

COLONY OF



NORTH BORNEO

COBBOLD REPORT



PUSTAKA
NEGERI
SARAWAK

COBBOLD REPORT

FOREWORD

The members of the Commission, who, it will be recalled, were The Right Honourable Lord Cobbold, P.C., Chairman, Sir Anthony Abell, K.C.M.G. and Sir David Watherston, K.B.E., C.M.G. nominated by the Government of the United Kingdom, and Dato Wong Pow Nee, P.M.N. and Enche Mohammed Ghazali bin Shafie, nominated by the Government of the Federation of Malaya, were charged with ascertaining the views of the peoples of North Borneo and Sarawak on the question of Malaysia and in the light of their assessment of these views to make recommendations.

This booklet gives a summary of the report and, while every effort has been made to reflect accurately the views and recommendations of members, this cannot be guaranteed. A report of this nature must be read in full. It is hoped however that this booklet will serve as a means of spreading more widely the significant recommendations in the report and the background against which they were made.

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THE REPORT

CHAPTER I

SARAWAK

The first chapter of the report deals with the enquiry in Sarawak.

A brief description of the country is given. The Commission state that they were much impressed with the efforts made by Residents and District Officers to ensure that the implications of the Malaysia proposals were understood despite the problems of communications and illiteracy.

They note the increasing strain on race relations arising from the possibility of early withdrawal of British authority. The Malaysia proposal had accentuated this development.

They state that there is confusion between the functions of a constitutional Head of State and an executive Governor. The Head of State has become a symbol of the transfer of power. Native races insist that the Head of State should be a native. Immigrant races want anyone born in Sarawak to be eligible. All races however realise that the administration must continue to depend on British officials.

The Commission record that non-Malay natives fear the return of Malay domination under Malaysia. The suggested name Malaysia, the use of Malay as the national language and Islam as the national religion emphasized these misgivings.

The Commission note the high esteem of all communities for the colonial administration, its impartiality and the progress which has been made under it. They note the hope that present officials would remain.

The Commission were often reminded of the nine Cardinal Principles of the Rule of the English Rajahs, now enshrined in the Constitution. Some natives however would not wish these principles to stand in the way of Malaysia.

Many people were influenced by their admiration for the Malayan Prime Minister and progress in Malaya. Unfortunate repercussions may follow if hopes of similar progress in Sarawak were not fulfilled.

Many people were aware of the threat of Communist subversion but the Commission considered that the anti-Communist position of present Federation leaders was also an important factor in opposition to Malaysia. A large section of the Chinese business community and many of the native races dislike change and fear the unknown.

A major strand in opposition to Malaysia lies in the demand for independence first, arising from a genuine fear of discrimination against the Chinese, and against native customary law and practice. Concern was also felt about migration from other territories in the proposed Federation.

The Commission felt that if assurances were given on safeguards, many in opposition might come round to support Malaysia.

Those for Malaysia generally want speedy implementation and a strong Central Government to deal with external relations, defence, internal security and economic development. All native groups wanted special privileges for the natives and the acceleration of development and native education. They also insisted that land, forestry and agriculture should be controlled by the State and that customary rights should be safeguarded.

Groups from other races, other than outright opponents, expressed a desire for the retention of British officers, the control of immigration by the State, and no rapid change in administration or taxation.

Natives felt that only a native should be eligible for Head of State; others, that anyone born in Sarawak should be eligible.

Other general differences of opinion were over eligibility for Head of the Federation, Islam as a national religion, Malay as a national language and the powers of the Federal and State Governments.

The next section of the chapter deals with the views of the various races and political parties.

CHAPTER II

NORTH BORNEO

The second chapter deals with the enquiry in North Borneo. The opening paragraphs give a general description of the country, its history and its progress. It refers to the exhilarating atmosphere in North Borneo with its rapid development, improving finances and bright and prosperous future.

Reference is then made to the arrangements made for the Commission and Government's efforts to provide every facility for the Commission.

The Commission were impressed by the background of friendly race relations but note the conflict of opinions which arose over the Malaysia proposals. They refer to a growing awareness that present conditions must change, and record the assurances and safeguards which people of all races had asked for. These cover subjects such as the Head of State, Head of the Federation, Immigration, Religion, Language, special privileges for Natives, the status of North Borneo in the Federation, Federal subjects, amendments to the Constitution, the possibility of secession, and citizenship.

The Commission note that many of the fears expressed in Sarawak were echoed in North Borneo, and there was the same desire that British officers should be encouraged to remain and that there should be no rapid changes in administrative arrangements.

The report then refers to the representations made by the various political parties in North Borneo.

CHAPTER III

ASSESSMENT OF EVIDENCE

Chapter III of the report deals with the assessment of evidence. It records the views of the Chairman and the general consensus of opinion of the members that about one-third of the population in both North Borneo and Sarawak strongly favours early realisation of Malaysia without too much concern about terms and conditions, another third are in favour of Malaysia with safeguards which vary in nature and extent, and the remaining third either wish for independence before Malaysia or the continuance of British rule for some years to come.

