

## THE CONSTITUTIONAL FRAMEWORK

Introduction:

The extension of the Federation of Malaya to become the Federation of Malaysia on the 16th of September 1963 carried with it certain economic implications. The new Federation brought in three new states viz: Sabah, Sarawak and Singapore. These three states differ from Malaya in respect of their level of political, social and economic development. The changed political relationships implies that there will have to be adjustments and a movement towards closer political, economic and social integration. The aim of this exercise is to describe the new financial and economic relationships which have been brought into being as a result of the new political arrangement. It will also seek to analyse the effects these new relationships will have as the economic position of Malaysia both in terms of its present economic position and its future economic development. The scope of this exercise will largely centre upon the financial and economic relationships between Sabah, Sarawak and Malaysia. The short-lived tenure of Singapore within the Federation and its expulsion from the Federation on the 9th of August, 1965, dictate that Singapore should be largely excluded from the scope of this study. The economic relationship of Singapore to the Federation of Malaysia remain in the whorl of political polemics and we must await the final settling down to a sensible and mutually acceptable relationship. However it would be unrealistic to ignore the existance of Singapore altogether; the intricate web of traditional economic relationships between Singapore and Malaysia have to be recognised. As such there will be references to Singapore whenever such references are pertinent and essential. But nonetheless the main focus of attention in this study would be the financial and economic relationships amongst Sabah, Sarawak and Malaya.

Brief Political Background:

Before going on to examine the constitutional framework it is necessary to briefly outline the political background of the new Federation.

Up to the formation of Malaysia each of the 4 territories Sabah, Sarawak, Singapore and Malaya were at different stages of political development.

The Federation of Malaya attained her independence from British rule on the 31st of August, 1957. Singapore achieved self-government except for defence, external affairs and internal security in 1958 while Sabah and Sarawak were still colonies of Britain until the formation of the Federation of Malaysia. These differences in the level of political development are accompanied by a corresponding lag in the level of social and economic development of the Borneo states.<sup>1</sup> These differences have a great bearing upon the constitutional arrangements which have been arrived at.

Even before the independence of Malaya in 1957 there had been discussions on the question of a merger between Singapore and the Federation of Malaya. Despite the obvious economic benefits of merger and the historical ties existing between these two territories, political obstacles remained in the way. Malaya saw the left wing political forces in Singapore as a threat to her newly-won victory over communist insurrection and the predominantly Chinese population of Singapore would have upset the racial balance against the Malays. Then in May 1961 the idea of political unity between Malaya, Singapore, and the British territories in Borneo was first mooted. The proposal offered the means through which merger between Singapore and Malaya could be achieved while at the same time affording the means through which the Borneo territories could achieve independence from British rule.

After the announcement in May 1961 a series of events rapidly took place and culminated in the actual formation of Malaysia in slightly more than two years from the time of the first announcement.

The initial response in the Borneo territories was cautious and hesitant but the first step in the direction of political unification was taken in July 1961 with the setting up of the Malaysia Solidarity Consultative Committee.<sup>2</sup> The Committee had as its objectives the collection of views on the creation of Malaysia, the dissemination of information on the question of Malaysia and the fostering of activities which would expedite the realisation of Malaysia. The committee produced a memorandum which supported Malaysia and made recommendations for various aspects of constitutional arrangements.

On the 23rd of November, 1961 a Joint Statement was issued by the British and Malayan governments as a result of dis-

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<sup>1</sup>See statistical appendix.

<sup>2</sup>Set up in July 1961 following a Commonwealth Parliamentary Association Regional Conference in Singapore. It comprised of 23 members from Sabah, Sarawak and Malaya.

cussions in London. It announced the setting up of a Commission to ascertain the views of the people of Sabah and Sarawak.

