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 7 May 1985

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From the Private Secretary

Anglo/Irish Agreement: Joint Courts

The Prime Minister has seen the Northern Ireland Secretary's minute of 2 May about his discussion with Lord Lowry.

In the light of this, the Prime Minister agrees with Mr Hurd that we cannot do more than offer to study a proposal for Joint Courts.

I am copying this letter to the Private Secretaries to members of OD(I), to the Private Secretary to the Lord Chancellor and to Sir Robert Armstrong.

Charles Powell

Jim Daniell Esq
Northern Ireland Office.

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PRIME MINISTER

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Prime Minister

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ANGLO/IRISH AGREEMENT : JOINT COURTS

I understand that during the last round of official talks on 29/30 April, the Irish reacted strongly to the revised British proposal and that one of the main points at issue was the suggestion that the Standing Committee "could consider whether there is a case for establishing a system of joint courts for trying terrorist crimes". The Irish considered that this did not go nearly far enough and that there must be a firm commitment to the principle of establishing joint courts, with only the means of setting them up subject to further study. Moreover, they indicated that they saw this as a crucial point in the negotiations. Against this background, I think I should report a conversation which I had on Monday night with the Lord Chief Justice, Lord Lowry.

2. After emphasising the need for strict secrecy I explained to Lord Lowry (as authorised by OD(I)) the context in which the proposal was being made and the general shape of a possible agreement with the Irish of which it would form part. Lord Lowry reiterated the arguments against joint courts which he had put to me in writing after the Taoiseach first raised the matter with him in Dublin at the end of February. Some of these are technical and concern the disadvantages which he considers to be inherent in plural courts and which would be aggravated if the judges were drawn from different legal and constitutional backgrounds. (All this was gone into in 1974 by the Joint Law Enforcement Commission which rejected joint courts.) But Lord Lowry's main objection was of a broader, political nature. He described it as a clear invasion of sovereignty to have judges from a foreign country sitting in UK courts. He considered that it would have

the effect of bringing the courts in Northern Ireland into political controversy, and that, far from reassuring the minority, this would be likely to make matters worse. Moreover, he predicted, as a staunch unionist himself, that any move in this direction would produce "one hell of a backlash" from the majority community. Even if the judges succeeded in working together, he believed it would prove a disastrous political step.

3. Lord Lowry went on to say that being strongly opposed to the concept he would himself feel unable to continue in office if joint courts were to be introduced. He believed that all his fellow judges in Northern Ireland, including the Catholics, would also be hostile to the proposal; at least one of them would probably resign too, though most would continue. He would be surprised if Southern judges were not also opposed to the idea. (I am told that the Irish have not yet consulted their judges on the proposal for joint courts).

4. I have no reason to doubt that Lord Lowry speaks for the judiciary in Northern Ireland. In the light of his strong reaction, which echoes the views expressed by the Attorney General in OD(I) last week, I do not see how we can agree to do more than study a proposal for joint courts, in the knowledge that the study is likely to lead to rejection of the idea, as it did in 1974. No doubt we shall have to discuss these matters again in OD(I); and I am therefore copying this minute to the other members of the Committee, to the Lord Chancellor and to Sir Robert Armstrong.

NBward
Private Secretary

2 May 1985

for D.H.

(approved by the
Secretary of State and
signed in his absence)