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Agree

Brian
18/9/97

See note of Minister's
agreement here and
at para 17.



SUB/009:
mc Gibbs

~~22/11/96~~
~~18/9/97~~
A1485/96
MacB Strategy
18.9.97

cc Secretary
Mr O'Doherty
Mr Cary, W'ton
Mr Reid, BIS
Dr Smyth
Ms O'Neill
Ms Barucha

PS/Mr Ingram

MACBRIDE STRATEGY

Introduction

1. The Minister's visit to the United States in October provides an opportunity to look again at our reaction to the MacBride campaign. The last review was in October 1994 but, since then, there has been a change in Government, the Employment Equality Review by SACHR recognises the significant progress made as a result of the 1989 Act, and there has been a change in the nature of the MacBride campaign (see below). In 1994, it was agreed that we should continue a phased reduction in the level of our response to the campaign consistent with the reduction in activity by campaigners and this submission recommends that we continue with that phased reduction.

Principles

2. The MacBride Principles (see Annex A) were originally published in 1984 above the names of John Robb (a surgeon from Ballymoney), Inez McCormack (a UNISON trade unionist), the late Sean MacBride (a former winner of the Nobel Peace Prize) and the late Father Brian Brady. The main promoters of the Principles were and are Pat Doherty who is employed by the New York City Comptroller and Father Sean McManus of the Irish National Caucus. The New York City Comptroller's Office has, throughout the



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period - through Pat Doherty - played a prominent role and Alan Hevesi is the current Comptroller.

3. The Principles are, in our opinion, a poorly drafted set of good intentions and one or two of them are either impossible to implement eg No 2, or of doubtful legality eg No 7. Doubts about their practicality or legality were largely remedied by the expanded Principles (see Annex A) which were issued in 1986. Even with that, however, they remain no more than a set of loosely worded good intentions. More importantly, the objectives of the Principles are largely covered by the 1976 and 1989 Fair Employment Acts which can safely be said to be some of the toughest fair employment legislation in the world and are now recognised by SACHR as having enabled significant progress to be made. Despite this, the campaign has continued.

Campaign

4. The campaign reached its peak in the late 80s and in the first half of the 1990s when it concentrated on legislation at state and city level. There are now 15 states and some 30 cities that have implemented various forms of MacBride legislation. Typically this requires US companies based in those states with plants in Northern Ireland to implement the MacBride Principles, or makes such implementation a condition of the award of contracts or, in one state (Connecticut) seeks disinvestment by the state in companies which have plants in Northern Ireland. As well as that, the campaigners attend the annual general meetings of many companies with plants in Northern Ireland and put down shareholder resolutions about the companies' employment policies in Northern Ireland. This general harassment of companies with plants in Northern Ireland has been particularly focused on Ford. In recent times, QUB has been subject to vitriolic attack and British Gas has come under



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pressure following its purchase of Ballylumford Power Station.

5. The campaign is opposed by all the Northern Ireland parties except Sinn Fein and John Hume in particular has made the point that the campaign is inconsistent with the need for investment and jobs in Northern Ireland which will help to remedy unemployment problems here. There is no firm evidence that investment in Northern Ireland has suffered because of the campaign but, as we have pointed out to campaigners, their efforts have certainly not encouraged investment in Northern Ireland. Many companies have reached a compromise with the MacBride campaigners by which they agree to take all lawful methods to implement the MacBride Principles. In recent times, the campaign has shifted from state intervention with private companies doing business in Northern Ireland to federal legislation providing funds for the International Fund for Ireland (see below). (There are two other bills proposing a free trade zone for employers complying with MacBride and import restrictions on those who don't but these are unlikely to make progress).

Why Have We Opposed?

6. It is, perhaps, worth considering why we have opposed the campaign (not the Principles) in the past. The main reason was because, in the late 80s and the first half of the 1990s, it seemed that there was a real possibility of a damage to investment by this campaign. Beyond that, there were also concerns that what was being asked was, in some cases, impracticable and unlawful (see above) and, of course, we considered the Principles to be unnecessary following the passing of the 1989 Act. At a different level, state and city hearings on new legislation provided an opportunity for grossly misleading attacks on Government policy in Northern Ireland.



DEPARTMENT OF ECONOMIC DEVELOPMENT

An Equal Opportunities Organisation



7. As already noted, there is no clear evidence that MacBride has damaged investment but neither has it helped it. However, this objection to MacBride has largely been overtaken by the Call for Fair Employment and Investment (Annex B) which was made in 1994 by the four churches (Catholic, Anglican, Methodist and Presbyterian) on both sides of the Atlantic and which clearly linked investment and jobs to the achievement of fair employment. This has led even the most extreme MacBride campaigners, eg Doherty and McManus, to acknowledge that investment in Northern Ireland is key to the solution of our problems. It has not, however, stopped their campaigning although, as already noted, the focus of their campaign has changed.
8. So far as the other two issues are concerned, the questions of the Principles being impracticable or unlawful have faded into the background following the publication of the expanded Principles and doubt as to whether the Courts would agree that they are unlawful. That leaves the third objection, ie, that the Principles are unnecessary and, over the last few years, we have increasingly focused on promoting the successes of the Fair Employment legislation in the US rather than being seen to adopt the negative tactic of opposing well meaning Principles.