The Commission considers that if the reservations of the group demanding safeguards were substantially met this group would generally support the proposals, and once a firm decision was made some of the anti-Malaysia group would be likely to abandon their opposition. There would probably remain a hard core of about 20% of the population in Sarawak and perhaps less in North Borneo which would remain opposed to Malaysia on any terms unless preceded by independence and self-government.

The Commission records that it could not guarantee that opinion might not change one way or the other in the future.

CHAPTER IV

RECOMMENDATIONS

Chapter IV of the report gives the recommendations. It records a fundamental divergence of opinion among the members of the Commission on the question of phasing, as to whether the Federation should be formed in one or two stages. The recommendations are therefore in four separate categories:—

First—recommendations on certain general matters which are unanimous except where otherwise stated:

Second—recommendations by the United Kingdom members;

Third—recommendations by the Malayan members;

Fourth—a summary by the Chairman and his recommendations.

The general recommendations are as follows:—

(a) *Decision.* Governments should take a decision of principle as soon as possible.

(b) *Constitution.* The present Federal Constitution should be adapted. The Federation of Malaya would cease to exist and would become the Federation of Malaysia with a strong Central Government. The Borneo States should have extra autonomy and safeguards and some guarantee that these should not be modified without the concurrence of the State.

(c) *Head of Federation.* The Commission sees no way of meeting the demand that the Heads of State of North Borneo and Sarawak should be eligible for appointment as Head of the Federation.

(d) *The Name "Malaysia".* The Commission sees no alternative to the name "Malaysia" for the proposed new Federation.

(e) *Religion.* There is divergence of opinion on religion. The Chairman and the British members recommend that there should be complete religious freedom in the Borneo territories and that the Federal provisions on Islam should not be extended to the Borneo territories. Later when they have a fully elected legislature they can decide for themselves.

The Malayan members recommend that Islam should be the national religion of the Federation.

(f) *Languages.*

National Language. The Chairman and the Malayan members consider that Malay can be the national language. The British members consider that this should be decided by the Borneo people themselves when they have fully elected representation.

Official Language. The Chairman and the British members recommend provision for Malay and English in Borneo without time limit.

General
Recommendations.

The Malayan members recommend English for 10 years and thereafter subject to agreement between the Central and State Governments. *Other Languages.* The Commission recommends that other local languages at present in use in the Legislatures should continue for 10 years. The Malayan members recommend continuance only if the Central Government approves. The Chairman and the British members consider that this should be a matter for the State to decide.

- (g) *Immigration.* The Commission recommends that immigration from outside Malaysia into any part of it should rest with the Federal Government, and that the Federal Government should guarantee unrestricted entry for employment of persons recruited by a State Government, except on security grounds. States should control immigration within Malaysia into North Borneo and Sarawak with guarantee of free entry of Federal officials. Entry from Borneo into Malaya should not be restricted.
- (h) *Right to secede.* The Commission recommends that there should not be a right to secede.
- (i) *Borneanisation.* The Commission recommends the Borneanisation of the Public Service should proceed as quickly as possible.
- (j) *British officers.* The Commission recommends that every effort should be made to encourage them to remain as long as needed.
- (k) *Citizenship.* The Commission's recommendations are lengthy. The main ones are:—
- (1) A citizen of the U.K. and Colonies born or naturalised in North Borneo or Sarawak before Malaysia should become a Malaysian citizen provided he has been a permanent resident for a continuous period of 5 years beforehand.
 - (2) that 8 out of 12 years' residence shall qualify for registration as a citizen, subject to certain conditions.
 - (3) that otherwise present Malayan citizenship laws should apply. This will mean that persons born in Borneo after Malaysia will be citizens if one of their parents is a citizen or is permanently resident in the Federation.
 - (4) The citizenship provisions should be written into the Constitution.

The next series of recommendations are made by the British members.

Recommendations by the British Members.

They consider that Malaysia is an attractive and workable proposal and offers the best solution for the future of the Borneo territories. A decision of principle should be taken as soon as possible by the British and Malayan Governments subject to debate and support by a majority of unofficials in the Borneo legislatures. They consider that the first step should be the creation of a Federation of Malaysia within 12 months. After that they recommend a transitional period because of their strong conviction on the following points:—

- (a) They consider that Her Majesty's Government has clear obligations to carry political development in the Borneo territories to the stage where people are able to play their full part in their own Government. They do not consider that this stage has yet been reached in North Borneo or Sarawak where unofficials have not yet been given even semi-ministerial responsibilities.
- (b) They consider that the appointment of a Chief Minister and the introduction of a ministerial system should take place as soon as possible but they strongly believe that for this advance to take place at the same time as the appointment of a constitutional Head of State and all the changes and adjustments, both emotional and political, involved

in the transfer of sovereignty and the transfer of many of North Borneo's and Sarawak's present powers to a Federal Government in Kuala Lumpur would seriously overtax the administration and create a sense of bewilderment and a feeling of insecurity.

- (c) They note that the idea of a popularly elected Government is still strange to a large section of population, and so also is the concept of a constitutional Head of State. People are accustomed to a Governor who governs.

