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Before the

Committee on Foreign Affairs

Subcommittee on Africa, Global Health, Global Human Rights, and International

Organizations

and

Subcommittee on Europe, Eurasia, and Emerging Threats

United States House of Representatives

2nd Session, 113th Congress

Hearing on the Northern Ireland Peace Process Today: Attempting to Deal With the Past

Chairman Smith, Chairman Rohrabacher:

Thank you for this opportunity to appear before these two subcommittees of the House Committee on Foreign Affairs to discuss the Northern Ireland peace process.

I have twice been intimately involved with this issue. For three years, from 2001 to 2003, I was the US envoy to the Northern Ireland peace process. And more recently, over the last six months of 2013, I was the chair of the Panel of Parties in the Northern Ireland Executive.

When I represented the Bush Administration in this realm more than a decade ago, the principal challenge was to implement the recently negotiated Good Friday Agreement – also referred to as the Belfast Agreement – of 1998. That agreement constituted a major milestone, effectively bringing to an end the violence that had taken over 3,500 lives and all too often dominated Northern Ireland (and, at times, life in Ireland and the rest of the United Kingdom, as well) for three decades. The challenge facing those of us who came after the agreement was concluded was to bring

about the decommissioning of arms still widely held by paramilitary groups and to help stand up local political, policing, and legal institutions.

These efforts advanced the peace process, but in no way did they complete it. Nor did they bring about what might be described as a normal society. This was a widely shared judgment among outsiders and Northern Ireland's politicians alike. Indeed, in the Spring of 2013, the Office of the First Minister and Deputy First Minister published "Together: Building a United Community," a document calling for a large number of initiatives that would, if implemented, help ameliorate many of Northern Ireland's remaining divisions. One specific proposal was to establish a political process that would tackle some of the most divisive issues. The process would involve all five parties of the Northern Ireland Executive and an independent chair.

I was asked by the First Minister and deputy First Minister in July to become the independent chair. Based in large part upon their support for the process, I accepted this position, after which I immediately asked Meghan O'Sullivan, a professor at Harvard's John F. Kennedy School of Government who had previously worked closely with me when I was the US envoy to the Northern Ireland peace process, to be the Vice-Chair. Our remit was to forge a consensus among the participating parties in three areas: the use of flags and emblems, both in official spaces and in informal public displays; the regulation of the thousands of parades, commemorations, and attendant protests that take place each year; and contending with the past. We assembled a small team and got down to work.

By the end of the year, we had made seven trips to Northern Ireland as well as additional trips to London and Dublin. There were 33 days of meetings and negotiations, most involving the five parties either separately or collectively. There were also more than 100 meetings with 500 people representing a wide range of civil society organizations, along with business, religious, and political representatives. We received some 600 submissions from interested individuals and groups on a website (PanelofPartiesNIE.com) that we established.

The draft agreement that emerged from this process on December 31, 2013 is in the public domain, and I very much hope it gets wide readership. The goal was to produce an accord acceptable to all five parties that would help Northern Ireland address some of its most vexing issues and, in the process, reduce sectarianism and promote reconciliation. The text does not always represent my or Professor O'Sullivan's view of what would be optimal for Northern Ireland society now or in the future. Rather, the December 31 document is and was our best effort to produce a set of carefully balanced compromises that we believed would meet the various needs of the political parties and still leave the society as a whole better off. We reserved the right to issue our own assessments and recommendations, a step that we continue to consider and may well take in coming weeks. In two areas – parades and the past – the text deals extensively and I believe fairly with the challenges Northern Ireland confronts. In the realm of flags and emblems, where despite intensive efforts no amount of consensus proved possible, it calls for a follow-on process.

More specifically, the draft agreement has the most to offer in helping Northern Ireland address its difficult past. I attribute this, in large part, to the critical role victims and survivors have played in encouraging new thinking. The agreement places a high priority on the principle of choice – the notion that victims and survivors must be able to choose, wherever possible, how and whether they interact with organizations and processes addressing the past. This principle runs throughout provisions to provide quality services to victims in a sensitive and compassionate manner, and extends to the question of how legal cases are handled.

