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I. INTRODUCTION

The MacBride Principles of fair employment comprise a nine-point fair hiring program for corporations doing business in Northern Ireland.[1] These equal opportunity guidelines are intended to curb discriminatory hiring practices by prohibiting violence in the workplace and requiring that employers recruit underrepresented, minority applicants for job openings.[2]

This article will briefly trace the history of the Irish civil rights struggle, review the efficacy of British anti-discrimination law in contrast with the MacBride Principles and respond to arguments against MacBride legislative enactments.

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1. KENNETH A. BERTSCH, THE MACBRIDE PRINCIPLES AND U.S. COMPANIES IN NORTHERN IRELAND 1991, at 57 (Investor Responsibility Research Ctr. ed., 1991).

2. *See Appendix* for the complete listing of the MacBride Principles and the amplification language added in 1986.

II. THE IRISH CIVIL RIGHTS MOVEMENT

Discrimination against Catholics in Northern Ireland dates back to Elizabethan rule.[3] The penal codes passed during this period were part of a calculated scheme to disenfranchise the presumptively disloyal, agrarian Catholic minority, destined for second-class citizenry under British law.[4] Protestantism became synonymous with Loyalism during the following several hundred years where a transplanted ascendancy gradually assumed a religious-based preference in voting rights, housing and employment in both the public and private sectors.[5] Over time, hanging trees and repressive penal codes eventually gave way to the institutionalization of systematic discrimination in housing and employment.[6] Laws were enforced almost exclusively by a Loyalist police force, the Royal Ulster Constabulary (RUC).[7] The RUC implemented a government policy intended to uproot and relocate the Catholic population in order to keep Protestants and Catholics segregated.[8]

A divisive social order between Protestants and Catholics became endemic in Northern Ireland by the 1920s, setting the stage for the partition of Ireland by politically severing six counties from the nine-county province of Ulster.[9] This pivotal moment in Irish history is known as the "Playing of the Orange Card."[10] Northern Ireland's Protestants demanded that the portion of Ireland where Protestants held numerical, social and political superiority remain under British Rule.[11] A bitter civil war

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3. DAVID J. SMITH & GERALD CHAMBERS, INEQUALITY IN NORTHERN IRELAND 2 (Oxford Univ. Press 1991). "[I]nequality between Protestants and Catholics was the clear result of the conditions imposed by [the British] Government for the original plantation of Ulster, and of later acts of the exclusively Protestant parliament in Dublin." *Id.*

4. Joseph Judge, *The Travail of Ireland*, NAT'L GEOGRAPHIC, Apr. 1981, at 432, 439. "As the Protestant colony grew, Gaelic-speaking Catholics were pushed back toward the Shannon, as the Indians of America were pushed back toward the Alleghenies. English law with its ideas of property, its judges and sheriffs and tax collectors, spread over Ireland, replacing the brehons and chiefs and clan-owned kingdoms." *Id.*

5. *See* PATRICK O'FARRELL, IRELAND'S ENGLISH QUESTION 16-18 (B.T. Batsford Ltd., 2d ed. 1971).

6. *See* BERTSCH, *supra* note 1, at 16.

7. *See* ALLEN FELDMAN, FORMATIONS OF VIOLENCE: THE NARRATIVE OF THE BODY AND POLITICAL TERROR IN NORTHERN IRELAND 40 (Univ. of Chicago 1991).

8. *See id.*

9. BERTSCH, *supra* note 1, at 3.

10. *See id.* at 17.

