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 TO ROUTINE FCO
 TELEGRAM NUMBER 3957 OF 29 DECEMBER
 INFO ROUTINE BIS NEW YORK, NIO LONDON, NIO BELFAST
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MY TELNO 3947: NORTHERN IRELAND: EXTRADITION

1. UNDER THE HEADING: QUOTE WHEN TO SHELTER A MURDERER UNQUOTE, TODAY'S NEW YORK TIMES CARRIES AN EDITORIAL ABOUT THE CASES OF THE IRA TERRORIST DESMOND MACKIN AND THE PALESTINIAN TERRORIST ABU EAIN. THE EDITORIAL SAYS ALTHOUGH TERRORISM CAN BE DEFINED AS POLITICALLY MOTIVATED VIOLENCE, THIS DOES NOT MEAN TERRORIST CASES QUALIFY FOR THE POLITICAL EXCEPTION. WHILE SHOOTING A BRITISH SOLDIER ON PLAIN-CLOTHES PATROL IN NORTHERN IRELAND HAS MORE OF A POLITICAL FLAVOUR THAN PLANTING A BOMB IN A CROWDED MARKET (ABU EAIN'S OFFENCE), MACKIN'S ACTION STILL SEEMS UNWORTHY OF RECOGNITION IN AMERICAN OR INTERNATIONAL LAW. THE US HAS ENDOWED BOTH CASES WITH TOO MUCH JUDICIAL SOLEMNITY. GRANTING ASYLUM TO EITHER ABU EAIN

OFFENCE, ~~PROBING~~ ~~NOTION~~ ~~WELL~~
AMERICAN OR INTERNATIONAL LAW. THE US HAS ENDOWED BOTH CASES WITH
TOO MUCH JUDICIAL SOLEMNITY. GRANTING ASYLUM TO EITHER ABU EAIN
OR MACKIN WOULD DANGEROUSLY LEGITIMISE INDISCRIMINATE TERRORISM.
THE NEW YORK TIMES ADDS THAT, IN TRYING TO DECIDE WHETHER THE
CRIMES INVOLVED WERE POLITICAL, THE JUDGES WERE DRIVEN TO
INCONSISTENT RULINGS. THE COURT'S DETERMINATION THAT THE MACKIN
CASE GREW OUT OF A COMMONLY RECOGNISED POLITICAL UPRISING WAS A
POLITICAL ONE BETTER LEFT TO THE STATE DEPARTMENT. THE NEW YORK TIMES
ENDORSES PENDING LEGISLATION DESIGNED TO TAKE EXTRADITION MATTERS
AWAY FROM THE COURTS AND TO LEAVE THE DECISION SOLELY TO THE SECRET-
ARY OF STATE. IT COMMENDS A SIMILAR TREND IN RECENT BILATERAL
EXTRADITION TREATIES, EG BETWEEN THE US AND THE NETHERLANDS AND
COLOMBIA. THE EDITORIAL CONCLUDES THAT, WHILE NO APPROACH WILL
ESCAPE CONTROVERSY, LEAVING DIPLOMACY TO DIPLOMATS WILL PROVIDE
BETTER AND SPEEDIER JUSTICE.

2. THE US DEPARTMENT OF JUSTICE HAVE AGAIN URGED US TO CONSIDER
RENEGOTIATING OUR OWN EXTRADITION TREATY WITH THE US TO BRING IT
INTO LINE WITH THEIR CURRENT PRACTICE, IE TO TAKE CONSIDERATION OF
THE POLITICAL OFFENCE ISSUE AWAY FROM THE COURTS. THEY ARE AT
A LOSS TO UNDERSTAND OUR OBJECTION, NAMELY THAT WE WOULD THEN BE
SUBJECT TO THE WHIM OF THE US SECRETARY OF STATE. THEY ARGUE
THAT THE DIRECTION OF US POLICY UNDER BOTH THIS ADMINISTRATION AND
THE LAST, IE TO CHANGE THE LAW TO MAKE IT EASIER TO EXTRADITE
TERRORISTS, AND THE FACT THAT THEY KNOW OF ONLY ABOUT A DOZEN CASES
IN THE ENTIRE HISTORY OF THE UNITED STATES IN WHICH A SECRETARY OF
STATE HAS REFUSED TO AUTHORISE AN EXTRADITION, SHOW THAT OUR
FEARS ARE ILLFOUNDED. MOREOVER, THE PROPOSED CHANGE WOULD NOT
ACTUALLY GIVE THE SECRETARY OF STATE A POWER (IE TO WITHHOLD
EXTRADITION) THAT HE DOES NOT ALREADY HAVE.

3. IN THE CIRCUMSTANCES I BELIEVE THAT THERE IS A STRONG CASE FOR
ADOPTING THE US PROPOSAL OR, AT THE VERY LEAST, FOR EXPLORING IT
FURTHER AND IN DETAIL. WE COULD HARDLY BE WORSE OFF THAN AT
PRESENT: WE HAVE LOST TWO EXTRADITION CASES (MCMULLEN AND MACKIN)
AND RUN A CONSIDERABLE RISK OF LOSING A THIRD (QUINN).

HENDERSON

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