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UNITED KINGDOM:

The Disputed Killing of Diarmuid O'Neill

During a police raid on 23 September 1996 unarmed Diarmuid O'Neill, aged 27, was shot and killed in a hotel by an armed police unit. On suspicion of involvement in the Irish Republican Army (IRA), Diarmuid O'Neill had been under intensive police surveillance during the six weeks preceding his death. The observation, carried out by the Metropolitan Police of London, was supposed to culminate in the arrest of Diarmuid O'Neill and his two companions Brian McHugh and Patrick Kelly. In the immediate aftermath of the raid the media suggested on the basis of unattributable briefings that there had been armed violent resistance to arrest by the three. However, evidence, which emerged later, indicated that the three suspects complied with all the police's demands during the raid. More importantly, in contrast to the media's version of events, it was revealed that none of them was in possession of firearms or explosives at the time of the raid. A subsequent investigation into the incident was supervised by the Police Complaints Authority (PCA) and conducted by the Criminal Investigation Bureau of the Metropolitan Police. After almost two years of investigating, however, it resulted in a report which concluded that there was not enough evidence to prosecute the police officers involved in the killing.

Diarmuid O'Neill was born and raised in West London. Six weeks prior to his killing he was put under intensive police surveillance due to his alleged involvement with an IRA active service unit. Commander John Grieve, then the head of Scotland Yard's Anti-Terrorist Branch, stated that the extent of that operation exceeded that of others carried out in Britain by far. Besides producing intensive video documentation, the police bugged Diarmuid O'Neill's hotel room and searched it on at least one occasion. The surveillance operation resulted in extensive video footage that reportedly covered the whole six weeks except the night of the raid on the hotel itself.

It was decided that the arrest should be conducted as an armed raid on the hotel, where Diarmuid O'Neill was staying with Brian McHugh and Patrick Kelly at that time, on 23 September 1996. In preparation for the raid the participating officers – members of the Metropolitan Police's firearms squad SO19 – were shown video footage of the aftermath of the IRA's Canary Wharf bombing in February of the same year.(1) The officers were informed that the men in the hotel room may possess and make use of hand grenades, explosives and weapons. Furthermore, the officers were allowed to carry 'Rip' with them, the most potent form of CS gas available "which had required prior Home Office approval for its use".(2) Although officers in court claimed that CS gas was only brought to be used in an emergency, the excessive use of the substance during the raid raises some issues.(3) Amnesty International is concerned that the substance had not been tested appropriately and thus the extent of its effects were not perfectly clear. Thus, the officers involved did not take into account the ways in which the actions of the suspects in the room would be affected, nor did they appear to have drawn conclusions about state of well-being of the suspects, considering the fact that they themselves were incapacitated by the gas seeping into the corridor.

On 23 September at 4.30 a.m. SO19 arrived at the hotel and apparently things went wrong from the start. To get access to the premises, where Diarmuid O'Neill was staying with his companions, and catch the three suspects by surprise the police had been supplied with an electric power key by MI5, which had previously been used on several occasions when police had entered and searched the room. However, that night the key would not fit the lock, leaving the officers unable to open the door. The new situation prompted them to make use of an enforcer. This spring-loaded battering ram, that should have broken down the whole door, merely hit a hole in it. At the same time, the decision was taken to make use of 'Rip', which was fired through the rear window into the room.(4) Not only were the suspects affected by the gas, but also the officers were forced to flee the scene to be sick outside as the gas started seeping through the hole in the door into the corridor. Police stated later that it had been left as a voluntary matter as to whether individuals chose to bring gas masks or not. Only two of the officers returned to continue the operation; one of them, who was code-named 'Kilo'

during the trial against Brian McHugh and Patrick Kelly, would later fire the fatal shots at Diarmuid O'Neill. The officer in charge of the raid, however, stayed outside.

Obviously, by the time the battering ram had been used the suspects were well aware of the presence of the police. The recording device, which had been installed in the suspects' room, helped to reconstruct what happened. From the beginning the suspects made clear that they were unarmed and would surrender. In the police's official transcript of the tape one of the persons in the room – supposedly Diarmuid O'Neill – can be heard shouting "We give up!", "We're unarmed!", "Okay, we're down, we're down!" and "They're up, we're on the deck!" in response to the police officers' demands. According to the tape, the officers ordered Diarmuid O'Neill to open the door, after they had made sure that Brian McHugh and Patrick Kelly were down on the floor. Diarmuid O'Neill complied with the officer's demands, confirmed that they were unarmed several times and tried to open the door as he was ordered to do. It would not open straight away, though, reportedly because it had been battered and broken by the enforcer. However, Diarmuid O'Neill would continue to try and thus follow the police's instructions up to the time when officer 'Kilo' shot him three times in the abdomen and lower chest, hitting his spine and causing him to fall to the ground. He was shot another three times as he was falling. The officers then entered the room. The post-mortem examination of Diarmuid O'Neill's body would later reveal a "patterned" bruise on his scalp which according to the Home Office's pathologist might have resulted from "an individual treading on his head".(5) Heavily bleeding and severely injured, he was then dragged down the steps and outside the building where he was denied vital medical care for 25 minutes despite the presence of an ambulance. He subsequently died in hospital. Patrick Kelly and Brian McHugh were arrested. Directly before the first burst of shots was fired one of the police officers was recorded shouting something, which according to Brian McHugh was a command to shoot; one of the officers commented on the sight of severely injured Diarmuid O'Neill: "Dead as a fucking rat!".(6)

Immediately after the incident the media published wrong information regarding the incident on the basis of unattributable briefings. This included the raid having involved a gun battle, explosives being found on the premises and witnesses that talked of exchange of gun fire and cries of "Put down your guns!". Although these stories were denied and withdrawn within one day, the British public had been led to believe the previously published lies and – helped by the crude media coverage of the corrections – was thus unaware of the controversies surrounding the killing.

