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E. Action by the South

1. Any settlement on the lines envisaged in previous papers may require action by the South under one or more of the following headings:-

- (i) Constitutional or legislative measures to give effect to the settlement itself;
- (ii) Additional action either by way of policy decisions or legislation to give support to the settlement or respond to it as a quid pro quo;
- (iii) Change in other matters beyond anything under (i) and (ii) above, to try to make the settlement a beginning of the process of conveyance in this island which we believe to be necessary, and to give additional momentum to that process.

These three areas are considered further below.

- (i) Constitutional or legislative measures to give effect to the settlement

2. Of the four parties at least who will have a role in regard to any arrangements for a settlement - Majority and minority in the North, British and Irish Governments - only the Government here has to meet the requirements of a written Constitution, which is relatively difficult to amend. Any settlement may, therefore, need careful legal consideration here to see if it is compatible with the Constitution and if not, to recommend as to the changes (either to particular articles or by way of a new article) which would be necessary. Because the eventual shape of a settlement is as yet quite fluid and all the possibilities are difficult to envisage, it would be premature to undertake this task at present.

3. Though not immediately relevant, two points in regard to Constitutional issues may, however, be worth keeping in mind:-

- (a) Article 3 explicitly envisages the eventual "re-integration of the national territory". This provision might conceivably be used to support and justify a more flexible constitutional approach to a settlement seen as helping to bring this about.

- (b) The Taoiseach is on record as saying in regard to an eventual united Ireland:

"My own view is that it would be better to regard the new Ireland as an entirely new political entity which should work out and enact for itself its own constitution".

- (Foreign Affairs July 1972 page 615).

4. When and if the settlement now envisaged begins to take more definite shape, it will be necessary to consider whether its terms or some of them (e.g. those in regard to the Council of Ireland) should be:

- (a) incorporated in an inter-Governmental Agreement;
- (b) given effect by legislation, without an Agreement - perhaps by parallel legislation in Westminster and Dublin respectively;
- (c) given continuing effect, or worked in practice on a day to day basis, insofar as Dublin is concerned by executive and administrative action only.



(ii) Action to support, or respond to a settlement

5. If an arrangement which meets the views of the Government here to a substantial extent and gives promise of providing a general settlement, can be worked out and put into effect, it would be in the interest of the Government here to support and uphold it. This could mean

- (a) additional legislative action in order to respond to, or support the whole settlement as firmly as possible (beyond the legislation specifically required to bring it into effect). For example further legislative action on security matters or on extradition might be warranted in the new situation.
- (b) a change in the tone and substance of policy and its enunciation, and in public rhetoric, commemorations etc. so as to throw full support behind the new arrangements as the means of bringing to a settlement at last the unfinished aspects of the Irish question. (This does not necessarily mean excessive stress in public - particularly at the outset - on the hope that the settlement will grow towards unity. Due account would have to be taken of Unionist susceptibilities on this score and this would have to be balanced against the need to present the settlement publicly in the most favourable light in the South).

6. The need for a definite response "by the South" is stressed in one way or another by virtually all parties to the problem.

Two such references are touched on here, as particularly worthy of note:-

- (a) The British Government, in the Green Paper (par) say that "whatever arrangements are made for the future administration of Northern Ireland must take account of the Province's relationship with the Republic of Ireland: and to the extent that this is done, there is an obligation upon the Republic to reciprocate".
- (b) The Unionist Party proposals (Green Paper annex) make acceptance of a joint Irish Inter Governmental Council dependent on two conditions:
 - (i) "acceptance by the South of the right of the people of the North to self determination..... In reality this means asking Southern politicians to translate their verbal commitments to the idea that force will not be used to bring about a United Ireland into political and constitutional action."
 - (ii) "a greater commitment of the Southern Government to cooperate in ending terrorism here".

[(i) Above could be substantially met, not by having the South focus explicitly on "self determination" for the North, but by commitment to the new settlement (including the North-South link) acceptable to both. Since (ii) was put forward the Offences against the State (Amendment) Act has been introduced and passed. Some further measures aimed at helping "to end terrorism" in the North may be needed and could be warranted in the new situation here envisaged.]

7. The Taoiseach has already publicly accepted the need for a response here in connection with any settlement. Replying to a question on the Green Paper in the Dáil on 3 November 1972 he said:

"But the structures which are now to be built must also encourage, as an organic growth, a process of reconciliation in the island as a whole; and unless they do, they cannot bring permanent reconciliation in the North. The Green Paper seems to allow for the possibility of some institutional arrangements of this kind; and in so far as it does it calls for a response from us."

For our part, we in the Government are prepared to make such a response".



(iii) Other changes in the South to give momentum to the process of convergence

8. Some of the parties to the problem may see any settlement now worked out as largely static in character. The hope of the Government here, however, as expressed by the Taoiseach, has been that any arrangements which now emerge will begin a process of gradual convergence between both parts of the island, since only this seems to offer the prospect of a lasting settlement.
9. The need for action to give effect to, or respond directly to, settlement proposals which may emerge, was dealt with above. Beyond this, it could help to encourage this process of change which is to be the consequence of such a settlement, and could give it momentum towards convergence if action could be taken separately by the South to make changes in a number of additional areas. The areas most often referred to in public discussion are listed here, principally for reference and without discussion of the merits of each since it seems both unnecessary and inappropriate in this context to discuss in detail the arguments for and against change and the ways in which change might be made:-

Constitutional

- (a) Articles 2 and 3 - insofar as they are taken as asserting a "claim by the South to the North".
- (b) Other aspects of the Constitution, including the Preamble, still seen as "theocratic" (sic).
- (c) The constitutional recognition of Irish (Art.) as "the first official language" and its consequences in law and practice.
- (d) Constitutional prohibition on divorce legislation (Art. 41).

Legislation

- (e) Contraception issue - (Criminal Law Amendment Act 1935
(Customs Consolidation Act 1876)

- (f) Adoption Act 1952 - which establishes a statutory prohibition on legal adoption by a mixed marriage - and thereby provides that the law takes explicit cognisance of denominational differences.
- (g) Censorship Acts - as providing for advance, and virtually wholesale, censorship of publications by an appointed Board. (To be distinguished from the normal "police" powers, which exists also in Britain, to proceed against a particular publisher or bookseller in the Courts on charges of obscenity, indecency, etc.).

Other

- (h) Administrative action by Customs authorities analogous to, or related to, (g).
- (i) Education policy, clerical management of national schools etc.
- (j) Other, more general aspects of the Church-State relationship in the South - including, for example, fairly regular attendance of Government leaders at Roman Catholic episcopal ordinations, blessings, generally by Roman Catholic priest or bishop, of new factories, projects etc. - including those of a State or semi-State nature, religious dedication of the Army, etc.

10. It should be noted that in many cases the objections raised in these matters relate not simply to the particular prohibitions involved as such, but primarily to the fact that our Constitution, or law, or practice appears to take cognisance so obviously of religious beliefs and practice.

It is accordingly not a sufficient answer to an objection to the ban on divorce for example to point out that several of the Protestant churches are also unsympathetic to divorce. The objector may himself be against divorce while regarding this as a religious matter and therefore being also against having a civil bar to divorce facilities.