What Has Changed?

9. Circumstances have changed materially over the last few years. The Churches' Call, which was endorsed by the then Prime Minister and then Tanaiste, by President Clinton, by trade unions in Northern Ireland and in the United States and by a wide variety of political and community interests here and in the USA, clearly established the message that investment and jobs were needed if fair employment is to be secured and, by implication, that campaigning for the MacBride Principles



DEPARTMENT OF ECONOMIC DEVELOPMENT
An Equal Opportunities Organisation



on its own would not solve our problems. This was accepted, reluctantly or otherwise, by the campaigners, most noticeably by Father Sean McManus in a statement during President Clinton's Washington Conference on Investment in Northern Ireland in May 1995. Whether directly related or not, this has been accompanied by a lessening of campaigning for state legislation (it could, of course, also be that all interested states already have legislation) and a move to federal legislation aimed at the IFL.

10. The other major changes have been on this side of the Atlantic. The Department now concentrates on publishing the successes of fair employment legislation and Government policies aimed at reducing unemployment especially in TSN areas rather than opposing legislation at state level in the USA. This concentration of attention on remedying unemployment and tackling TSN areas will, of course, be brought into closer focus by the Government's response to the SACHR report and by the Government's Welfare to Work proposals.

Current State of Play

11. The current state of play is that the campaign is now focused almost entirely on federal legislation and Congressman Ben Gilman has emerged as a leading proponent. Some of this legislation refers overtly to MacBride Principles and some ~~of which~~ refers more coyly to the Principles of Economic Justice. Either way, they are the same principles. The first effort to attach these to spending by the IFI was made in 1995 and carried forward into a foreign aid bill in 1996 which was vetoed by President Clinton for reasons unrelated to MacBride. However, in that election year, President Clinton came under severe pressure from the Irish-American community and eventually he compromised by writing to the US observer on the IFI Board asking him to ensure that



DEPARTMENT OF ECONOMIC DEVELOPMENT

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businesses supported by IFI complied with the Principles of Economic Justice. The US observer responded by noting that the IFI already implements "these Principles" and honour was satisfied. We understand, however, that this "implementation" is no more than ensuring that businesses supported by IFI comply with the 1989 Act and no additional requirement to comply with the MacBride Principles (and/or the Principles of Economic Justice) is being imposed.

12. The attempt to attach the Principles (of either kind) to IFI funding is being proposed again in 1997 in two new bills and the Embassy in Washington is lobbying against them. In the event of being unable to avoid any reference at all, we would prefer a reference to businesses being supported by the IFI signing up to the 1989 Act. In the worst case, we may have to put up with a reference to the Principles of Economic Justice; a reference in the legislation to MacBride Principles would be regarded as a major setback. IFI (and indeed the US State Department) supports the position. Privately, IFI oppose attempts to impose the Principles as being unwelcome and unnecessary. It already ensures that businesses it supports comply with FE legislation and the intrusive application of the Principles of Economic Justice could be burdensome for its, mostly small, customers and, possibly, deter Protestant businesses from seeking IFI assistance.

Options

13. We have two options. The first is to declare an end to our opposition to the MacBride campaign as part of our response to SACHR's Employment Equality Review. We can say that the campaign is now irrelevant because of HMG's new proposals to achieve fair employment and remedy imbalances in unemployment. In a sense, we would declare a victory and walk away. In doing so, however, we would



DEPARTMENT OF ECONOMIC DEVELOPMENT
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need to ensure that those who have been most supportive over the years and who have borne the brunt of the battle, eg, Ford and, indeed, the SDLP, do not feel let down. We would also need to confront the leading campaigners in the past, eg, the New York Comptroller's Office and, indeed, Sinn Fein, and seek their public recognition of the importance of investment to remedying unemployment imbalances.

14. Declaring that we are ending our opposition to the campaign would not, of course, necessarily mean that the campaign would end. At the very least, the campaigners would declare victory and claim that their work alone had forced the UK Government into the measures it is now proposing. At the other end of the spectrum, this flagging campaign could get a new lease of life and seek a new target for challenging the UK Government. Even if we cease to oppose the campaign, DED will still need to continue to advise companies affected by it.
15. The alternative is, publicly, to brush aside the campaign as irrelevant and to continue to publicise the legislation and programmes being implemented to remedy imbalances in employment and unemployment. Privately, we would continue to run down the level of our opposition to the campaign and lobby only against the most damaging legislation. The definition of such legislation would need to be agreed but probably would include no more than contract compliance (almost certainly illegal under GATT and WTO rules) and disinvestment legislation at state level and all legislation at federal level. This is, in effect, a "wither on the vine" option.
16. In both cases we will continue to advertise measures being taken to address employment and unemployment imbalances which would include our response to the SACHR review.



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Recommendation

17. We believe that the best approach is to continue with the low level of response to the campaign, associated with continued publicity for measures being taken in Northern Ireland to remedy employment and unemployment imbalances. The Minister is asked to agree.


D GIBSON

17 September 1997



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