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BRITISH EMBASSY,
DUBLIN.

31 December 1981

G Angel Esq
Under Secretary
Northern Ireland Office
LONDON

N. B. P. N.

A. J. C. $\frac{4}{1}$

See Angel

FOLLOW-UP TO MEETING OF ATTORNEYS GENERAL

1. It is disappointing to see from Steel's letter of 16 December that the meetings are not going at the tempo we want. You may now have heard that the Secretary of State for Northern Ireland told me when I saw him on 23 December that at his next meeting with the Irish Foreign Minister he would want to review with him the state of play on the Attorneys General's talks. This meeting has now been fixed for 29 January which I hope will give enough time for another meeting between Sir Michael Havers and Mr Sutherland.
2. However, we have to adjust ourselves to things going slower than we would like in some of our other dealings with the Irish, and a good contemporary example is our negotiation with them about arbitration on the Continental Shelf. And from my own experience in the last few weeks it is all too clear that the forthcoming budget has made it very difficult to see the Taoiseach or any of his Cabinet.
3. Meanwhile, I hope I may be consulted if you or Steel think that we should put pressure on the Irish.

Yours sincerely

Leon Kin.

L C W Figg

cc: P H C Eyers Esq MVO, RID, FCO
A P Wilson Esq, Asst. Secretary, Home Office
N Wenban-Smith Esq, Cabinet Office
M Alexander Esq, No.10 Downing Street
H Steel Esq, Attorney General's Chambers

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- 4 JAN 1982



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ATTORNEY GENERAL'S CHAMBERS,
LAW OFFICERS' DEPARTMENT,
ROYAL COURTS OF JUSTICE,
LONDON, W.C.2.

Our Ref: 400/81/310

16 December 1981

G Angel Esq
Northern Ireland Office
Great George Street
LONDON S W 1

N. L. P. D.

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Dear Sir,

FOLLOW UP TO MEETING OF ATTORNEYS-GENERAL

✓ This letter is itself a follow up to my letter to you of 11 December and, again, is intended to record in more detail what I have already told you briefly on the telephone.

I telephoned Quigley yesterday afternoon, as arranged. I was told - and was not surprised to be told - that the Irish side were not ready to proceed with the proposed meeting next week. Quigley's explanation was that his colleagues in other Departments would not proceed without clearance from their own Ministers; that, in view of the issues involved, such clearance could not be obtained without collective discussion at Ministerial level i.e. in the Irish Cabinet; and that, because they were in the middle of their Budget season, there was no possibility of such discussions taking place in the near future. He therefore suggested that we give up hope of any meeting before the New Year but he promised to be in touch with me again as soon as possible after the New Year. I expressed pained regret; said that I would of course report this to my own colleagues; and indicated that I thought that there might be representations made through other channels.

Quigley said that he had been told that Mr Sutherland was hoping to telephone our own Attorney General in the course of the afternoon to explain the position personally. This telephone call was indeed made not long after my conversation with Quigley. As I understand it, Mr Sutherland gave the same explanation to the Attorney General, with heavy emphasis on the pressure which Irish Ministers were at present under because of their Budget. He said that he himself was going to be out of the country for two weeks as from this coming Sunday but would take the problem up as soon as he got back. He would seek the necessary "decisions in principle" from his colleagues (but presumably not until the New Year) and would then want to have a further meeting with the Attorney General at which "more specialised discussions" could take place.

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Only after that did he envisage that there would be any point in having a meeting between officials. He apparently added that he had kept closely in touch with the Taoiseach who was fully aware of how matters stood.

This seems to me to be a thoroughly unsatisfactory situation, but one which we have seen coming for some time. I think that there is little that we can now do until the first week in January. If we have not heard from the Irish by, say, the middle of that week (i.e. about 6 January) I would propose either to telephone Quigley myself or to ask the Attorney General to telephone Mr Sutherland. Depending on what reaction we get, it may then be necessary to concert views on how best to put pressure on.

I am copying this letter to Patrick Eyers (FCO), Austin Wilson (HO), Nigel Wenban-Smith (Cabinet), Michael Alexander (No 10) and David Tatham (HM Embassy, Dublin).

*Yours ever,
Henry*

H STEEL

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11 December, 1981

N. B. R.

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FOLLOW UP TO MEETING OF ATTORNEYS-GENERAL

1. I am sorry that you could not be present at my meeting with Quigley. I hope that you are now fit again. In your absence, I asked David Haggan to join me. Quigley was accompanied by Matthew Russell, a member of his own departments.
2. Very early on in the discussion three things became clear to me, though I had already suspected them. The first is that Quigley had done virtually nothing to follow up the various points agreed between his Attorney-General and ours. The second is that a number of matters which Mr. Sutherland agreed should be discussed by officials fell outside his own Ministerial competence and the relevant departments in the Irish administration have made it clear to Quigley that they do not regard themselves as bound by anything that he said about these matters and will not embark on discussions of them with us unless and to the extent that they are so authorised by their own Ministers - and they will look to their own Ministers and not Mr. Sutherland to give them their negotiating briefs. Thirdly, Quigley himself, though by no means hostile or obstructive, lacks the necessary drive and commitment to move this exercise along effectively on the Irish side. I can see the time coming when we shall have to find somebody else - perhaps Russell, who struck me as bright and alert, or perhaps somebody from another department of government - whom we can look to as our principal interlocutor.
3. When we managed to get Quigley to get down to concrete business (which was not easy), I gave him a copy of a note of the meeting between

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the two Attorneys-General which, as I had agreed with you and the others present at the meeting in your room on 3 December, I had concocted by a process of bowdlerising my letter to you of 27 November. I now enclose a copy of that note. We took Quigley through it, more or less paragraph by paragraph, and got his confirmation that it was an accurate account of what had passed between the two Attorneys-General. We then identified the specific concrete decisions which were recorded: these are shown in the passages that I have sidelined. We then got Quigley to agree to show this note (or, if he preferred, his own version of it) to his colleagues in other departments when he got home and to get them to obtain whatever authority was necessary for them to come and discuss with us the matters for which they are responsible.