The 5-man Commission comprised of two members nominated by the British government and two by the Malaysian government and was under the chairmanship of Lord Cobbold. The Commission began its hearings in Sarawak on February 20th, 1962 and interviewed over 4,000 people and considered some 2,200 written submissions from town boards, and religious, political and native leaders. The Commission's report was published in June 1962 and the Commission's conclusion was that about one-third of the population in each territory favoured the early realisation of Malaysia another third was in favour but insisted on various conditions and safeguards. On the strength of this finding the Commission urged an early decision on the creation of Malaysia.

The Cobbold report was considered by British and Malayan Ministers in July 1962 and a decision was reached that the proposed Federation of Malaysia should be brought into being by August 31st, 1963. A decision was also reached to set up an Inter-Governmental Committee in which the British, Malaya, Sabah and Sarawak governments would be represented. The Committee was to work out the future constitutional arrangements, including safeguards for the special interests of Sabah and Sarawak.

Meanwhile a controversial Referendum was held in Singapore. On 1st September, 1962, the results of which endorsed the government's proposal for entry into the Malaysian Federation. On the 13th of September the North Borneo Legislative Council gave its unanimous approval to the formation of Malaysia. On the 27th of September the Sarawak Council Negeri took a similar stand. As such the way appeared to be all clear for the establishment of Malaysia. However strident external opposition arose to the proposed Federation from Indonesia and the Philippines. It would be mundane to trace the development of Indonesian 'Confrontation'. It would suffice to only note that the implementation of the Malaysia agreement was finally implemented only on the 16th of September, 1963 instead of on 31st August.

The Confrontation posed the threat of military conflict and also had serious economic effects. The political instability affected the climate for investment and also necessitated a substantial diversion of resources into Defence expenditure. The severance of trading relationships also affected the new nation especially Singapore's entrepot trade.

### General Features of the Constitution

The Malaysia Agreement, <sup>was</sup> signed on the 9th of July, 1963 by representatives of Britain, Malaya, Singapore, Sabah and

Sarawak.<sup>3</sup> The agreement specified the terms on which the new federation was to be formed in the constitutional instruments which were annexed to the agreement. It provided for the passing of the Malaysia Act by the Parliament of the Federation of Malaya and specified the constitutional amendments necessary to allow the entry of three new states on specified terms. Among other things, it also provided for the implementation of the assurances, undertakings and recommendations contained in the Inter-governmental Committee report in so far as they are not implemented by express provision of the Constitution of Malaysia. Annex J of the agreement outlined the provisions for the creation of a common Market in Malaysia "in order to facilitate the maximum practicable degree of economic integration of the territories of Malaysia".<sup>4</sup>

The salient fact to note about the Constitutional arrangements it gave rise to a federation of "irregular characteristics" ... in which the principle of proportionate parliamentary representation was abandoned; in which the legislative competence is quite variable among the states; in which their financial arrangements with the centre differ; in which the mobility of population is restricted between some states but not between others; in which variant aspects of citizenship are recognised; and in which even amendments to the Constitution are different for some states from that for others. The Federal Government remains the strongest unit in the federal structure; but it is not as powerful vis-a-vis some States as others".<sup>5</sup> Although the Malaysia Act, 1963 provided that the new states "shall be federated with the existing states of the Federation", the Malaysian constitution appears, in some particulars, to regard the original states as one unit in a new four-unit grouping. This lack of symmetry as compared to the original constitution of the Federation of Malaya is a reflection of the underlying political and economic realities. Sabah and Sarawak were still colonies of Britain at the time of the formation of Malaysia and were still largely undeveloped areas which lagged behind Malaya in the field of social and economic development. The irregularities in the federal structure were, as such, necessary to allay the genuine apprehensions of the Borneo states about political and economic domination by Malaya.

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<sup>3</sup>Malaysia: "Agreement concluded between the Federation of Malaya, United Kingdom of Great Britain and Northern Ireland, North Borneo, Sarawak and Singapore" (Kuala Lumpur: Government Printer, 1963) - hereafter will be referred to as the "Malaysia Agreement".

