they might relate to the distribution of powers. I advised him that the Government of Canada, for its part, feels that it can go no further as part of this exercise than the constitutional guarantees that are embodied in the document and that indeed even they might find difficulty of acceptance in their present form. To go further would involve entry upon the distribution of powers, with the consequences to which I have referred. We must, then, consider three alternatives that are open to us in these circumstances.

Let us begin with the simplest alternative. The Government of Canada remains firmly of the view that we should as a minimum, achieve patriation" of the B.N.A. Act. It is not prepared to contemplate the continuation of the anomalous situation in which the British Parliament retains the power to legislate with respect to essential parts of the constitution of Canada. Such "patriation" could be achieved by means of an Address of the two Houses of the Canadian Parliament to the Queen, requesting appropriate legislation by the British Parliament to end its capacity to legislate in any way with respect to Canada. Whereas unanimity of the federal government and the provinces would be desirable even for so limited a measure, we are satisfied that such action by the Parliament of Canada does not require the consent of the provinces and would be entirely proper since it would not affect in any way the distribution of powers. In other words, the termination of the British capacity to legislate for Canada would not in any way alter the position as between Parliament and the provincial legislatures whether in respect of jurisdictions flowing from Sections 91 and 92 or otherwise.

However, simple "patriation" would not equip us with an amending procedure for those parts of our constitution that do not come under either Section 91(1) or Section 92(1) of the B.N.A. Act. To meet this deficiency, one could provide in the Address to the Queen that amendment of those parts of the constitution not now amendable in Canada could be made on unanimous consent of Parliament and the legislature until a permanent formula is found and established. In theory this approach would introduce a rigidity which does not now exist, since at present it is the federal Parliament alone which goes to Westminster, and the degree of consultation of or consent by the provinces is a matter only of convention about which there can be differences of view. In practice, of course, the federal government has in the past sought the unanimous consent of the provinces before seeking amendments that have affected the distribution of powers.

A second and perhaps preferable alternative would be to include in the action a provision that could lead to the establishment of a permanent and more flexible amending procedure. That could be done by detailing such a procedure in our Joint Address and having it included in the British legislation as an enabling provision that would come into effect when and only when it had received the formal approval of the legislatures of all the provinces. The obvious amending procedure to set forth would be the one agreed to at Victoria in application to those parts of our constitution not now amendable in Canada. (Part I of the attached "Draft Proclamation"). This could be with of without modification respecting the four western provinces. (On this last point, the federal government would be quite prepared to accept the proposed modification and it is my understanding that the other provinces would equally agree if the western provinces can arrive at agreement.)

If we took the above step, we would achieve forthwith half of our objective of last April—"patriation"—and we would establish a process by which the other half—the amending procedure—would become effective as and when the provincial legislatures individually signify their agreement. Over a period of time, which I hope would not be long, we would establish the total capacity to amend our constitution under what is clearly the best and most acceptable procedure that has been worked out in nearly fifty years of effort, since the original federal-provincial conference on this subject in 1927. Until full agreement and implementation had been achieved, any constitutional changes that might be needed, and which did not come under Section 91(1) or Section 92(1) or which could not otherwise be effected in Canada could be made subject to unanimous consent. This would impose an interim rigidity for such very rare requirements for amendment, but, as I have said, the practice has, in any event, been to secure unanimous consent before making amendments that have affected the distribution of powers.

A third and more extensive possibility still, would be to include, in the "patriation" action, the entirety of the "Draft Proclamation" I am enclosing. In other words the British Parliament, in terminating its capacity to legislate for Canada, could provide that all of the substance of Parts I to VI would come into effect in Canada and would have full legal force when, and only when, the entirety of those Parts had been approved by the legislatures of all the provinces. At that point, we would have, not only "patriation" and the amending procedure, but also the other provisions that have developed out of the discussions thus far. Here again, of course, until all the Provinces had approved the entire Draft Proclamation, any constitutional change which did not come under Section 91(1) or Section 92(1) would be subject to unanimous consent.

As you can see, there are several possibilities as to the course of action now to take. So far as the federal government is concerned, our much preferred course would be to act in unison with all the provinces. "Patriation" is such a historic milestone that it would be ideal if all Premiers would associate themselves with it.

But if unanimity does not appear possible, the federal government will have to decide whether it will recommend to Parliament that a Joint Address be passed seeking "patriation" of the B.N.A. Act. A question for decision then will be what to add to that action. We are inclined to think that it should, at the minimum, be the amending procedure agreed to at Victoria by all the provinces, with or without modification respecting the western provinces, and subject to the condition about coming into force only when approved by the legislatures of all the provinces as explained above.

The implications of the different possibilities are complex, and you will undoubtedly want to consider them with care. To facilitate consideration, Mr. Robertson would be glad to come to see you, at a convenient time, for such