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SECURITY AND COOPERATION IN EUROPE**

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NORTHERN IRELAND

(CODEL DECONCINI)

***Trip Report prepared by the staff of the Helsinki Commission
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CODEL DeCONCINI TO NORTHERN IRELAND

5 - 8 July 1992

I. Summary of Trip

From July 5 - 8, Senator Dennis DeConcini traveled to Belfast, Northern Ireland, for meetings with government officials; party leaders; community leaders and activists; business representatives; and representatives of non-governmental organizations (NGOs) dealing with the administration of justice, employment practices, and poverty programs.

II. Introduction

In the aftermath of a Cold War which shaped the course of international relations to a remarkable degree for nearly half a century, the participating States of the Conference on Security and Cooperation in Europe (CSCE) have set forth an agenda that is no less remarkable in its scope and possible implications for international relations. Peacekeeping forces, conflict prevention and management, fact-finding and rapporteur missions, peaceful settlement of disputes, and a high commissioner on national minorities--all are intended by the CSCE as tools for confronting and addressing the brushfires across Europe. It is a new role that CSCE is undertaking, one of putting in place and strengthening institutions and mechanisms that offer the means to resolve conflicts, promote internationally agreed upon human rights standards, and identify and respond to potential instability. As the CSCE attempts to address long-suppressed grievances now erupting in its new political framework, attention has also turned to protracted disputes that have simmered away for years on CSCE's back burner.

In this context, the Helsinki Commission was urged by several non-governmental organizations (NGOs) to make a contribution to the public debate on Northern Ireland. Human rights reports by well respected NGOs such as Amnesty International and Helsinki Watch have documented persistent human rights abuses by security and paramilitary forces. Serious questions have been raised about the administration of justice as well. And to this day, issues of social and economic justice dominate the political dialogue between the two communities of Northern Ireland. Prior to its visit, the Commission was warned that, given its complex realities and historic passions, Northern Ireland often defies understanding. Nevertheless, the delegation, which in addition to Senator DeConcini, included Commission Deputy Staff Directors Jane Fisher and Mary Sue Hafner, as well as Mary Hawkins of Senator DeConcini's personal staff, came away with a better perception of what drives this conflict.

The delegation began its fact-finding trip on the premise that any evaluation of the situation in Northern Ireland must consider not only traditional human rights violations, but the erosion of a democratic system by terrorist activity. Indeed, the delegation viewed terrorist acts by paramilitary forces from both communities as one of the worst recurring causes of human rights violations. At the same time, the delegation agreed the root causes of that terrorism should also be examined. As local religious leaders admonished, "any evaluation of Northern Ireland based upon CSCE standards and principles must address the dangers it confronts." This view reflected the competing interests that challenge Northern Ireland today: on the one hand, efforts by one of the world's oldest democracies to promote and protect human rights and the rule of law; on the other, the need to combat a vicious terrorist movement that has taken thousands of lives.

III. Background: Decades of Emergency

"THE ARMY, LIKE THE EMERGENCY LAWS, WERE SUPPOSED TO BE TEMPORARY."
-- (a government official)

The Parliament in Westminster passes laws for Northern Ireland as well as Great Britain. Some laws, however--particularly in the areas of national security, judicial administration, and police powers--are applicable only to Northern Ireland. These have been central targets of criticism with regard to Northern Ireland's justice system.

When the British imposed direct rule from Westminster in 1972, they also established a commission mandated to consider arrangements for the administration of justice in Northern Ireland. The commission's primary goal was to find a more effective response to terrorist organizations and individuals involved in terrorist activities, particularly those who plan and direct, but do not necessarily take part in, terrorist acts.

In December 1972, the commission, chaired by Lord Diplock, submitted its report to Parliament. It concluded that jury intimidation and perverse verdicts were obstacles to dealing effectively with terrorist crime in the regular courts of justice. The commission recommended that juries be abolished for a vast array of crimes, that bail in such cases be granted only by the High Court and only if certain stringent requirements were met, and that the threshold standard for admissibility of a confession be changed so that it would be lower to what is applicable in the rest of the UK.