<sup>4</sup>Ibid. Pg 226.

<sup>5</sup>Groves "The Constitution of Malaysia" (Singapore: Malaysia Publications Ltd, 1964) Pg 133.

## Special Provisions and Safeguards for Sabah and Sarawak

The special position of Sabah and Sarawak within the Federation will be illustrated by the existence of the following constitutional safeguards.

1. Legislative powers: Compared with the states in Malaya, the state list for Sabah and Sarawak carries the following additional subjects, which the state governments have legislative competence - native law, ports and harbours, cadastral land surveys, libraries, mukims and historical monuments and in Sabah the Sabah Railways. The concurrent list for Sabah and Sarawak also carry additional items among which are personal law, water power, agricultural and forestry research and in Sabah medicine and health until the end of 1970.

2. On the national language: the termination of the use of the English Language as the official language in the Borneo states can be effected only after 1973 and then only if it is with the concurrence of the legislatures of those States.

3. Article 161 E of the Constitution ensures that no amendments can be made to the constitution with<sup>out</sup> the concurrence of the Borneo States on matters affecting citizenship rights, the quota of seats in the federal parliament, the financial arrangement between the Federal and state governments, the legislative competence of the State Legislatures, the official language in the State and the special position of Natives.

4. With 40 members in the House of Representatives the Borneo states have greater representation, in proportion to their respective populations, than the states in Malaya. The eleven states of Malaya have 104 seats, 72% of the total number of seats, although 86% of the population of Malaysia is resident there. Thus the Borneo states with 14% of the total population have 28% of the seats in the House of Representatives.

5. Unlike the states of Malaya, the Borneo states are not obliged to follow the policy formulated by the National Land Council and the National Council for Local Government when they wish to become so bound. Likewise the right of the Federal Government to proclaim areas as "development areas" does not extend to the Borneo states.

6. The Immigration Act of 1963 grants the Borneo States the right to regulate entry into their states. With the exception of members of the Federal Government, the Judiciary, the Public Services and politicians, non-Bornean Federal Citizens have to obtain Passports or Internal Travel documents, before they are allowed entry into any Borneo state.

### Financial Provisions

The fiscal relationships between the states in Malaysia and the Federal Government is based on certain principles which are common in many federal structures. Firstly the States are granted the right to independent revenues, that is, independent sources of revenue over which the State have complete control. Secondly the principle of derivation is also applied by which states are given a claim of revenues collected within its boundaries notwithstanding the fact that the tax lies wholly within the competence of the Federal Government. It is applied such that the tax revenue should be divided between the states in the proportion in which people of these states have contributed to the taxes in question. Thirdly the principle of needs provides that there should be a fair distribution of Revenues amongst the people of the Federation. In this case special grants and assignments are usually given to the poorer states.

Article 110 of the Federal Constitution grants the states the right to independent revenue and these sources of state revenue are revenues from lands, mines and forests, licenses other than those connected with motor vehicles, electrical installations and registration of businesses, entertainments duty, revenue of local authorities, water rates, rents on state property interests on State Balances, receipts from State property, <sup>8</sup> Muslim revenue, fees in non-federal courts and Treasury trove. Each state is to also receive 10% or such greater amount as may be so provided of the export duty on tin produced in the State. The states are also eligible to receive such proportions as may be prescribed by Parliament of the export duty of minerals produced in the state. This provision with regard to mineral revenues illustrates the principle of derivation referred to in the preceding paragraph.

The special position of the Borneo states is borne, out by the fact that in addition to the revenues assigned to the States that has just been enumerated there are additional sources

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<sup>7</sup>These provisions have economic implications since, if these powers are rigidly exercised by the states, it could severely restrict the mobility of Labour within Malaysia. This question will be discussed in a later chapter.