11. *See id.*

followed the agreement of the Michael Collins delegations to accept a twenty-six county nation, which later became the Republic of Ireland.[12] To this day, six of Ireland's thirty-two counties still remain under British rule.[13] The six-county state is generally known as Northern Ireland.[14]

The movement by Irish Catholics to gain equal footing with their Loyalist counterparts began in the 1960s.[15] Protestors engaged in mass marches, influenced by the civil rights struggle in the United States.[16] The British military suppressed otherwise peaceful civil rights demonstrations with ruthless intolerance.[17] Detention, arrest and interrogation were conducted in accordance with regulations passed under the Special Powers Act of 1922. This statute acted as enabling legislation, allowing the suspension of the procedural and substantive rights of due process and equal protection.[18] The United Kingdom also derogated from their treaty obligations to protect human rights guaranteed under the European Convention of Human Rights.[19]

British armed forces entered Northern Ireland in 1969.[20] Catholics originally welcomed British protection from Loyalist rioting, arson and the RUC.[21] The British Army, however, concentrated its efforts on the harassment and repression of the Nationalist/Catholic community.[22] Catholics were defenseless against Loyalist sectarian violence, as well as the wholesale arrest

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12. KEVIN J. KELLEY, THE LONGEST WAR: NORTHERN IRELAND AND THE IRA 44 (Zed Books & Lawrence Hill & Co. 1988). "Eleven of the Republican Army's 18 divisions would not accept the proposed Treaty. To the militant majority, this was no republic – this was a fraud and a farce." *Id.*

13. Dingle Peninsula Tourism, *Ireland's Dingle Peninsula: 6,000 Years of History on the Dingle Peninsula*, *at* http://www.dingle-peninsula.ie/history.html (last visited Sept. 20, 2001).

14. BERTSCH, *supra* note 1, at 3.

15. *See id.* at 11.

16. *See id.* at 12.

17. *See id.* at 14.

18. Ireland v. United Kingdom, 23 Eur. Ct. H.R. (ser. B) at 493 (1976). In 1978, the European Court of Human Rights found the United Kingdom guilty of inhuman and degrading treatment of Irish and Northern Irish citizens subject to interrogation techniques during wholesale arrest and detention conducted by the police and armed forces in Northern Ireland from 1971 to 1975. *Id.* at 496.

19. *Id.* at 495-496. Article 3 of the European Convention of Human Rights, which prohibits inhuman and degrading treatment and torture, cannot be derogated during exigent circumstances. *Id.*

20. BERTSCH, *supra* note 1, at 5.

21. *Id.* at 14.

22. *Id.* at 4.

and interrogation of urban Catholics by the armed forces.[23] Thus, there was a resurgence of the Irish Republican Army (IRA) and violence ensued.[24]

During this period, legislative enactments created the equivalent of martial law in Northern Ireland.[25] This statutory scheme, coupled with the intransigence of the British government to enact meaningful anti-discrimination laws, stagnated the civil rights agenda.[26] As matters grew worse, the policy of the newly elected Tory government in Britain during the 1970s criminalized the Nationalist political struggle and suppressed public protests by the Catholic minority aimed at equality in housing and employment.[27]

III. BRITISH LAW INEFFECTIVE

"[T]here is no Government commitment to reducing the ratio of Catholic male unemployment to Protestant male unemployment."[28]

A. Acts of Parliament

The Northern Ireland Constitution Act of 1973 prohibited discrimination on religious and/or political grounds.[29] After three years with virtually no improvement in the pattern of discriminatory hiring, the Parliament passed the Fair Employment Act of 1976.[30] Neither the British Constitution nor the 1976 Act, however, contained any realistic enforcement mechanisms.[31]

Eventually, the Fair Employment Agency, now reconstituted

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23. *Id.* at 13.

24. *Id.* at 12.

25. *See id.* at 13-14.

26. *See* 7 DAVID R. LOWRY, THE ENGLISH SYSTEM OF JUDICIAL INJUSTICE IN NORTHERN IRELAND 2 (1980).

27. *Id.* at 3.

28. NEIL J. CONWAY, MACBRIDE PRINCIPLES COALITION OF OHIO, REPORT ON THE OHIO MACBRIDE LEGISLATION 4 (1994) (citing Kevin McNamara of the House of Commons in 1988).