The British members consider that any weakening in authority in Jesselton or Kuching in the next few years would involve serious security risks. They refer to the regrettable growth of racial discord and believe that until this has been given time to subside it would be difficult for local Heads of State to be selected who would command loyalty and respect, and who would be capable of discharging a delicate and invidious task.

The British members attach overriding importance to the maintenance of efficient administration and law and order in the years immediately ahead. They consider, and state that this is common ground among all members of the Commission, and among an overwhelming majority of witnesses, that it is absolutely essential that the services of expatriate officers should be retained for a number of years. They emphasise that the departure of a substantial proportion of expatriate officers would almost certainly mean a breakdown of normal administration. They consider that any solution which does not lead to the retention of a large proportion of expatriate officers would be doomed to failure.

They consider that, once Malaysia is a going concern and that officers are aware of the progress in the Federation of Malaya since independence, many of them may be willing to serve the new Federation.

Thus during the transitional period they consider that the pattern should be:—

Transitional Period.

- (a) Defence, External Affairs and anti-subversive aspects of internal security should be transferred at once to the Federal Government.
- (b) North Borneo and Sarawak legislatures should elect representatives to the Federal Parliament from their own unofficial members, the two territories having a smaller quota of seats in the Federal Parliament during the transitional period.
- (c) Sarawak and North Borneo Heads of State should continue to be called Governors and have similar executive powers to those exercised by the Governors at present.
- (d) The Governors should be advised by Executive Councils at which they would take the chair. Chief Ministers and a ministerial system should be introduced as soon as possible for State subjects, Federal subjects remaining the responsibility of officials. In particular the Chief Secretary, the Attorney-General and the Financial Secretary should remain *ex-officio* members of the Executive Councils and the Legislatures during the transitional period.
- (e) In North Borneo there should be an early electoral system for the legislature. Unofficial members should be increased in both territories and Speakers should be appointed at an early date.
- (f) As soon as possible after a decision to create a Federation is taken, a Joint Committee with Federal, Sarawak and North Borneo representatives under an agreed independent Chairman should be appointed. Senior Officials and Unofficials should sit on this committee. It would make recommendations as to the timing and manner of integration, and the safeguards which should be incorporated into the Constitution.

Working parties should work under the Joint Committee to consider the judicial, economic and educational fields and the public service, and other matters.

- (g) There should be close co-operation between the Federal and State Governments during the transitional period.
- (h) The basis of employment of expatriate staff should remain unchanged. A generous compensation scheme should be introduced at the end of the transitional period to encourage them to stay.
- (i) The transitional period should be for 5 years adjustable to a minimum of 3 and a maximum of 7. During the period the States should make appropriate financial contributions for services transferred to the Federal Government. Expatriate staffs should however remain a State responsibility.

The British members recommend that on the creation of Malaysia, the United Kingdom should surrender sovereignty and agreement would be reached as to the ultimate division of State and Federal powers. The Federal Government would at once take over responsibility for Defence, External Affairs and aspects of Internal Security. Powers and functions in respect of all other matters ultimately to be allocated to the Federal or Concurrent Lists should be delegated to States for a period of 3 — 7 years.

The States would be administered during this period by a Governor appointed by the Agong on the joint nomination of the Agong and the Queen. At the end of the period Sarawak and North Borneo would have permanent constitutions on the lines of Penang and Malacca.

For the long term arrangements there should be a balance between ensuring a strong Federation and separate identities of the Borneo States. Racial and other problems in Borneo are quite different to those in Malaya and distances are so great as to make day to day administration from Kuala Lumpur impracticable and undesirable.

The British members recommend that the Joint Committee should consider the desirability of regionalising the more important of the Federal posts and services in Borneo as the practical administration must be carried out on the spot. Serious consideration should be given to the appointment of a Minister for Borneo Affairs with general responsibility for Federal subjects in Sarawak and North Borneo.

The quota of seats in the Federal Parliament should take account of the size of the Borneo territories as well as the population.

They recommend that the Head of State should be appointed by the Head of the Federation after consultation with the Chief Minister of State, with a constitutional position the same as that of the Governors of Penang and Malacca. They consider that the first Governor after the transitional period should be a Native.

In view of the distances involved, Sarawak and North Borneo should maintain a separate High Court with its own Chief Justice, with appeals to the Federal Supreme Court.

One British member is not in favour of constitutional provisions for special privileges for indigenous races. The other British member considers that they should be given not less favourable treatment than the Malays in Malaya, subject to review after 10 years.

They consider that the allocation of functions between Federal, State and Concurrent Lists should generally follow the existing provisions in the Constitution of the Federation of Malaya, but make the following reservations:—

- (a) For land, agriculture, forestry, local customs and usage, power should clearly rest with the States.
- (b) Education needs special consideration. The aim should be Federal policy and local administration. English should be retained as the medium of instruction in schools.
- (c) Finance should be Federal in the long term, but it will be necessary to proceed gradually. They suggest that States might retain their own borrowing powers.
- (d) Tariffs should eventually be aligned but this should be done gradually.
- (e) Large port and harbour works should be Federal but smaller installations on the Concurrent List.
- (f) Fisheries should be on the Concurrent List with day to day administration a State matter.
- (g) Some degree of concurrence may be appropriate for Labour and Social Security.
- (h) The welfare of aborigines in Borneo should not be a Federal matter.