4. On timing, I impressed on Quigley the importance which we attached to getting concrete discussions under way before Christmas. We agreed that our aim should be to have these discussions take place, in London, on Monday 21 December. I arranged to telephone Quigley next Tuesday, 15 December, to confirm that they (and I suppose we) would be ready. I hope that I have not caused you, and the others who will be involved on our side, great inconvenience by going nap on this date without first consulting you. In practice, no other date before Christmas seemed possible: next week is too early for the Irish to sort themselves out and anything later takes us too close to Christmas (though Tuesday 22 December may not be totally ruled out). I thought that if I did not pin Quigley down to ^aspecific date there and then, I could abandon all hope of a meeting this side of the New Year.

5. Though I tried to confine our talk to the agenda for the future substantive discussions and to the procedure for those discussions, Quigley kept wandering off into disquisitions on the substance. In a few cases I found it convenient to let him do so since it either gave us

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a better insight into what his colleagues' attitude was likely to be or gave me an opportunity to fire a warning shot across his bow about what he should expect from us. The major points of interest were the following:

- (a) In relation to extradition, it was clear from what Quigley said that the Irish have virtually closed minds on our suggestion that the international law dispute might be resolved by getting an independent authoritative ruling. This is not to say that I think that we should not press that suggestion very hard (because of the tactical advantage which the Irish refusal will give us), and I made it clear to Quigley that we should certainly do so. But I do not think that we should entertain any illusion that they will give way on this.
- (b) As regards Mr. Sutherland's promise to seek authority from his Ministerial colleagues to pursue the "Hanlon v Fleming line" in the Irish courts, Quigley in effect served notice on me not only that Mr. Sutherland might fail to get such authority (which I think is fair enough) but that he might himself come to the opinion that a rebuff by the court would be so damaging that the risk ought not to be incurred and the authority to run it should therefore not even be sought (which is perhaps not so fair). But I, personally, have always been a bit sceptical about whether this approach to the problem could give us very much of value - and the Irish would certainly try to represent it as letting them off the hook of our more far-reaching demands.
- (c) In relation to the proposals to replace a backing of warrants system by an orthodox extradition system, Quigley put forward arguments which, if taken to their logical conclusion, suggested that he would favour such a change across the whole board and not merely in relation to political offences. But I do not know how far he (and Mr. Sutherland) spoke for other departments on this.
- (d) As regards facilities for what Quigley tactfully described as "joint interviewing", it was evident that Mr. Sutherland had done nothing in pursuance of his promise to take our suggestion up with the Minister of Justice and the Garda. Quigley made it clear that, if and when it was taken up, he expected it to be given a totally negative reception.

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- (e) In the context of our suggestion about the transfer of exhibits, Quigley said that he and his colleagues had a number of other suggestions for the technical improvement of the reciprocal extra-territorial jurisdiction arrangements. I said that we should be delighted to discuss any and every suggestion of that kind and that I hoped that they might let us have a note of what they had in mind so that we could come prepared for a useful discussion.
- (f) In relation to the *All-Ireland Court" it became clear from what Quigley said that he did not share (though he had visibly indicated his assent at the time) Mr. Sutherland's view that those who had thought in 1974 that a constitutional amendment would be required were mistaken. More important perhaps, it also became clear that the proposal which he had in mind related not to a "Single Court" but to "Joint Courts" (or "Mixed Courts"). It also emerged that he did not envisage that the place of trial would be the place where the offence was committed: it would be where the offender was apprehended, though the court would somehow be empowered to take evidence from witnesses in the country other than the place of trial. Even on this basis which, as I pointed out, seems to me to represent little advance on straight extra-territorial jurisdiction, I got the impression that there might be constitutional difficulties which the Irish might find it difficult to duck except by some reliance (of course unacceptable to us) on Article 2 of their Constitution. But Quigley was more than usually difficult to pin down on this and I think that it would be a mistake to get too excited about it at this stage. I impressed on him - and he appeared to accept - the need for the Irish to let us have a paper, in advance of the substantive discussions, in which they set out in detail what their proposals really are on this issue.

6. I have to say that I shall be agreeably surprised if, when I telephone next Tuesday, I find that his side is ready, able and willing to come over for proper substantive discussions on the following Monday. We must wait and see. But if the position then is that they either are not ready or are prepared to discuss only a limited range of topics, we may have to consider whether to put pressure on at the political level,

/either

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either by our own Attorney-General getting in touch with Mr. Sutherland or by sending in the Ambassador in Dublin or even, perhaps, by some approach at the Heads of Government level.

7. I am sending copies of this letter and its enclosure to Patrick Eyers in the FCO, Austin Wilson in the Home Office, Nigel Wenban-Smith in the Cabinet Office and Michael Alexander at No.10. At Patrick's suggestion I am also sending a copy to David Tatham in Dublin. If any of the recipients have any comments to make which I ought to bear in mind before I speak to Quigley on Tuesday afternoon, perhaps I could have them by telephone. I should also be grateful for confirmation that there is no insuperable difficulty on our side about having the meeting on Monday 21 December.

H. STEEL

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