29. N. IR. CONST. (Constitution Act, 1973) ch. 36, pt. III (Prevention of Religious and Political Discrimination), § 17(1).

30. Kevin A. Burke, *Fair Employment in Northern Ireland: The Role of Affirmative Action*, 28 COLUM. J.L. & SOC. PROBS. 1, 7 (1994).

31. *See id.* at 8 n.35. Initially, compliance with British law entailed that employers sign a declaration not to discriminate. *Id.* at 8. Many Northern Ireland employers nonetheless refused to sign the declaration. *Id.* In his article, Burke reviewed employer-based enforcement and found it to be a major flaw of the 1976 Act. *Id.*

as the Fair Employment Commission (FEC), conducted research revealing gross imbalances at almost every level of employment: banks, building societies, insurance companies, manufacturing, engineering, railways, universities, district councils and other public sectors.[32] A 1980 Fair Employment Agency study concluded that during the period of direct rule by Britain, the gap between Catholics and Protestants "was widening" and would worsen in the "foreseeable future."[33]

While under pressure from the MacBride campaign abroad, the British government attempted to strengthen its employment laws in The Fair Employment Act of 1989.[34] The Act was criticized because it could be interpreted as allowing for indirect discrimination by allowing employers to state a regional preference for employees.[35] Even further, the Act prohibited the disclosure of employees' religions, thereby preventing regulatory agencies, such as the Fair Employment Tribunal, from discovering discrimination practices.[36] The British government contends it has since corrected this flaw in the Act.[37] The most current timetable for evaluating the impact of successive fair employment laws in Britain calls for the substantiation of statistical data through a 1995 survey.[38]

Therefore, while British law may someday completely address civil rights issues, MacBride advocates argue that the British government should nevertheless embrace U.S. supported MacBride Principles since they are not antithetical to the aims of British law but, to the contrary, are consistent.[39]

B. Comparative Legal Analysis of the MacBride Principles and British Law

A New York District Court decision in 1986 is the only instance in which a United States Federal Court has addressed the

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32. *See generally* THE EQUAL. WORKING GROUP, THE DIRECTORY OF DISCRIMINATION (1991).

33. David R. Lowry, *Keeping Catholics in their place*, COMMONWEAL, July 16, 1982, at 400.

34. Burke, *supra* note 30, at 9, 14.

35. BERTSCH, *supra* note 1, at 48.

36. *Id.*

37. *Id.*

38. *See generally* Report of the Committee on Social Affairs, Employment and the Working Environment, EUR. PARL. DOC. (A 3-0151) (1994).

39. *Id.* at 58, 71, 74.

substance of the MacBride Principles in a comparative law context.[40] The MacBride Principles were ruled to be consistent with British law and consistent with the aims of Britain's fair housing legislation.[41]

Contrary to MacBride Principles, the 1989 Act was not seen as effectively promoting notions of equality in its application. In its decision, the Court relied heavily on an affidavit submitted by Christopher McCrudden, Oxford University's expert on discrimination.[42] Professor McCrudden refers to the 1989 Act as "the law that will not ensure fair play."[43]

The McCrudden affidavit criticizes Britain's law for the following unworkable aspects: (1) monitoring of *perceived* religious affiliation and the standard of proof requiring a finding of *intent* to discriminate on the part of the employer;[44] (2) problems concerning the Department of Economic Development's ability to appoint or dismiss members of the Fair Employment Tribunal;[45] (3) defenses allowing employers in the area of contract compliance to prohibit the Tribunal from compelling sanctions (i.e., financial penalties and the termination of government contracts).[46]

C. British Government Statistics

Information regularly available to Americans under the Freedom of Information Act and its state counterparts is not obtainable by right in the United Kingdom.[47] Some MacBride activists feel that this aspect of doing business in Britain could be indicative of the real underlying resentment by the British government and some British multinational corporations to the MacBride Principles campaign.[48]

In 1991, statistics were publicly disclosed by the British government that resulted from company-by-company monitoring

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40. N.Y. City Employees' Ret. Sys. v. Am. Brands, 634 F. Supp. 1382 (S.D.N.Y. 1986).