On the Public Services the British members recommend that officers in federalised departments should not be transferred to other parts of the Federation without their consent, nor should federal terms of service be applied to them unless they opt. Promotion prospects of officers in federalised departments within North Borneo and Sarawak should not be prejudiced.

The Public Service.

Officers in Federal and Joint Services should come under the appropriate Federal Service Commission. There should be close liaison between the Federal Service Commission and the State one.

A Public Service Commission should either be established in North Borneo or preferably there should be a single one for the Borneo territories which should be given executive powers from the end of the transitional period.

An Advisory Board should consider whether the Malayan quota system for recruitment should operate in Borneo. Persons recruited to Federal services after Malaysia should be liable to serve anywhere in the Federation. Federal services in Borneo should as far as possible be staffed by local recruitment.

A Working Party should be set up to consider staff matters. Uniformity in salaries, conditions and qualifications should be the objective.

The British members stress again the need to retain British officers and recommend determined efforts to fill existing staff vacancies, if necessary on contract.

They consider that one of the main attractions of the Malaysia proposals is the rural development programme in Malaya and agree with the Malayan members on this, and recommend a Development Board in Sarawak and North Borneo as soon as possible with Federal and State representatives.

The next section of the report deals with the recommendations of the Malayan members.

Recommendations by the Malayan Members.

They say that the desire for special provisions and safeguards requested relate mainly to the privileges of natives and the protection of legitimate interests of others, on matters such as citizenship, religious freedom, representation, languages, immigration and development. All people who requested these safeguards wanted

British officers to be retained until the Borneo people could undertake the responsibilities of administration themselves. This reflected their trust in the present British officials whose advocacy of any plan for Malaysia would help to instil confidence in the future.

They then record the various parties and organisations which supported Malaysia and refer to the unanimous support of the Malaysia Solidarity Consultative Committee, the opinions of which, they consider, demand serious consideration. They state that opposition to Malaysia came mainly from those who demanded independence first, after which they were ready to consider the possibility of closer association between Malaya and other Borneo territories. The Pasok Momogun was the only predominantly native organisation of any consequence which opposed Malaysia, and the Malayan members believe that the party would be more receptive if fears of domination by the Federation of Malaya could be set at rest.

The fear of Malay domination and swamping from Malaya and Singapore is the dominating factor among many groups and individuals who are satisfied with the present colonial administration and have hopes of more progress in the future.

The Malayan members were deeply impressed by the trust in the present colonial administration. People were not categorically opposed to Malaysia, only puzzled and afraid. Positive assurances, explanation, and tangible demonstrations were needed. Any lingering misgivings would be removed if the colonial administration could unequivocally commend Malaysia to the people.

The Malayan members state that there is therefore left a body of resistance to Malaysia which, though small in number is extremely vociferous and active. It springs from either ideological identification with the Communist cause, or an emotional identification with Chinese chauvinism, or an ardent belief in independence on their own on the basis of ultra nationalism in the narrowest sense.

Different elements of opposition require different responses. It would be a grave error to treat other forms of opposition in the same way as Communist opposition.

The Malayan members do not agree with submissions made that Malaysia is premature and would be more acceptable if delayed until the development of a complete electoral and ministerial system. They were impressed by the quality of leadership in North Borneo and Sarawak, the emergence of political leaders of high calibre and consider relative inexperience is not insurmountable. They are convinced that present leadership is in a position to guide the people, not only towards self-government, but also self-government within Malaysia.

They state that both natives and non-natives supporting Malaysia stressed that it should come quickly to avoid racial conflict. The Malayan members shared this view and feel strongly that the transfer of sovereignty must take place within the next twelve months. They consider that the admission of North Borneo and Sarawak as constitutional states of the new Federation would serve as a major political advancement. They will then be constituent parts of a sovereign nation which derives its independence from the status of its constituent parts.

They then state that their views on the name of the Federation, the Head of the Federation, National and Official Language, National Religion, Citizenship, and the right to secede are recorded in the joint recommendations.

On the question of representation in the Federal Parliament, they strongly recommend that this should take account not only of the population of the Borneo territories, but also their size and potentialities. The existing Election Commission increased by the addition of a Borneo member should decide this.

If people from Malaya and Singapore are not to have unfettered entry into Borneo, only people normally resident in the Borneo territories should be allowed to stand and vote in Federal and State elections in Borneo and should be prevented from voting or standing in elections outside their States. Initially election to the Federal House should be by State Legislatures from among their own unofficial members. Unofficials in State Legislatures should be increased.

Borneo representation in the Senate should also take account of other factors than population.

The Malayan members recommend that the native races in Borneo should be put in an analogous position to the Malays under the present Malayan Constitution, and this should be written into the Constitution, and not subject to review separately from any review of the position of the Malays as a whole. The position is complicated. A balance must be held not only between natives and non-natives but also between various native races. They recommend that an Advisory Board should consider the problem. The definition of 'native' should follow existing law. Sarawak and North Borneo law on the matter should be brought into line and perhaps slightly widened.