Most of the Diplock commission's recommendations were enacted by Parliament in the Northern Ireland (Emergency Provisions) Act of 1973, applicable only to Northern Ireland. In 1987 Parliament made changes to the Emergency Provisions Act by providing for statements to be inadmissible if evidence was shown that the accused was subjected to

violence or threat of violence, and by codifying in declaratory form the discretionary power of judges to exclude statements in the interests of justice. Under the 1991 revised Emergency Provisions Act, the police were granted broad powers in the investigation, detention, and arrest of persons suspected of terrorist activity. The police and army were also granted wide ranging authority to stop and search persons and to search residences and other premises. Some of these powers can be exercised without cause or suspicion of criminal activity and all can be exercised without prior judicial approval. The power to intern without trial remains part of the emergency laws of Northern Ireland, although it has not been used for over 17 years.

Under a 1988 revision of law, a court may draw whatever inference it deems proper, including one of guilt, if a defendant chooses to remain silent during questioning. In addition, the 1989 Prevention of Terrorism Act gives police the power to arrest without a warrant persons anywhere in the United Kingdom whom they reasonably suspect to be involved in terrorism. Such persons may be detained up to 48 hours without legal representation. During that 48 hour period the police do not have to inform anyone that the suspect has been arrested. Upon authorization by the Secretary of State, persons may also be detained for up to seven days without judicial review. The introduction of video- and audio- recording of police interrogations has been rejected by the government, though such a safeguard against police ill-treatment during interrogation has been recommended by Lord Colville, the official reviewer of emergency legislation, the Standing Advisory Commission on Human Rights as well as the Independent Commission on Police Complaints.

In addition to these specific emergency acts, the United Kingdom has relied on the declared existence of a state of emergency in Northern Ireland to derogate from some of its obligations under the European Convention on Human Rights and Fundamental Freedoms.¹ In 1984, the government of the United Kingdom announced that it was no longer availing itself of these provisions. However, following a 1989 holding by the European Court of Human Rights that the detention of four persons for more than four days under the Prevention of Terrorism Act violated one of the provisions of the European Convention, the United Kingdom again used the Convention's exceptions clause to derogate from its international obligations.²

¹Article 15 of the 1950 European Convention on Human Rights and Fundamental Freedoms permits a state-party to take measures "derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation" only "in time of war or other emergency threatening the life of the nation."

²The power to detain for four days under the Emergency Provisions Act was found to be a breach of United Kingdom's obligations in *Brogan et al v. UK*, Eur Ct., 29 November 1988.

The "emergency" provisions were enacted by Westminster to combat terrorism and bring those who commit, direct or aid in such violent crimes to justice. At the heart of British policy were replacement of internment with a system of non-jury courts and establishment of the primacy of police, many of them specially trained personnel, in the battle against terrorism. The army and police were granted through law the authority to mount the massive intelligence gathering operation considered necessary to combat terrorism in general and the IRA in particular. The political goal of the strategy is to strip the IRA and its adherents of any vestige of political legitimacy.

There are two legal regimes in operation with regard to the administration of justice. The prosecution of "normal" or nonterrorist criminal activity is largely governed by the Police and Criminal Evidence (No.1.) Order 1989 (PACE). Police powers governed by PACE are generally restricted by requirements of cause and reasonableness. Yet there is overlapping with the emergency provisions. And while PACE is not invoked to fight terrorism, the sweep of the emergency provisions in fighting crime was a significant concern and complaint among those with whom the delegation met. Some maintain that security forces arrest individuals without cause to believe that they are involved in criminal activity. The arrests, critics charge, are in some instances motivated by an interest in gathering intelligence information, persuading the arrested person to become an informer or simply to harass.

The state of emergency has lasted decades. The dangers to society are the gradual erosion of democratic principles and the institutionalization of less democratic tendencies. While the Diplock court system may, according to some analysts, conform to the requirements of the international standards on fair trials, it departs from standard norms of British justice. Jury abolition represents a derogation from a fundamental legal safeguard of the common law system that existed in both England and Northern Ireland. And the lower threshold for admissibility of statements or confessions in Diplock trials represents a fundamental alteration in rules governing admissibility of confessions long a part of the English common law. The costs associated with such departures have been high for Britain in terms of its international standing, for the victims of the system, and for the system of justice itself.