41. *Id.* at 1392. *See also* BERTSCH, *supra* note 1, at 65.

42. *N.Y. City Employees'*, 634 F. Supp. at 1389-1392.

43. CONWAY, *supra* note 28, at 6.

44. *Id.* at 7.

45. *Id.*

46. *Id. See also* BERTSCH, *supra* note 1, at 46.

47. YOUR RIGHT TO KNOW: THE GOVERNMENT'S PROPOSALS FOR A FREEDOM OF INFORMATION ACT, 1997, Cm. 3818, at 1.

48. *See* BERTSCH, *supra* note 1, at 45-55.

by the FEC.[49] The data confirmed that serious under-representation was rampant in the ninety-seven public and 1,831 private sector bodies monitored, including the Harland and Wolff Ship Yard (94.4% Protestant) and the police force, the Royal Ulster Constabulary (92.5% Protestant).[50]

A cryptic indictment of British legislation appeared in 1992 when a report from senior civil servants in Northern Ireland leaked to the press.[51] This internal report concluded that fair employment laws would do little to change the plight of Northern Ireland Catholics for the next ten years.[52]

Over the years, the British government has compiled numerous reports documenting the depth of discrimination in Northern Ireland.[53] These reports provide a basis for prohibiting workplace violence and recruiting Catholics for jobs for which they have historically been precluded.[54] The report further substantiates the minimal impact that British law has had in its various attempts to change discriminatory hiring practices.[55]

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49. BERTSCH, *supra* note 1, at 107. The following sixty-one North American corporations that do business in Northern Ireland have agreed to implement the MacBride fair hiring formula: AES Corp., Allstate, AM Int'l, Alexander & Alexander Services, Inc., American Home Products Corp., AT&T, Avery Dennison Corp., AVX Corp., Bell Atlantic, Bemis Corp., Cendant Corp., Chesapeake Corp., Conoco, Dana Corp., Data General, Digital Equipment, Donnely (R.R.) & Sons, E.I. Dupont de Nemours & Co., Emerson Electric, Estee Lauder, Federal Express Corp., Ford Motor Co., Fort James, General Electric, Fruit of the Loom, GATX Corp., Honeywell, Household Int'l, Hyster (Nacco Industries, Inc.), IBM Corp., Interface, Inc., Keyspan Energy, Marsh and McClennan, McDonald's Corp., Minnesota Mining and Manufacturing (3M Corp), Northern Telecom, also known as BCE Corp. (A Canadian Co.), Nynex Corp., Oneida Ltd., Petsmart, Philip Morris, Pitney Bowes, Procter & Gamble, Reynolds Metals, Sara Lee, Shaw Industries, Sonoco Products, Co., Sun Healthcare, Teleflex, Inc., Texaco, Inc., Toys 'R' Us, TRW, Inc., Tyco Int'l, Unisys Corp., United Technologies, Viacom, Waste Management, Warnaco, Westinghouse Electric and Xerox. *Id.* at 90, 119-150.

50. CONWAY, *supra* note 28, at 8. (The FEC statistics released in 1993 are available at the Linen Hall Library, Belfast as submitted to the Comptroller of the City of New York).

51. Friends of Sinn Fein, *Building a Permanent Peace in Ireland* (Jan. 10, 1996) *at* http//sinnfein.ie/documents/ibsub.html (last visited Oct. 18, 2001).

52. *Id.*

53. *See generally* OLIVER KEARNEY, THE ROAD FROM '68 (Equality 1993).

54. *Id.* at 39.