Special Position of Indigenous Races.

The provisions regarding the special position of natives should apply to Federal subjects only unless the States decide to adopt similar provisions for State subjects.

The Malayan members' views on Constitutional safeguards are set out in the joint recommendations earlier in the report.

They recommend that executive authority in each State should be the Head of State appointed by the Agong after consultation with the Chief Minister. He would act in accordance with the advice of a Council of Ministers, Executive Council or Supreme Council answerable to the State Legislature. He should be independent of any control from the Central authority and have a status similar to that of the present State Rulers and Governors in the Federation.

They do not think that he should be elected. It would be sufficient for him to owe his appointment indirectly to election. He could be appointed for a period of years but removable by a two-thirds majority in the State Legislature. With reservations they consider his title should be 'Governor'.

The first Head of State should be appointed by the Agong on the joint nomination of the Queen for not less than two years, after which the State Constitution would apply. Since the Head of State is a constitutional post, it should be possible for others than natives to be eligible for it.

Each State would also have a Chief Minister. He would be appointed by the Head of State from among members of the Legislature and would be a person who commands the confidence of the House.

The present electoral college system in Sarawak should be maintained, and introduced in North Borneo to ensure a smooth transition. Until there is a fully elected legislature, the State Secretary (Chief Secretary), the State Legal Adviser (Attorney-General) and the State Financial Officer (Financial Secretary) should be *ex-officio* members of the State Legislatures and the State Executive or Supreme Council.

The States would have their own Constitution and have autonomy as provided in the current State List and in such other matters as may be specially retained. While specific powers will be exercised by the Federation, residual powers will remain with the State.

Powers of States.

The Federal Government should exercise the powers in the current Federal List, subject to:—

- (a) *Immigration.* The Malayan members' views on this were included in the joint recommendations.
- (b) *Shipping and Navigation.* There is a case for distinguishing between large and small installations. The latter would be appropriate to the Concurrent List and this should be examined by a Working Party.
- (c) *Fisheries.* Fisheries should be on the Federal List but nothing should be done to prejudice the present exclusive rights of Borneo fishermen.
- (d) *Education.* This should be a Federal matter but a Working Party should examine the integration of systems and policies.

The Malayan members consider that Sarawak and North Borneo should be admitted as States as soon as possible. They state that a blue print to be put into effect at a later date would provide opportunities for disruption. The Central Government could not assume responsibility for any matter until sovereignty has been transferred. Legislative and Executive authority in Federal matters must be transferred at the same time as sovereignty. A graduated constitutional and legal transfer of powers would be a cause of delays, would impede the creation of a strong central authority and allow the creation of friction between the Central Government and the States. It would be extraordinarily cumbersome if both State and Federal Legislatures had to be consulted each time a transfer of responsibility was to be effected. In any case matters of everyday concern to people would remain on the State List. The Central Government must be responsible from the outset for progressive economic development, rural development and increased attention to education if peoples' expectations are not to be disappointed.

This would also avoid difficulties over keeping financial problems and representation in step with progressive transfers of power.

They think this is the only scheme which will meet peoples' wishes.

They are aware of the dangers of a complete breakdown of administration. A transitional period during which transfer of functions should be worked out carefully and gradually is important. They recommend that when the Federal Government is legally and constitutionally vested with Federal powers on the transfer of sovereignty, there should be immediate delegation to the State Chief Minister of as many executive functions as may be necessary for the maintenance of good administration. Provision should also be made for State authorities to execute certain functions for the administration of specific Federal laws. They urge the general continuance of existing State laws on Federal matters, which would become Federal laws until amended or repealed by Federal Parliament, but External affairs, Defence and Internal Security must be excluded from this arrangement. Otherwise, nothing would change during the transitional period for the purposes of ordinary business.

These transitional arrangements would continue as long as necessary to avoid a breakdown in administration. A Working Party should be formed of equal numbers of State and Central Government officials to advise on the integration of laws into the Federal system. This Working Party should not concern itself with financial, fiscal, economic subjects, educational policies or judicial and legal matters, which merit separate attention.

The Public
Service.

In view of distances from Kuala Lumpur, Federal posts and services in Borneo should be regionalised, with a regional head in Borneo with sufficient authority to deal with local problems. Titles of Heads of Departments should not be changed immediately and suitable titles for regional heads should be coined. Control of Federal services should remain with the appropriate Federal Commission, but some arrangement should be made for its functions to be carried out in Borneo by a Borneo Federal officer or by a Board with some Borneo representation.

An officer in a Federalised department should not be transferable to the Federal service, nor should his terms of service be altered without his consent. Promotion prospects in his original area should not be prejudiced.

The ultimate aim should be uniformity of service conditions but present practice should continue subject to review by an Advisory Board.

Nothing should be done for a suitable period, and then only if absolutely necessary, to standardize uniforms of uniformed services, especially the police.

There should be a convention of consultation on confidential reports on Federal officers transferred between any State in Malaysia.

The Borneo States should not find it too difficult to co-operate in sharing state officers.