In the aftermath of the above events, the PCA supervised an investigation conducted by the Metropolitan Police. Despite the evidence that was available, including the official recording of the event by the bugging device and the results of the post-mortem examination, after two years of investigation the PCA handed over a report to the Crown Prosecution Service (CPS), which stated that "there was insufficient evidence to prosecute the police officer".(7) They reasoned that

"[t]he officer who shot Diarmuid O'Neill has said that he did so in the belief that he was acting in self-defence. [...] There is no evidence to show that the Police Officer's account is false or that his belief about the danger he thought he faced was not honestly held."(8)

However, the outcome of the investigation is not convincing at all. Several arguments can be put forward to challenge its validity. Firstly, the investigation was conducted by Metropolitan Police officers, initially by one officer, who retired during the investigation, and then another officer, from the same force that had taken part in the raid. Secondly, the officer who shot Diarmuid O'Neill was not interviewed until some 23 months had passed. (9) Thirdly, the report, which was only finished after two years of investigation, thereby exceeding the maximum length of 120 days as stated in the PCA's own charter, was never made available to the public. Fourthly, the PCA initially appointed an investigating officer who was about to retire. Questioned about the decision to do so by a representative of the *Justice for Diarmuid O'Neill Campaign*, Alan Potts of the PCA argued that it was convenient as the officer (i.e. of the Metropolitan Police) was nearby and also known as a "capable and good chap".(10) The report was finally handed over to the CPS in April 1999. They decided, after six months of consideration, that no further action should be taken and no charges were to be filed against any police officer involved in the raid. Amnesty International considers that the PCA report should now be made public.

In October 1999, Hammersmith coroner Dr John Burton requested that Paul Boateng MP, deputy Home Secretary and Minister of State for Home Affairs, consider setting up a public inquiry into the murder of Diarmuid O'Neill. Moreover, a spokesperson for the coroner confirmed that notice had also been given to Home Secretary Jack Straw, who together with the Lord Chancellor, Lord Irvine, would have to decide whether the inquest should go ahead. However, in a subsequent letter to Diarmuid O'Neill's relatives, junior Home Office minister Charles Clarke stressed that the minister was "not persuaded that the circumstances justify a judicial inquiry".(11)

Amnesty International is concerned about the circumstances in which Diarmuid O'Neill, an unarmed man, was shot dead while reportedly fully complying with police orders to surrender. The organization is also concerned about the use of very potent CS gas 'Rip' which incapacitated everyone at the scene; the denial of vital medical care to a severely injured man, despite an ambulance being close by; and about the misleading information about the incident given to the media. Amnesty International is also concerned that the authorities failed to carry out an independent, prompt and impartial investigation into the full circumstances of the incident.

Amnesty International therefore urges the authorities to initiate an independent and impartial inquiry into the full circumstances surrounding the killing of Diarmuid O'Neill to clarify these disputed circumstances and establish whether there is enough evidence to bring criminal charges against the officers involved in this incident.(12)

KEYWORDS: POSSIBLE EXTRAJUDICIAL EXECUTION1 / USE OF EXCESSIVE FORCE1 / POLICE / INVESTIGATION OF ABUSES / IMPUNITY / NON-GOVERNMENTAL ENTITIES AS VICTIMS /

- (1) This refers to the Canary Wharf bombing of 9 February 1996. The bombing resulted in a number of casualties and two deaths at the scene.
- (2) Tracey Davanna: "Why Was Diarmuid O'Neill Killed ?" in **Fortnight**, November 1999, p. 12
- (3) Patrick Kelly, Brian McHugh and two others were charged with and tried for conspiring to cause explosions and with possessing explosives. It was during this trial that the officers involved in the raid were questioned about the incident in the hotel.
- (4) The pathologist carrying out the post-mortem examination of Diarmuid O'Neill's body even found wounds on the back "that could be the result by the impact of CS gas rounds against the back of the deceased" [cf. footnote 5]
- (5) The post-mortem examination was conducted by Dr Iain Eric West at Guy's Hospital, London. The quotes are taken from his report which was written on 25 September 1996.
- (6) Although the latter of these quotations appears in the police's official transcript of the recording of the incident, the first one caused some controversy during the trial mentioned in footnote 3. According to the police transcript the words said are an order to shut up ("Shut the fuck up!"). Brian McHugh, however, claimed that the words in question were a command to kill ("Shoot the fucker!").
- (7) This quote is taken from the report of the PCA, handed over to the CPS on 11 April 1999.
- (8) Ibid.
- (9) After Paul Philippou of the *Justice for Diarmuid O'Neill Campaign* had met the PCA to discuss the report, he summarized their argument to delay the interview with 'Kilo' as follows: "They [the PCA] said it was standard procedure to talk to all the other officers first and then to question him [Officer 'Kilo']. That sounds very reasonable but only if the time period is quite short—not if it is two years." [Tracey Davanna: "Why Was Diarmuid O'Neill Killed ?" in **Fortnight**, November 1999, p. 13]
- (10) Tracey Davanna: "Why Was Diarmuid O'Neill Killed ?" in **Fortnight**, November 1999, p. 12
- (11) "Minister Rejects Inquiry Pleas" in **The Irish Democrat**, December 1999 / January 2000
- (12) Amnesty International has already expressed its concerns in earlier publications: Amnesty International, News Service 170/96, 26 September 1996: "United Kingdom: Killing of Diarmuid O'Neill Raises Serious Questions", AI Index: EUR 45/12/96; and Amnesty International, 30 September 1996: "United Kingdom: Killing of Diarmuid O'Neill", AI Index: EUR 45/14/96.

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