55. *Id.*

D. European Parliament

In 1994, the European Parliament adopted a report issued by its Committee on Social Affairs.[56] The Committee found, after a two-year study, that British law was ineffective in changing the pattern of discriminatory hiring in Northern Ireland over the last twenty years.[57] The study further linked the British law's inability to resolve social problems to the present peace process by pointing out that "a renewed and reinforced commitment by the British authorities to effective implementation of anti-discrimination legislation would constitute a major boost to the current talks and efforts for peaceful settlement."[58]

The report also found that British law is "technically speaking, undoubtedly one of Europe's more stringent anti-discrimination laws."[59] The important question is whether the legislation is working.[60] "The test of the law is its capacity to change the reality of religious discrimination in Northern Ireland. The situation seems to suggest that it is not able to do so."[61]

The EC report also notes "Northern Irish Catholics see the worldwide 'MacBride Principles' campaign as a great source of support in overcoming their problems and endorses the campaign's moral principles."[62]

The report echoes the plea of civil rights leaders over the years; many of whom feel that the efforts of the British government to address discrimination have been misguided or insincere.[63]

> The Catholic community has laboured for too many generations under a pervasive and systematic machinery of Economic Apartheid to calmly accept that the problem can be solved by enlisting a few complaint professionals in public service appointments, while their children are consigned, with the children of the working-class

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56. *See generally* Report of the Committee on Social Affairs, Employment and the Working Environment, EUR. PARL. DOC. (A 3-0151) (1994).

57. *See id.* at 13.

58. *Id.* at 6.

59. *Id.* at 13.

60. *Id.*

61. *Id.*

62. Report of the Committee on Social Affairs, Employment and the Working Environment, EUR. PARL. DOC. (A 3-0151) 5 (1994).

63. *Id.* at 4-6.

> Catholics, to the scrap heap of emigration and unemployment.[64]

IV. THE MACBRIDE PRINCIPLES INITIATIVE

"Catholics [in Northern Ireland] have been discriminated against in almost every way, particularly in employment. All their many protests failed because the effectiveness of the protests depended on the good faith of the British Government. That good faith was lacking then, and it is still lacking today."[65]

A. The MacBride Campaign

In 1984, Irish civil rights activists and their U.S. supporters launched an initiative attempting to address the bases of job discrimination in Northern Ireland.[66] The nine fair hiring practice principles were fashioned to encourage corporations doing business in Northern Ireland to take positive actions to implement equal hiring practices and ensure the security and safety of employees in the workplace.[67]

Four human rights activists sponsored the Principles.[68] They are named after the 1974 Noble Peace Prize Laureate, the late Dr. Sean MacBride.[69]

The MacBride Principles campaign revealed the insincerity of the British government from its inception. In response to a relatively moderate platform of equal hiring practices, the United Kingdom hired lobbyists and expended millions of pounds to stifle MacBride legislative enactments that were pending in legislative bodies across the nation.[70] Nonetheless, the MacBride Principles

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64. OLIVER KEARNEY, THE EQUAL. WORKING GROUP, THE DIRECTORY OF DISCRIMINATION 7 (1991).

65. IRISH NATIONAL CAUCUS, INC., THE FAILURE OF BRITISH FAIR EMPLOYMENT LAWS IN NORTHERN IRELAND 22 (1992) (quoting Sean McManus).

66. *See* BERTSCH, *supra* note 1, at 1.

67. *Id.* at 57.

68. *Id.* at 60.

69. *Id.* at 67. Dr. MacBride was also the former Assistant Secretary General of the United Nations, Irish Foreign Minister, a renowned international jurist and co-founder of Amnesty International. *Id.* at 67-68. He was one of four original sponsors of the MacBride Principles, including Dr. John Robb, Inez McCormick (who stepped down from her position as a member of the Board of the Fair Employment Agency due to its failure to effectively proscribe discriminatory hiring) and Brian Brady. *Id.* at 60.