On the question of the Judiciary the Malayan members consider that there should be one Supreme Court for Malaysia with unlimited jurisdiction throughout the Federation and between the Federal Government and States, and States themselves. There should be a High Court in Borneo with unlimited original jurisdiction in all matters arising in the area except those reserved for the Supreme Court. The High Court should also be a Court of Appeal. The aim should be to establish a uniform system of Magistrates Courts.

The
Judiciary.

Legal and Judicial services should be under a Commission with the Chief Justice of Malaysia as Chairman, but Judges should be appointed as provided in the Malayan constitution. Postings of judicial officers should be made by the Chief Justice of Malaysia, and of legal officers by the Federal Attorney-General.

A Joint Working Party should examine the integration of legal and judicial services into the Federal system.

On Financial matters North Borneo and Sarawak must be subject to the same arrangements applicable to present States in Malaya but certain unequivocal safeguards must be given. A formula must be worked out whereby North Borneo and Sarawak would be assured of an annual grant such that the total revenue of the States after addition of this grant would generally meet its total expenditure. This formula should be flexible to allow for a changing situation and future development. State Governments should be able to borrow with the approval of the Central Government, but there should be co-ordination of borrowing plans. During the transitional period existing Federal laws and practices relating to taxation, trade and tariffs should not apply in States. The functions could be delegated to the Chief Minister, and changes towards a common structure should be gradually worked out. A Joint Working Party (Economic) should be set up for each new State to consider integration of these matters into the Federal system.

Financial
Matters.

Great expectations have been raised by the publicity given to rural development in Malaya and Malaysia will be judged on its results in this field. It is essential that from its inception Malaysia should offer, and be seen to offer, definite advances in rural improvements, schools and medical and other social services. Training schemes must also be stepped up.

The Malayan members recognise that Districts, Residencies and Divisions, and the States themselves should have power to decide at the initial level the aims and best methods of development in accordance with local needs within the framework of the national good. The Central authority should formulate and implement an overall and integrated development plan but should not have a completely free hand in this as this might give rise to friction. They do not envisage, at least in the early stages, centralised planning for the Borneo territories. Much of the present organisation pattern should continue, but they should be co-ordinated in a development plan for Malaysia to avoid inconsistency and a waste of resources.

There should be increased opportunities for industrial development and joint consultation on industrial locations.

They note the valuable help being given in Borneo by Commonwealth Governments, Colonial Development Corporation, Colombo Plan and United Nations agencies and hope that this will continue. They hope that Malaysia will result in more external aid and that the Central Government would see that this was channelled in the direction of the Borneo territories. They recommend that the Joint Working Party (Economic) should examine the matter.

The Malayan members stress the importance of British contributions to the territories and the necessity for continuance of such financial and technical assistance.

They consider that Education should be a Federal matter. Special attention should be given to Federal scholarships and other educational training schemes. Indigenous dialects should be preserved. Due heed must be paid, however, to the wishes of the people of the territories regarding the policies to be adopted. A Joint Working Party (Educational) should work out the problems of integration of educational systems and policies.

The Malayan members then refer to the position of expatriate officials. They note the high regard in which these officers are held and the unanimous view that they should be encouraged to stay until they can be replaced by local people. While they see no objection to recruitment from overseas to fill vacancies arising before local officers are available, they are reluctant to advocate the secondment of officers from Malaya or Singapore unless definitely requested by the State Government.

They have been encouraged by the responsible and reasonable attitude which expatriate officers have taken towards the Malaysia proposals and note with satisfaction their willingness to consider serving on, provided satisfactory terms can be agreed on, irrespective of constitutional arrangements.

They strongly urge that Her Majesty's Government and the Federation Government direct their attention to the problem of how to encourage officers to remain.

The next section of the Report is a summary by the Chairman of recommendations made by the other members, and his own comments.

He states that in the section on joint recommendations, recommendations have been made on certain general matters. On some of them there is unanimity, and on others divergence which can only be resolved by Governments.

As regards the sections which deal with the separate recommendations of the British and Malayan members, many of the proposals are seen by the British members as objectives to be gradually worked towards and introduced during the transitional period, whereas the Malayan members see them as recommendations which should start to take effect immediately. Subject to this there is unanimity or near unanimity on most of the matters which are summarised as follows:—

- (a) On five matters to which great importance was attached in the bulk of evidence, recommendations were drafted and agreed by the Commission as a whole, subject to qualifications stated earlier in the Report. These are:—

(1) *Representation in Federal Parliament.*

Representation in the Federal Parliament should take account not only of the population of the Borneo territories, but also their size and potentialities.

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(2) *Special Position of Indigenous Races.*

The native races should be placed in a position analogous to the Malays in Malaya. The Malayan members say that this should not be subject to review separately from the position of Malays as a whole. The British members, with whom the Chairman agrees, think the provisions should be reviewed after ten years. One British member is opposed to any constitutional provision in this matter.

(3) *Development.*

Special and urgent attention should be given to rural development, education and training. The Malayan members see the proposals as an integral part of their whole approach. The British members concur generally and suggest that Development Boards should be set up during the transitional period which they recommend.

(4) *Land, Agriculture and Forestry, Native Customs and Usage.*

These should be under the sole control of the State Government.