The proposed mechanisms would increase the chances that families could learn more about the specific circumstances around and reasons for the death of loved ones. But they would do so in a way that does not grant the perpetrators of violent acts amnesty for their actions. Unlike in many other post-conflict societies, the agreement as written would not require that the pursuit of greater information come at the cost of potential prosecution.

The text would establish a new Historical Investigations Unit, with full investigative powers equivalent to those of the Police Service of Northern Ireland, to take over cases being addressed by the already-existing Historical Enquiries Team and the historical unit of the Police Ombudsman for Northern Ireland. The role of this new entity would be to investigate unsolved conflict-related deaths and transfer findings for prosecutions where evidence warranted.

The draft agreement would also create an Independent Commission for Information Retrieval (ICIR) that would enable victims and survivors to seek and privately receive information about conflict-related events separately from the justice system. To encourage people to come forward and cooperate with this undertaking, the agreement would provide limited immunity, i.e., information provided to the ICIR could not be used to prosecute, although nothing would preclude prosecution if grounds for doing so emerged from other sources or by other means. In order to help make better sense of the past, the ICIR would also assess the presence of certain patterns or themes involving governments and paramilitaries and report on the degree of cooperation with this process by both. Last, the text calls for public statements of acknowledgment of responsibility by individuals, organizations, and governments that were involved in the conflict. Such statements are essential if there is to be healing at either the individual or societal levels.

Second, the text seeks to defuse the tension around parades, protests, and certain commemorations. While a critical component of Northern Ireland's culture and history, these events can also be a flashpoint for unrest and an obstacle to good relations. The right of free expression that is part of marching must be balanced not only against other rights but also against the goal of creating a less-divided society of 1.8 million people sharing a space the size of Connecticut.

The agreement seeks to distinguish the overwhelming majority of parades, which pass off peacefully each year, from the small number that are contentious. It offers a new institutional architecture for notifying events and adjudicating disputes, prioritizes local dialogue and mediation, and establishes a more transparent means of decision-making and oversight. It also sets forth some of the principles that would inform a new code of conduct that would be enshrined in law.

The issue of flags proved the most difficult. Flags are the most visible and emotive — but not necessarily the only — representation of what many in Northern Ireland hold so dear: sovereignty, allegiance, and identity. The text calls for a follow-on effort — a Commission on Identity, Culture, and Tradition — that would convene a public debate across Northern Ireland on such issues as flags, emblems, the role of the Irish language, and a Bill of Rights. The Commission would submit a report to the leaders of Northern Ireland with its recommendations. Despite our disappointment that more definitive prescriptions could not be agreed upon, I believe the Commission offers a pathway for meaningful progress and very much hope it is constituted.

Our mandate ran until December 31 — a deadline established by the Northern Ireland government — and at that point we ended the talks. Two of the parties — Sinn Fein and the Social Democratic and Labour Party — endorsed the text in its entirety. A third, Alliance, endorsed the part dealing with the past. The other two parties, the Democratic Unionist Party and the Ulster Unionist Party, decided not to endorse the text.

Some have interpreted this outcome as an indication that the agreement met more nationalist than unionist concerns. Both Professor O'Sullivan and I reject this characterization. There is a great deal in the proposal for unionists as well as nationalists. There is also a great deal in the text for the many in Northern Ireland who are not politically aligned but simply want to have a better understanding of the past and more reason to look forward to the future.