70. Damien Kiberd, *Religious Discrimination Remains to be Tackled*, SUNDAY BUSINESS POST (Dublin) Feb. 20, 1994; *see also Name Your Own Price*, BELFAST NEWS, Dec. 9, 1986 at 1. Originally, a fifteen million pound slush fund was uncovered in a series

were broadly embraced by the United States, in the form of advancing various legislative measures, with the hope that external pressure for fair hiring would act as a catalyst for peaceful social change in Northern Ireland.[71]

B. MacBride Legislative Enactments

The MacBride Principles legislation in the United States takes two forms: (1) statutes that require corporations doing business in Northern Ireland to implement the MacBride principles in order for state-managed funds to be invested in their corporation, and (2) contract compliance legislative enactments which require corporations doing business with government entities to agree to implement the MacBride Principles.[72]

Currently, sixteen U.S. states have passed some form of MacBride legislation.[73] The latest phase of legislative activity is in the area of contract compliance in the states of New York and New Jersey, as well as the cities of Boston, MA, Chicago, IL, Lackawanna County, PA, San Francisco, CA, Scranton, PA and Cleveland, OH.[74] Contract compliance legislation generally

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of articles published in the *Belfast News* in December of 1986, and confirmed in Irish newspapers up through 1994. Kiberd, supra. Anti-MacBride lobbyists had a going price of 2,000 pounds per day for their efforts to stifle implementation of MacBride principles. *Id.*

71. BERTSCH, *supra* note 1, at 79. Support for the MacBride Principles ranges broadly. *Id.* at 79-80. This support includes numerous U.S. cities and counties, the U.S. Congress, the Irish Government, major sections of the British and Irish trade union movements, the British Parliamentary Labour Party, the Sinn Fein Party, religious leaders and organizations including Church based associations such as the National Council of Churches, the Interchurch Council of Greater Cleveland, the Commission for Catholic Community Action, civic organizations, pension funds, labor unions including the AFL-CIO and UAW, the Ohio Federation of Teachers, the National Education Association, universities directing endowment fund investments and private institutional shareholders. *See generally id.* at 57-101.

72. *Id.* at 94-95.

73. CONWAY, *supra* note 28, at ii. The following state legislatures implemented laws requiring compliance with the MacBride Principles: California, Connecticut, Florida, Illinois, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, Rhode Island, Texas and Vermont. *Id.*

74. HEIDI J. WELSH, INVESTOR RESPONSIBILITY CTR. INC., A GUIDE TO U.S. LEGISLATION IN SUPPORT OF THE MACBRIDE PRINCIPLES 11-36 (1993). The Cleveland, Ohio contract compliance ordinance was the first of its kind, passed in May 1991. *See id.* at 24-36. An amendment to the Cleveland ordinance, proposed by its own sponsor, passed in March 1992. In effect, it stripped the ordinance of its enforcement mechanism by requiring that fair hiring practices need only be "relevant" to the MacBride Principles. A subsequent amendment in 1993, which failed, was intended to return the legislation to its original form. In the controversy surrounding the alleged repeal of the Cleveland

enables government bodies subscribing to the MacBride Principles to require corporations to submit to some form of supervision.[75]

Unlike the Sullivan Principles campaign in South Africa,[76] MacBride legislative mandates have generally failed to dictate divestment of stock.[77] Of the sixteen legislative enactments passed at the state level, only Connecticut mandates divestment of stock, while four other states – Florida, New Hampshire, New York and Rhode Island – contain language where divestment is an option in investment decision-making.[78]

Generally, MacBride advocacy is aimed at curbing discriminatory hiring while keeping corporations in Northern Ireland.[79] The goal of the MacBride movement is to enhance future business development by remedying certain social ills.[80] MacBride enthusiasts hope that they will continue to maintain a position of leverage and enhance positive social change by the use of legislative enactments and corporate resolutions as vehicles for moral persuasion.[81]

V. ARGUMENTS BY THE BRITISH GOVERNMENT AGAINST IMPLEMENTING THE MACBRIDE PRINCIPLES

A. Will implementing the MacBride Principles discourage investment in a time of poor economic conditions? No.

There is no evidence that subscribing to equal hiring practices deters investment.[82] To the contrary, increasing the pool of applicants for jobs and outlawing violence in the workplace are normally considered sound business practices.[83]

The level of U.S. investment has increased since the MacBride Principles campaign began.[84] Even British government

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ordinance, a final attempt to completely remove the amended ordinance from the city record was also defeated. *Id.* at 27.

