to a full range of protection under British law.

Pursuant to the Fair Employment Act, an independent Fair Employment Agency (FEA) was established in Northern Ireland. This Agency sponsors a voluntary Fair Employment Code, which has

The Honorable
Dante B. Fascell, Chairman
Committee on Foreign Affairs,
House of Representatives

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been signed by all US companies operating in Northern Ireland. It is our understanding that adoption of certain of the MacBride Principles (particularly 1, 7, & 8) could place American firms in contravention of existing UK law by promoting reverse discrimination. If it is not the intent of the MacBride Principles to require preferential treatment ("reverse discrimination"), as some of its supporters claim, then the MacBride Principles offer no advantage over the fair employment legislation already in effect in Northern Ireland.

Efforts to promote adoption of the Principles seem misguided at best. One result will be to increase uncertainty about doing business in Northern Ireland. When added to the strong negative publicity about violence and social problems, uncertainty caused by the MacBride Principles would discourage possible new investment and jobs. It would also militate against the retention or expansion of firms already operating in Northern Ireland since they would be faced with the choice of implementing the Principles, and possibly contravening UK law, or losing access to the US market.

The impact would fall most heavily on those who need jobs the most -- the Catholic community. High level officials, as well as political and Church leaders in Ireland and Northern Ireland have voiced similar concerns about the effects the MacBride Principles could have on the economy and employment situation in the north.

I think it is also worth calling to your attention that HR 722 would be in conflict with the clearly stated intention of Congress to assist in the economic regeneration of Northern Ireland. In 1986 Congress authorized in the Anglo-Irish Support Act a \$120 million contribution to the International Fund for Ireland, to be spread over three years. Congress stipulated that seventy percent of the US contribution must be used in Northern Ireland and that it should primarily be in support of increased private investment and private sector activity.

The MacBride Principles legislation under consideration would ban the imports of all goods from Northern Ireland unless they were accompanied at the time of entry by a certificate stating that the manufacturer was in compliance with the MacBride Principles. Such a requirement would be a clear violation of the General Agreement on Trade and Tariffs (GATT), Article I, which requires us to provide unconditional most favored nation treatment to the goods of other contracting parties. It could also be considered a contravention of the "Standstill" Agreement that is an integral part of the 1986 Ministerial Declaration made at the GATT negotiations at Punta del Este, Uruguay. This Agreement includes a political commitment not to take any trade restrictive or distorting

measures inconsistent with the GATT. A violation by the US, even in a good cause, would weaken our ability to use the GATT to challenge actions of others are inconsistent with it.

In addition, the second article of the Convention which regulates commerce between the US and the United Kingdom (dating from 1815) forbids restrictions on the importation of goods from one party to the territory of the other, "which shall not equally extend to all other nations." The trade aspects of HR 722 clearly would violate this part of the Convention.

Although much remains to be done, the United Kingdom has made efforts to improve equality of employment opportunity in Northern Ireland and these efforts are continuing today. The British government has proposed new measures to strengthen fair employment practices and enforcement mechanisms by the FEA. These proposals were spelled out in a Consultative Paper, released in November 1986 and were open to public comment until March 31, 1987. The proposals were welcomed by the government of then Prime Minister Garrett FitzGerald. Before such proposals could be implemented, Parliament would have to consider new legislation. We believe that these reforms, and their discussion within the Anglo-Irish Inter-governmental Conference, offer the best means of improving the fair employment situation in Northern Ireland.

I hope that the above information has been of assistance to you.

With best wishes,

Sincerely,

J. Edward Fox
Assistant Secretary
Legislative and Intergovernmental Affairs