

CONFIDENTIAL

Second Working Session, Constitutional Conference

September, 1970

NOTES FOR  
INTRODUCTORY COMMENTS

September 9, 1970

REGIONAL DISPARITIES - CONSTITUTIONAL OBLIGATION

1. It was agreed at the first working session, in June, 1969, that the reduction of regional disparities should be written into a constitutional preamble as a basic goal of Canadians and an objective of the constitution. It was also recognized then, and affirmed at the Conference last December, that all governments had responsibilities in the achievement of this goal and should have appropriate powers for this purpose.
  
2. It has also been suggested on various occasions (particularly by Nova Scotia) that there should be a specific obligation imposed on governments by the constitution to reduce regional disparities. At the December meeting the Continuing Committee of Officials was asked to give further study to the implications of such constitutional clauses which would
  - set forth an obligation on both the federal government and the provincial governments,
  - not be judicially enforceable.
  
3. The Secretariat has submitted a report (Tab 8 in the Secretariat Briefing Book) on the CCO discussions. Various possibilities have been considered as to the form such constitutional clauses might take:
  - "non-enforceable obligations";
  - "purposes and principles";
  - statement of "directive principles".
  
4. You will note from the Report (at pp. 3-4) that it was generally considered that
  - the legal implications of any of these forms of clauses would be approximately the same;
  - their legal effect would also be approximately the same as that of any objective stated in the preamble; although their moral force might be stronger because of their location in the body of the constitution and their greater detail;

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- there would be drafting problems
    - in ensuring that such clauses will not be judicially enforceable;
    - in deciding with what particularity they should be expressed, as this will affect their persuasive or moral effect;
    - in defining what kinds of "regional disparities" are to be covered, as this will depend on the ultimate distribution of powers and other factors.
5. Perhaps it will be possible for us to advance this subject beyond our previous position by
- agreement in principle on the inclusion in the constitution of some statement of obligation on both federal and provincial governments - perhaps we can record this progress and reconfirm our earlier agreements on this subject in the formal statement of conclusions of this meeting;
  - agreement to postpone further consideration of this subject in the constitutional context until such time as we have to consider specific wording for the constitution and after we have more fully explored the distribution of powers.