When the delegation asked a government official why the state would not permit a suspect access to a lawyer during the 48 hour detention period, the official candidly admitted that the suspect would probably not talk to the police after seeing his attorney. Given the decades that the government has exercised emergency powers, the delegation repeatedly asked its interlocutors whether the state of emergency that justified the adoption of emergency laws decades ago still exists and, even assuming that it does, whether certain practices are rationally directed toward and necessary for combatting terrorism. While no one with whom the delegation met called for a complete repeal of the emergency provisions, there was a general consensus that a further safeguarding of individual rights was necessary. The degree varied significantly between representatives of NGOs and

government officials. There has not been a lessening of terrorist activity. It has been a persistent continuum with peaks and valleys -- and over the years its targets have spilled over the borders of Northern Ireland to include those on the British mainland, in the Irish Republic and on the European continent. Some argue that not enough has been done by the government to stem terrorism, and now is not the time to make any changes, especially since the emergency provisions have played a part in bringing about relative security. One aspect of the problem is that while all condemn the violence, the IRA in particular enjoys a solid core of support, some genuine and much of it coerced. But as one sympathizer stated, they know they cannot win the war but they can continue to fight indefinitely.

IV. The Legacy

**"NOTHING HAS CHANGED IN THE ADMINISTRATION OF JUSTICE, THE ABUSES HAVE JUST BEEN EXPOSED."
-- (a citizen of the Strabane area)**

The "troubles" (term used to describe the sectarian and political violence) which erupted in October 1968 and reached a peak in 1972 eventually resulted in British troops being stationed in Northern Ireland. About 11,000 remain today. It is a situation the delegation viewed as neither normal nor peaceful.

Stalemate, bitterness, and war-weariness have come to characterize Northern Ireland's relentless political conflict. Decades of destructive and exhaustive conflict have stretched into centuries without achieving any form of political accommodation between the two communities. The terms Catholic and Protestant no longer describe just religious differences; they describe a perception of "otherness" that each community attaches to the other. Their clash is between conflicting national identities; to perhaps an even greater degree it is a clash between two minorities trapped within a shared history of religious discrimination, mistrust, and oppression.

A political leader with whom the delegation met confided that the imposition of direct rule by Britain was a time "when democracy was stood on its head." And so while the Protestants fear becoming a minority, they also resent the long-arm of British rule. On the other hand, the delegation spoke with some who characterized the state of affairs as "unfinished business." Irish liberation need not necessarily mean unification with the South nor even a severing of ties from Britain, though both are the political objectives of some and certainly of the Provisional IRA. Perhaps if the name of the province had been "West Britain" instead of "Northern Ireland" then the violence would have ended sooner, suggested one government official. Of course, it is not as simple as a name. But this view suggests that opposing national identities have kept the conflict alive.

During the past two decades almost 3,000 people have died as a result of political violence--largely at the hands of paramilitary organizations from both the Catholic and Protestant populations. Clearly, terrorist acts are not carried out by one side alone. In

fact, paramilitary forces are responsible for 89 percent of the killings; the British army and the Royal Ulster Constabulary (RUC), Northern Ireland's police force which is over 90 percent Protestant, account for the rest. The violence stems from the work of Nationalist groups such as the Provisional Irish Republican Army (IRA) and the Irish National Liberation Army as well as extremists such as the Ulster Defense Association and Ulster Volunteers Force, an illegal Protestant paramilitary group. These groups are known to carry out executions, to engage in vigilante justice and coercive control through beatings and maimings. On the day before the delegation left for Northern Ireland, the IRA admitted to the execution of three men, claiming that they were informers for British Army intelligence and the Northern Ireland police. The IRA claimed to have killed the three in retaliation for their having killed a woman a year ago whom they feared was going to report them to the IRA.

The violence that mars and to some degree explains Northern Ireland has established the guideposts to a steady descent into the province's prolonged condition of instability. The problem of loyalist paramilitary attacks on members of the Catholic community, though far from condoned, is largely played down or ignored.³ The sustained and relentless attacks span 25 years and claim about half as many victims as IRA killings. Yet talks with members of both communities (and walks through London/Derry, Brownlow, Carrickmore, Strabane, the Catholic Falls area of Belfast, and Shankill district) reveal a society in which the much publicized and cited political violence manifests itself largely among those trapped in the poverty-stricken ghettos. The fact is that most people in Northern Ireland are not directly effected by the violence and those that are have developed an uneasy if not bitter truce with a conflict that has come to define their daily lives.

