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A15/11  
(9) 5/12

MUFAX

PS/Secretary of State (LAB) - M

c.c. PS/Mr. Scott (LAB) - M  
PS/PUS (LAB) - M  
PS/Mr. Bloomfield - M  
Mr. Brennan  
Mr. A. Stephens - M  
Mr. M. Elliott - M  
Mr. Innes - M  
Mr. Merifield - M  
Mr. Bell  
Mr. McKillop - M

RECEIVED  
1630  
17 DEC 1985  
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STORMONT HOUSE ANNEX

HEAD OF THE N.I.  
CIVIL SERVICE

LETTER FROM LORD CHIEF JUSTICE

In his letter of 10 December, Lord Ivory returns to the theme he has raised on many occasions (he lists them) - that "mixed courts" would be a political and administrative disaster (as well as a severe blow to the morale of the NI judiciary). He now even suggests that mere discussion of the subject, under the auspices of the Intergovernmental Conference, would reflect unfairly on the NI judiciary and call into question the credibility of earlier judgements.

2. The views of the LCI are well known and his fears are grounded: we have no wish whatsoever to see the introduction of mixed courts either on presentational or administrative grounds; but equally we are under an obligation to consider the possibility. The Government's position has been made clear by both the Prime Minister and the Secretary of State. In the House of Commons on 16 November the Prime Minister said: "The Agreement shows that we have agreed in good faith to consider the possibility of mixed courts. We are considering the possibility without commitment, because we know from experience the difficulties and we cannot yet see our way round them. We are considering the possibility without commitment."

3. Last week the Conference agreed to establish a working group of UK and Irish officials to consider the machinery for the further discussion of legal matters, including the administration of justice, and undoubtedly the question of mixed courts will be touched on soon, or later in that context.

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4. In reply to the LCJ, there seems little to be gained from once again discussing the demerits of mixed courts. But the Secretary of State will, I suggest, want to leave Lord Lowry under no illusion that, while we continue to see all the objections to the introduction of mixed courts, the Government continues to be bound by the statements that Ministers have made on this subject since 13 November.

... 5. I attach a draft on these lines for the Secretary of State's signature.

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D. CHESTERTON

17 December 1985

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DRAFT LETTER FOR THE S OF S TO SEND TO THE LORD CHIEF JUSTICE,  
ROYAL COURTS OF JUSTICE, BELFAST BT1 3JF

Thank you for your letter of 10 December about mixed courts. I understand your concern and share your wish that nothing should be done under the auspices of the Intergovernmental Conference that could be misconstrued as reflecting adversely on the competence and integrity of the NI judiciary. I hope that I do not need to tell you that I associate myself fully with the tributes paid to the judiciary by my colleagues.

Perhaps it would be helpful if I briefly explain again just what the Government's position is with regard to mixed courts. As the Prime Minister and I have made clear on several occasions since the Agreement was signed last month - to one of which you yourself referred in your letter - we are obliged in good faith, as the result of Article 8, to consider the possibility of mixed courts. That must be the case. And, as you may have seen from the joint press statement issued after last week's meeting, the Intergovernmental Conference has agreed to establish a working group of officials to consider the machinery for the further discussion of legal matters. However, and this is a point to which I attach particular weight, there is no question - for reasons with which we are both familiar - of our being likely to find mixed courts acceptable in the foreseeable future. As the Prime Minister and I have also both said we are considering the possibility of mixed courts without commitment because we know from experience that there is no easy way round the difficulties that stand in the way. I would not, in any case, countenance any move in the direction of mixed courts without the full support of the Lord Chancellor and the Law Officers, to whom I am copying this letter.