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TO IMMEDIATE FCO

TELEGRAM NO 3929 OF 24 DECEMBER

INFO IMMEDIATE NIO LONDON, NIO BELFAST

ROUTINE BIS NEW YORK

IMMEDIATE
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DESKBY

MY TELNO 3497: NORTHERN IRELAND EXTRADITION: DESMOND MACKIN

1. THE NEW YORK APPEAL COURT DECIDED TODAY THAT IT DOES NOT HAVE JURISDICTION TO HEAR THE US GOVERNMENT'S APPEAL AGAINST A LOWER COURT'S EARLIER RULING IN FAVOUR OF THE IRA TERRORIST, DESMOND MACKIN. FOR THE TIME BEING, MACKIN WILL REMAIN IN CUSTODY. IF EVENTS FOLLOW THE USUAL COURSE THE APPEAL COURT WILL, WITHIN THE NEXT THREE WEEKS, HAND DOWN A MANDATE IMPLEMENTING ITS DECISION AND THAT OF THE LOWER COURT. THIS WOULD LEAD TO MACKIN'S RELEASE. IT IS HOWEVER PROBABLE THAT MACKIN'S LAWYERS WILL APPLY TO HAVE THE MANDATE IMPLEMENTED IMMEDIATELY, IN WHICH CASE HE COULD BE OUT OF GAOL AS EARLY AS MONDAY, 28 DECEMBER.

2. NOW THAT THE US GOVERNMENT'S ATTEMPT TO BREAK WITH LEGAL PRECEDENT, BY GOING STRAIGHT TO THE APPEAL COURT, HAS FAILED, THE

2. NOW THAT THE US GOVERNMENT'S ATTEMPT TO BREAK WITH LEGAL PRECEDENT, BY GOING STRAIGHT TO THE APPEAL COURT, HAS FAILED, THE CASE WILL AUTOMATICALLY GO TO THE DISTRICT COURT FOR A NEW HEARING. IT REMAINS THE VIEW OF THE US DEPARTMENT OF JUSTICE THAT WE ARE UNLIKELY TO WIN THIS CASE. THE ORIGINAL FINDING BY THE NEW YORK MAGISTRATE THAT MACKIN WAS NOT EXTRADITABLE WAS DAMAGING, IN PARTICULAR FOR OUR CASE AGAINST THE TERRORIST QUINN, WHICH IS TO BE HEARD IN SAN FRANCISCO IN FEBRUARY. IF THE DISTRICT COURT WERE TO UPHOLD THE MAGISTRATE'S FINDING, WE WOULD HAVE EVEN LESS CHANCE OF EXTRADITING QUINN, OR ANY OTHER IRA FUGITIVE.

3. THE US LAWYERS HAVE PUT TO US THE FOLLOWING OPTIONS:

(A) WE GO AHEAD WITH A NEW HEARING IN THE DISTRICT COURT, EVEN THOUGH WE WILL PROBABLY LOSE. WE WOULD SEEK TO HAVE MACKIN HELD IN GAOL PENDING THE COURT HEARING BUT THE CHANCES ARE THAT HE WOULD BE ALLOWED OUT ON BAIL. THE MAIN DIS-ADVANTAGES OF THIS COURSE OF ACTION ARE THAT WE WOULD PROBABLY LOSE THE CASE AT THE END OF THE DAY AND THAT, PENDING THE NEW HEARING, MACKIN WOULD BE FREE TO MAKE FUND RAISING SPEECHES ON BEHALF OF NORAID.

(B) THE CASE IS DROPPED AND, IN RETURN, MACKIN'S LAWYERS AGREE THAT HE SHOULD BE DEPORTED, PROBABLY TO THE REPUBLIC OF IRELAND. THIS HAS THE ADVANTAGE THAT WE WOULD NOT SUFFER A DAMAGING DEFEAT IN THE COURT. ON THE OTHER HAND, IT WOULD BE OBVIOUS THAT WE HAD DROPPED THE CASE BECAUSE WE THOUGHT WE COULD NOT WIN, AND WE COULD BE ACCUSED OF CONNIVING TO ALLOW A TERRORIST MURDERER TO GO FREE.

(C) WHILE MAINTAINING OUR REQUEST FOR EXTRADITION (AND FOR A NEW HEARING IN THE DISTRICT COURT) THE US GOVERNMENT LAWYERS COULD, WITH A NOD AND A WINK TO MACKIN'S LAWYERS, ARRANGE FOR MACKIN TO LEAVE THE COUNTRY. THEY CALL THIS SELF-DEPORTATION. THIS COURSE HAS THE ADVANTAGE THAT OUR REQUEST FOR EXTRADITION WOULD REMAIN ON THE TABLE BUT THAT THE CASE WOULD NEVER ACTUALLY COME TO COURT BECAUSE OF THE DISAPPEARANCE OF THE DEFENDANT. ON THE OTHER HAND, THE US AUTHORITIES WOULD NOT ADOPT THIS COURSE OF ACTION WITHOUT AT LEAST A HINT FROM US AND THERE IS THEREFORE A RISK OF DAMAGING PUBLICITY AS IN (B) ABOVE.

4. WHEN WE DECIDED TO SEEK MACKIN'S EXTRADITION WE WERE WELL AWARE OF THE RISKS INVOLVED. NONE OF THESE OPTIONS IS ATTRACTIVE. BUT

(A) SEEMS TO US TO BE THE MOST STRAIGHTFORWARD AND LEAST OBJECTIONABLE. SHOULD MACKIN SLIP THE COUNTRY WHILE OUT ON BAIL, RESULTING IN THE CASE BEING DROPPED, WE WOULD PRESUMABLY NOT SHED TOO MANY TEARS. BUT THAT WOULD BE QUITE DIFFERENT FROM CONNIVING AT HIS DEPORTATION.

BECAUSE OF THE POSSIBILITY OF EARLY ACTION BY HIS LAWYERS TO

BECAUSE OF THE POSSIBILITY OF EARLY ACTION BY HIS LAWYERS TO
SECURE MACKIN'S RELEASE IT WOULD BE HELPFUL TO HAVE A REPLY
BY 281700Z.

HENDERSON

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