To be candid, however, the outcome was a disappointment. The draft reflects months of conversations with individuals and groups within Northern Ireland as well as the five parties. It reflects the often competing preferences of the five parties and what was required to bridge them. We understand that no party is fully comfortable with every

element of the December 31 text. That should surprise no one. Politics inevitably requires that each party accept some elements it views as disagreeable in order to advance the greater good; indeed, it is only through compromise that the political parties will be able to collectively deliver the better future that the people of Northern Ireland demand and deserve. Here I can do no better than to quote Henry Kissinger, who in a recent and typically thoughtful assessment of the principles that would need to inform any diplomatic settlement in Ukraine, noted that the test of any proposed accord “is not absolute satisfaction but balanced dissatisfaction.” I believe the December 31 Northern Ireland text met this test and then some, as its components should provide the basis not just for balanced dissatisfaction but balanced satisfaction.

Leaders must be prepared to take and make precisely this case to their constituents and the broader public. The true definition of leadership is a willingness to tell your supporters – not just your opponents – what they do not want to hear. A second requirement is to speak to those across the political divide, to reassure them that their core interests are not threatened and that what is in the interest of one party or group or tradition need not be inconsistent with the interests of the other. And in the case of Northern Ireland, there is a third requirement for leaders, as appropriate, to honestly acknowledge responsibility for the past.

I continue to believe that it is desirable for the parties to reach a comprehensive agreement covering all three issues; comprehensive agreement may also be necessary in order to accommodate tradeoffs and compromises. That said, it is ultimately up to the five parties to determine whether the ability to move ahead in any one area should be dependent upon consensus on the whole.

Over the past ten or so weeks, the parties have held a number of meetings in an effort to narrow their remaining differences and to add some needed detail, such as in the area of what would constitute a code of conduct for parades and protests. This effort, though, came to something of a halt two weeks ago when it was disclosed that the British government had sent letters to nearly 200 people assuring them that they were not wanted by the police.

Virtually all I know about these letters is what I have learned from public exchanges that have taken place over the past few weeks. The issue of “on the runs” (OTRs), involving individuals suspected of having committed paramilitary crimes or those who had been charged or convicted of such crimes and had escaped from prison, was referred to only tangentially in a few of the more than one hundred meetings that our team conducted over the six months of talks. The issue was never discussed in any detail. I had no idea of what was in the letters, how many were sent, or to whom. Nor was there any indication that anything mentioned in our presence was not known of and understood by all of Northern Ireland’s political leaders.

It is my understanding from public reports that the letters essentially informed select individuals that there was insufficient evidence to pursue or prosecute them should they return to the United Kingdom. But it is also my understanding that the letters make clear that prosecution could come about if new information regarding violations of the law came to light. In short, the letters did not offer amnesty. I appreciate the forceful reactions that have come from political leaders in Northern Ireland who were not officially informed of these letters, but I see nothing in their content that would justify walking away from the process that all five parties have been involved in.

Like many others, I look forward to seeing the report about the OTR issue that Prime Minister Cameron has called for by the end of May. That said, I believe that these recent revelations and the reaction to them only reinforce the importance that the five parties continue to build on the progress made in the latter half of 2013 on matters relating to the past and other issues.

Where do things go from here? I have no crystal ball, but I agree with the First Minister when he says that the three issues at the center of the talks are issues that have to be dealt with. To this I would add a sense of urgency. The

passage of time will not by itself heal Northern Ireland's society or make it more normal or bring it together. To the contrary, absent political progress, the passage of time will only create an environment in which social division intensifies, violence increases, investment is scared off, alienation grows, and the best and brightest leave to make their futures elsewhere.

Much of the world looks to Northern Ireland as a model of peacebuilding, and many in Northern Ireland like to be so viewed. But all this is premature. Yes, the society has come a long way from where it was two decades ago, but it still has a long ways to go before it can set an example others will want to emulate. It is up to the leaders of Northern Ireland to make politics work toward the objective of completing the peace process. The stakes are great. Largely depending upon what they choose to do, the future of Northern Ireland will either be that of a vicious circle or a virtuous one. I hope they make the right choice, and make it soon.

Thank you for this opportunity to be here today. I look forward to your questions.