<sup>8</sup>See Tenth schedule Part III of the Constitution of Malaysia

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of revenue assigned to these states.<sup>9</sup> These are the import duty and excise duty on petroleum products, export duty on timber and other forest product, state sales taxes and Fees and dues from ports and harbours other than federal ports and harbours. The Borneo states are entitled to receive royalty and export duty on any mineral chargeable other than tin, so long as the total of royalty and export revenue does not exceed 10% ad valorem of the value of such exports. In addition the Borneo states are also entitled to the revenues from registration and licence fees on motor vehicles up to 1974. Lastly Sabah is entitled to 30% of all customs revenue so long as she continues to bear the cost of Medical and Health services on her own.

The states are also assigned certain grants by the Central Government. Each state is entitled to a Capitation grant payable at the rate of \$15.00 per person for the first 50,000 persons in the state, \$10.00 per person for the next 200,000 people and \$4.00 per person for the remainder. The states are also entitled to State Road Grants based on the average cost of maintaining state roads and the total mileage of state roads.

In accordance with the principle of needs the Borneo states are given special grants<sup>10</sup> over and above those available to all states. Sarawak is entitled to an Annual Balancing Grant of \$5.8 million each year and to an Escalating Annual Grant which shall amount to \$3.5 million, \$7 million, \$11½ million, \$16 million and \$21 million in 1964, 1965, 1966, 1967 and 1968 respectively. Sabah is entitled to a Growth Revenue Grant of 40% of the difference between the net revenue derived by the Federation from Sabah in 1963 and the net revenue which would otherwise have accrued to Sabah. Sabah is also entitled to a minimum amount of \$5,179,500 in respect of State Road Grants in any year before 1968. Both states are also entitled to grants equivalent to the cost of maintaining the State Road Transport Department in any year before 1974.

These special concessions in respect of independent revenues and special grants is thus a reflection of the special position of the Borneo states and their greater relative need for financial assistance.

It will be thus seen that the lack of symmetry in the Federal structure is a direct result of the necessity to give special safeguards and concessions to the Borneo States. But it will also be noted that these measures are mainly intended to be temporary and there are specific provisions for reviews within certain time periods. For example the proportion of Parliamentary seats cannot be changed before 1970 and the financial grants are

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<sup>9</sup> See Tenth Schedule Part V of the Federal Constitution.

<sup>10</sup> See Tenth Schedule Part IV of the Constitution.



subject to a review within six years of the formation of Malaysia and every five years thereafter. There is provision of an independent assessor to intervene in cases of a disagreement over grants to the Borneo states between the state and Central Governments. The National language is also not to be introduced into the Borneo states before 1970. The task of political and economic integration of Sabah, Sarawak and Malaya has to be a slow and gradual process and therefore these constitutional provisions are necessary during the transitional period.

In conclusion it is necessary to note the following points about the constitutional framework which have particular economic significance.

1. The Immigration Act 1963 results in a restriction on the mobility of labour within the three regions of Malaysia. If this provision is jealously and inflexibly maintained by the Borneo states then it could create a barrier to economic development since it constitutes an interference with the free play of market <sup>forces</sup> sources. For example the Labour shortage in Sabah has not been alleviated to any significant extent by a movement of Labour from Malaya to Sabah.

2. The fact that the Sabah and Sarawak are not obliged to abide by policy formulated by the National Land Council could lead to an unnecessary lack of uniformity in land utilisation. This coupled with the lack of authority for the Central Government to declare 'development areas', could mean some sacrifice of some uniformity in overall national economic development.

3. The financial arrangements reflect the fact that there will have to continue to be a redistributive flow of funds from Malaya to the lesser developed Borneo States.<sup>11</sup>

4. The constitution gives recognition to the imperative necessity of effecting economic integration and Annex J of the Malaysia Agreement spells out the proposal for a common market for Malaysia. (This will be discussed in a separate Chapter)

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<sup>11</sup> See Chapter 5 for an elaboration of this point.