Regardless of whether Protestant or Catholic, people who live in these communities would not want to be seen talking or being with a member of the police force. The RUC is viewed with distrust and hostility. Initially seen as a partisan force whose commitment to law and order yielded a perception of official illegality and bias, the RUC's more even-handed treatment over the years has caused suspicion and distrust by members of both communities. This vacuum for other forms of societal arbitrators has been filled to some degree by organized paramilitary forces.

Many people expressed to the delegation their belief that the public's inability to hold the police and army accountable for their actions is a principal factor contributing to the sense of grievance and injustice permeating certain segments of society. They note that officers who have killed civilians or paramilitary forces are rarely prosecuted. According to the Committee on the Administration of Justice, an independent civil liberties

³The UDA is a Protestant paramilitary group. It is the largest paramilitary organization in Northern Ireland and was banned in early August, 1992.

organization the delegation met with, there have been some 340 disputed killings since "the troubles" began, but criminal prosecutions of those responsible have been brought in only 28 cases, only two of which have to date resulted in a conviction. The only member of the regular British army to have been found guilty of a murder committed while on duty received a life sentence, but he was released after serving only two years and three months of his sentence, and was allowed to rejoin his regiment.

The delegation also held discussions concerning the administration of justice within Northern Ireland with the Chairman of the *Independent Commission for Police Complaints for Northern Ireland (ICPC)*. The ICPC started operations in February 1988 as an independent body with members appointed by the Secretary of State to supervise the investigation of complaints against members of the Royal Ulster Constabulary by members of the public. In its supervisory role the ICPC has the authority to approve or veto the appointment of the investigating officer and generally gives directions on the conduct and scope of the investigation. It has no subpoena or independent investigatory powers. The ICPC is entrusted with the duty of deciding whether a police officer who is the subject of a complaint should be charged with an offense, if the Deputy Chief Constable has not preferred a charge. It has the power to direct that disciplinary charges be brought.

According to the *Fourth Annual Report 1991* of the ICPC*, the ICPC received 2,530 complaints in 1991 and supervised the investigation of 243. When a complaint alleges death or serious injury, the ICPC is required to supervise the investigation. In other cases, it has discretion to supervise investigations where it determines it is in the public interest for it to do so. Of the 243 cases undertaken by the ICPC, 70 were mandatory cases and 173 were the result of discretionary action. The Report states that "a comparatively small number of disciplinary charges were brought during the year (27) and that in those cases only five findings of guilt." As the Chairman of the ICPC during talks with the delegation stated, and as the Report acknowledges, the difficulty is in obtaining sufficient evidence to bring the disciplinary charge against the officer and in establishing proof to meet the requisite standard. In order to even discipline an officer the standard of proof is "beyond a reasonable doubt," the same standard for criminal conduct.

A recurring issue throughout the delegation's visit was the selective nature of justice in Northern Ireland and lack of accountability not just with security forces but also with government officials. Repeatedly the Brian Nelson affair was raised as an example of a duplicitous government (Brian Nelson is a loyalist and informer for British security agents who allegedly was known by the government to be an assassin and in some cases the agents knew beforehand Nelson's marked targets). It is a government viewed with suspicion, mistrust, and for some a sense of betrayal. As one community activist put it: these atrocities "never reach the level of British scandal to bring down the government, though they would have brought down other governments."

The perception of unfairness is highlighted dramatically by the press and the community involved, and inevitably the picture is one of British injustice meted out to nationalists. The "Guilford Four," one British and three Irish men sentenced to life imprisonment in 1975 for IRA pub bombings in Guilford and Woolwick, had their convictions thrown out in October 1989 by a court of appeals. The court ruled there had been a serious miscarriage of justice after it was shown that the four had been wrongly convicted because of police misconduct, including lying to courts about confessions and fabricating evidence. The so-called "Birmingham Six," sentenced to life imprisonment in 1975 for IRA bombings in Birmingham, were released after serving almost 16 years. Again, the court-ordered release was directly related to serious police misconduct including the use of violence on the detainees--who were held incommunicado--to secure confessions. And in another stinging judicial criticism of the criminal system, an appeals court just last month overturned the conviction of a woman imprisoned for 18 years for bombing a bus for the IRA, ruling that police, prosecutors, forensic experts and psychiatrists had withheld evidence in the case. The three appeals judges ruled that Judith Ward, now 43, had not committed the crime and threw out her confession as clearly unreliable. It was reported by the press that Ward was the 17th person freed in Britain in recent months after findings that their trials and imprisonment for IRA bombings in the 1970s were tainted by official cover-up and police misconduct.