75. BERTSCH, *supra* note 1, at 94. Monitoring is currently conducted by the Investor Research Responsibility Center in Washington, D.C. *Id.* at 2.

76. *Id.* at 57.

77. *Id.* at 94.

78. *Id.* at 93.

79. *Id.* at 94.

80. BERTSCH, *supra* note 1, at 35-39, 61-64.

81. *Id.* at 73-74, 79.

82. *Id.* at 73-74.

83. *See id.* at 74.

84. CONWAY, *supra* note 28, at 13. "Their confidence [in North American

officials admit that U.S. investment in Northern Ireland has increased since 1985.[85]

When evaluating options for investment opportunities, companies historically did not find Northern Ireland an appealing venue because of its record of sectarian violence.[86] Investment initiatives launched during the cease-fire and Good Friday Agreement indicate that the prospect of permanent peace may result in an era of economic growth for all of Ireland.[87]

Rather than deterring investment, the MacBride movement attempts to change the pattern of discriminatory hiring policies for the 100,000 jobs filled each year, and creates nondiscriminatory standards for new jobs pursuing business investment in the wake of incentives anticipated to follow permanent peace.[88] Increasing the pool of qualified applicants for jobs is not a negative business practice. In the long run, it will provide the job market with an untapped pool of talent from the general work force that discrimination prevents.

Investment statistics of the Industrial Development Board of Northern Ireland confirm steady corporate growth.[89] Many investors see Ireland as fertile ground for business investment due to its highly educated, English-speaking work force. Additionally, prospects of permanent peace minimize risk factors, thereby enhancing the probability of a healthy business environment.[90]

B. Are the MacBride Principles illegal under British Law? Are we meddling in foreign affairs? No.

The MacBride Principles do not require any illegal activity under British or U.S. law. In fact, a U.S. Federal District Court found the MacBride Principles legal and consistent with regulations promulgated under the United Kingdom's Fair

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companies] is evident in their investment record. Ford, United Technologies, Dupont, 3M, Northern Telecom, NYNEX, and others have substantially increased their investment in Northern Ireland in the past 18 months." *Id.* (quoting James Gray, Senior Vice President of North America Industrial Development Board for Northern Ireland).

85. *See* BERTSCH, *supra* note 1, at 70-71.

86. *Id.* at 21.

87. U.S. DEPT. OF STATE, BUREAU OF EUROPEAN AFFAIRS, BACKGROUND NOTES: IRELAND *at* http://www.state.gov/www/background_notes/ireland_0007_bgn.html (last visited Oct. 15, 2001).

88. *Id.* at 57.

89. *Id.* at 25, 27.

90. *Id.* at 73.

Employment Act.[91] Moreover, former Solicitor General of the United Kingdom, Peter Archer, has maintained that the MacBride Principles do not contravene the Fair Employment Act of Northern Ireland.[92]

Americans have established a valid legal and moral right to examine the fair hiring practices of firms that do business in the United States.[93] This is evident in the spirit of shareholders' resolutions passed regularly across the country, dealing with various issues of social responsibility, notwithstanding federal civil rights safeguards for foreign or domestic corporations doing business in the United States.[94]

C. Does MacBride Principle Number Two, which provides for "adequate security for the protection of employees both at the workplace and while traveling to and from work,"[95] require a private escort service for any employee traveling to and from the workplace who might be in danger? No.