(5) At least in the early years there should be no change in *administrative arrangements in so far as they affect the ordinary lives of the people.*

(b) On a number of other matters there was general agreement subject only to method of approach and certain minor divergencies. These are:—

(i) *Judiciary.* Specific recommendations are made by the Malayan members. The British members prefer to leave most of the details to a Working Party.

(ii) *Head of State.* Somewhat divergent recommendations are made reflecting the different approach by the British and Malayan members on phasing. It is unanimously recommended however that in the first instance the appointment should be made by the Agong on the joint nomination of the Queen and the Agong.

(iii) *Public Service.* There is near unanimity, with some divergences reflecting the difference on phasing.

(iv) *Federal Constitution.* The division of Federal, State and Concurrent Lists should broadly follow the lines of the existing Constitution of the Federation of Malaya. Amendments should be made in the case of Shipping and Navigation and Fisheries. The British members, with whom the Chairman agrees, advocate special consideration being given to the question of Labour and Social Security, and that the provisions regarding the Welfare of Aborigines should not apply to the Borneo territories.

(v) *Finance, Tariffs and Trade.* These should be on the Federal List but integration should take place gradually after study by a Working Party. The British members generally concur with the detailed views of the Malayan members.

(vi) *Education.* This should be on the Federal List but integration should take place after careful study by a Working Party. The British members, with whom the Chairman agrees, stress the importance of maintaining existing policies regarding the use of English as a medium of instruction.

(vii) *Regionalisation.* Federal services in Borneo should be regionalised and officers appointed with sufficient authority to deal with local matters.

The Chairman adds a personal recommendation that when expatriate officers are no longer needed for these posts they should normally be filled by officers from the Borneo territories.

The British and Malayan members have both concluded, on the lines of their respective approaches, that Malaysia is an attractive and workable proposal. The Chairman, on the assumption that Singapore also joins in, strongly endorses this, adding that the inclusion of the Borneo territories would also be to the advantage of the other participants. From the outset Malaysia must be regarded by all concerned as an association of partners. If any idea were to take root that Malaysia would involve a 'take over' of the Borneo territories by the Federation of Malaya, and the submersion of the individualities of North Borneo and Sarawak, Malaysia would not, in the Chairman's judgment, be generally acceptable or successful. He recommends that in negotiations Governments should pay close attention to this point, both in its psychological and practical aspects.

The principal difference of approach between the British and Malayan members of the Commission relates to the phasing of arrangements for the new Federation. The Chairman considers a transitional period most desirable, and agrees generally with the arguments and recommendations made by the British members on this matter. He feels that full precise constitutional and governmental arrangements for the transitional period, and in particular for Internal Security, must be matters for discussion between Governments.

He strongly urges that any arrangements made for the early years after Federation should provide for continuity of administration in the Borneo territories and should not result in any weakening, real or apparent, of authority in Kuching and Jesselton.

The Chairman considers it vital that Governments should reach an early decision of principle on Malaysia, subject to debate in, and approval by, the legislative chambers in North Borneo and Sarawak.

He strongly endorses the setting up of consultative machinery and Working Parties as soon as possible after the decision is taken to proceed with the Malaysia project, in order to work out the details of integration of the Borneo territories into a new Federation.

Finally he underlines what has been recorded in earlier chapters about the gratifying way in which people came forward to make their views known to the Commission. Apart from a few groups in Sarawak which took a somewhat aggressive attitude, and were, as could be clearly recognised, under Communist influence, groups of all races and of every shade of opinion, expressed their support, their opposition, or their doubts in a reasoned, thoughtful and constructive way.

CHAPTER V

Other
Matters.

Chapter V of the Report deals with other matters. The Commission state that they do not regard the merger of the Borneo territories (Closer Association) as an alternative which would offer prospects as attractive as Malaysia, but there is every advantage in closer association within Malaysia. Efforts to explain Malaysia will need to be redoubled after the Report is published and a decision of principle taken.

The Commission conclude with an appeal to leaders of public and political life in North Borneo and Sarawak to join in a determination to arrest tendencies to divisions and conflicts which have arisen over the Malaysia proposals, and to restore the racial harmony which has distinguished North Borneo and Sarawak for so long.

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The remainder of the Report covers thanks and acknowledgements, a summary of the Commission's itinerary, a census extract, a statement of the Cardinal Principles of the Rule of the English Rajahs, the legal meaning of the term 'native', the papers on Malaysia by Sarawak and North Borneo and the Memorandum on Malaysia by the Malaysia Solidarity Consultative Committee.