While the injustices have been largely perceived as one-sided, particularly with regard to the Catholic community, they are not exclusively so. One of the most talked about cases during the delegation's visit in which a miscarriage of justice had been alleged was the case of the "UDR Four." In 1983 six members of an Ulster Defense Regiment (UDR) patrol were charged with the murder of a Catholic youth, Adrian Carroll. Four were found guilty and given life sentences. After serving nearly nine years in jail, three of the "UDR Four" were cleared after an appeal court heard evidence of police misconduct. And so the expanse of injustices has swept up members of both communities.

One official acknowledged that some in the government now believe that extra measures may be needed to safeguard human rights. At the same time he noted that there is a widely held view that the British government has not done enough to stifle terrorism -- which he deemed the most sophisticated terrorist system in the world. The compromise being sought by a democracy in its war against terrorism has resulted in significant infringements upon individual rights in certain important areas.

The delegation was told by officials that they want to avoid at all costs the coalescing of forces and interests that occurred during the 1980 prisoners hunger strike during which 10 prisoners died, including Bobby Sands, who had won election to Westminster while in prison. One official claimed that IRA recruiting efforts still benefit from that period. And so the government attempts to strike a reasonable balance that does not cause "overreaction" or become counterproductive. However, the government's fight against terrorism has meant adopting extraordinary measures that have

institutionalized a marked erosion of civil liberties. One community leader summed it up by saying that he was not optimistic "unless the winds of Europe blow through."

The flaws of the system draw attention to the dangerous political undertow threatening the system itself. Political battles have been thrust into a judicial system in which long-standing rules and legal safeguards were altered to give the state the necessary means to fight internal political conflict and violence. Finding that its normal legal checks and balances were insufficient in combatting terrorism, the state altered them to the detriment of individual rights. The precarious balance between ensuring respect for civil liberties and combating terrorism has had serious implications for Britain domestically and internationally.

V. Social and Economic Costs

"COMMUNITIES LIKE CREGGAN ARE USED TO URGE BRITISH AND AMERICAN GOVERNMENTS TO INVEST, BUT THOSE INVESTMENTS BENEFIT ONLY THOSE IN TOWNS WHO PERHAPS HAVE NEVER SEEN A POLICE OFFICER OR ARMY CONSCRIPT - WE CONTINUE TO BE LEFT OUT."

-- (a former resident of Creggan)

The delegation spent considerable time meeting with grassroots community development leaders, representatives of foreign investors, and members of the Fair Employment Commission (FEC); touring several of the housing estates such as Creggan and Brownlow; and visiting with members of both communities in their private homes to discuss daily life in Northern Ireland.

Many Protestants spoke of their fear of being thrust into the hands of what they regard as one of Europe's most theocratic states. Not only do they fear the loss of religious, political, and cultural rights in a united Ireland where they would be outnumbered almost 4:1, they fear the economic decline that they believe would follow. And, as Protestants fear the future, many members of the Catholic community continue to live with the results of the discriminatory practices of the past.

Since 1969--but even more importantly, since the imposition of direct rule by Britain in 1972--the array of statutory and administrative controls on religious and political discrimination has failed to reduce the very substantial social and economic inequalities between the two communities. The rate of unemployment for Catholics remains significantly higher. Between 1971 and 1981, overall unemployment rates for Catholics increased from 10 percent to 25 percent, while Protestants experienced a four percent increase, from 6 percent to 10 percent. In 1971 the unemployment rate for all Catholics was 2.3 times the rate for all Protestants; ten years later it was 2.5 times. Today it is 2.6.

Furthermore, there is a substantial difference in the length of time that Protestants and Catholics remain unemployed. A 1987 report by the Northern Ireland Standing