The reality of a corporation helping to improve safety for its employees during their commutes to and from work is markedly different from the misrepresentation of the meaning of MacBride Principle Number Two. It does not require a private escort service.[96] The thrust of MacBride Principle Number Two is that existing security forces cannot turn their backs when there is a threat to employee safety.[97] The underlying rationale is that the corporation should voluntarily work with government security forces if necessary to alleviate threats to employee safety.[98]

Obviously, complete security cannot be guaranteed. The intent of MacBride Principle Number Two is not to create such an obligation, but to require that security personnel work with the government to protect all employees,

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91. *See N.Y. City Employees'*, 634 F. Supp. at 1390-1391.

92. CONWAY, *supra* note 28, at 14. (citing a letter from the Rt. Honorable Peter Archer, former Solicitor General of the United Kingdom, to Patrick Doherty, Director of Investment Responsibility of the Comptroller of the City of New York (Oct. 24, 1985)).

93. BERTSCH, *supra* note 1, at 81-86.

94. *Id.*

95. *Id.* at 62.

96. *See id.* at 61.

97. *Id.* (See *Appendix.* Amplification language added to MacBride Principle Number Two by Sean MacBride in 1986).

98. *Id.* at 62.

regardless of religious background.[99] In the past, several incidents involving union intervention led to the protection of Loyalist/Protestant employees from dangerous situations.[100] If a similar incident should arise concerning a Catholic worker, it is only logical to request similar protection.

Federal Express Company in Northern Ireland, one of the companies that initially agreed to implement the MacBride Principles, provides an example of how MacBride Principle Number Two is applied.[101] Federal Express considered employees' safety in evaluating the site for location of its main plant in the north.[102] Safety to minority employees traveling to and from work eventually became a pivotal reason for the choice of the final site.[103]

VI. CONCLUSION

The MacBride Principles offer nine equal opportunity guidelines to curb discriminatory hiring practices of corporations doing business in Northern Ireland.[104] These guidelines prohibit religious-based discrimination.[105] The Principles are consistent with the intent of British law – to outlaw discrimination.[106] These Principles succeeded in their implementation, notwithstanding a failure by British law to create any appreciable measure of social change.

The current peace process follows the presumption that the people of Northern Ireland, whether Protestant or Catholic, deserve a better life for themselves and their children. The people's hopes, in part, depend on how the social and political strife marking the last thirty years of British rule in the six-county state is addressed.[107] This includes past patterns of discriminatory

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99. *See id.* at 61.

100. The Mackie Engineering Works plant is a case where plant security escorted workers to the entrance of the industrial estate and RUC patrols were waiting to drive them through a Nationalist neighborhood. *Id.* at 109.

101. *Id.* at 129.

102. *Id.*

103. *Id.*

104. *Id.* at 57

105. *Id.*

106. *See id.* at 44.

107. "It is now—during this time of implementation—that the true transformation (of the North of Ireland) will either succeed or fail. . .the attention of the international community is critical during this stage of the process." Neil J. Conway, *Report of Lawyers Committee for Human Rights*, THE OHIO IRISH TIMES, OCT. 2001.

hiring.[108] Corporations capable of destroying sources of inequity, and not just its symptoms, including sectarian violence, may be the first step towards fairness, economic prosperity and a lasting peace in Northern Ireland.

108. *See generally* Report on Discrimination in the Field of Employment in Northern Ireland, EUR. PARL. DOC. (A 3-0151) (1994).

Appendix

THE MacBRIDE PRINCIPLES (AMPLIFIED VERSION)

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 under-represented religious groups at all levels of its operations in Northern Ireland.

2. **Adequate security for the protection of minority employees both at the work place 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 work place. Signatories must also make reasonable good faith efforts to ensure that applicants are not deterred from seeking employment because of fear for their personal safety at the work place or while traveling to and from work.

3. **The banning of protective religious or political emblems from the work place.** Each signatory to the MacBride Principle 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 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 drawn 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. **Establish 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 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.