APPENDIX A

LIST I—FEDERAL LIST

1. External affairs, including—
 - (a) Treaties, agreements and conventions with other countries and all matters which bring the Federation into relations with any other country;
 - (b) Implementation of treaties, agreements and conventions with other countries;
 - (c) Diplomatic, consular and trade representation in international bodies and implementation of decisions taken thereat;
 - (d) Extradition; fugitive offenders; admission into, and emigration and expulsion from, the Federation;
 - (e) Passports; visas; permits of entry or other certificates; quarantine;
 - (f) Foreign and extra-territorial jurisdiction; and
 - (g) Pilgrimages to places outside Malaya.
2. Defence of the Federation or any part thereof, including—
 - (a) Naval, military and air forces and other armed forces;
 - (b) Any armed forces attached to or operating with any of the armed forces of the Federation; visiting forces;
 - (c) Defence works; military and protected areas; naval, military and air force bases; barracks, aerodromes and other works;
 - (d) Manoeuvres;
 - (e) War and peace; alien enemies and enemy aliens; enemy property; trading with an enemy; war damage; war risk insurance;
 - (f) Arms, fire-arms, ammunition and explosives;
 - (g) National service; and
 - (h) Civil defence.
3. Internal security, including—
 - (a) Police; criminal investigation; registration of criminals; public order;
 - (b) Prisons; reformatories; remand homes; places of detention; probation of offenders; juvenile offenders;
 - (c) Preventive detention; restriction of residence;
 - (d) Intelligence services; and
 - (e) National registration.
4. Civil and criminal law and the administration of justice, including—
 - (a) Constitution and organization of all courts other than Muslim Courts;
 - (b) Remuneration and other privileges of the judges and officers presiding over such courts;
 - (c) Persons entitled to practise before such courts;
 - (d) Subject to paragraph (ii), the following—
 - (i) Contract; partnership, agency and other special contracts; master and servant; inns and inn-keepers; actionable wrongs; property and its transfer and hypothecation, except land; bona vacantia; equity and trusts; marriage, divorce and legitimacy; married women's property and status; interpretation of federal law; negotiable instruments; statutory declarations; arbitration; mercantile law; registration of businesses and business names; age of majority; infants and minors; adoption; succession, testate and intestate; probate and letters of administration; bankruptcy and insolvency; oaths and affirmations; limitation; reciprocal enforcement of judgments and orders; the law of evidence;

- (ii) the matters mentioned in paragraph (i) do not include Muslim personal law relating to marriage, divorce, guardianship, maintenance, adoption, family law, gifts or succession, testate and intestates.
- (e) Official secrets; corrupt practices;
- (f) Use or exhibition of coats of arms, armorial bearings, flags, emblems, uniforms, orders and decorations other than those of a State;
- (g) Creation of offences in respect of any of the matters included in the Federal List;
- (h) Indemnity in respect of any of the matters in the Federal List;
- (i) Admiralty Jurisdiction;
- (j) Ascertainment of Muslim Law for purposes of federal law; and
- (k) Betting and lotteries.
5. Federal citizenship and naturalization; aliens.
6. The machinery of government, subject to the State List, but including—
- (a) Elections to both Houses of Parliament and the Legislative assemblies of the States and all matters connected therewith;
- (b) The Armed Forces Council and Commissions;
- (c) Federal services, including the establishment of services common to the Federation and the States; services common to two or more States;
- (d) Pensions and compensation for loss of office; gratuities and conditions of service;
- (e) Local government and town planning in, and water supply to the federal capital;
[Note: this item was omitted until early 1960 under Article 154 (3)]
- (f) Federal Government contracts;
- (g) Federal public authorities; and
- (h) Purchase, acquisition and holding of, and dealing with property for federal purposes.
7. Finance, including—
- (a) Currency, legal tender and coinage;
- (b) National savings and savings banks;
- (c) Borrowing on the security of the Federal Consolidated Fund;
- (d) Loans to or borrowing by the States, public authorities and private enterprise;
- (e) Public debt of the Federation;
- (f) Financial and accounting procedure, including procedure for the collection, custody and payment of the public moneys of the Federation and of the States, and the purchase, custody and disposal of public property other than land of the Federation and of the States;
- (g) Audit and accounts of the Federation and the States and other public authorities;
- (h) Taxes; rates in the federal capital; [Note: the second part of this item was omitted until early 1960 under Article 154 (3)];
- (i) Fees in respect of any of the matters in the Federal List;
- (j) Banking; money-lending; pawnbrokers; control of credit;
- (k) Bills of exchange, cheques, promissory notes and other similar instruments;
- (l) Foreign exchange; and
- (m) Capital issues; stock and commodity exchanges.

8. Trade, commerce and industry, including—

- (a) Production, supply and distribution of goods; price control and food control; adulteration of foodstuffs and other goods;
- (b) Imports into, and exports from, the Federation;
- (c) Incorporation, regulation and winding up of corporations other than municipal corporations (but including the municipal corporation of the federal capital); regulation of foreign corporations; bounties and production in or export from the Federation;
- (d) Insurance, including compulsory insurance;
- (e) Patents; designs; inventions; trade marks and mercantile marks; copyrights;
- (f) Establishment of standards of weights and measures;
- (g) Establishment of standards of quality of goods manufactured in or exported from the Federation;
- (h) Auctions and auctioneers;
- (i) Industries; regulation of industrial undertakings;
- (j) Development of mineral resources; mines, mining, minerals and mineral ores; oils and oilfields; purchase, sale, import and export of minerals and mineral ores; petroleum products; regulation of labour and safety in mines and oilfields;
- (k) Factories; boilers and machinery; dangerous trades; and
- (l) Dangerous and inflammable substances.

9. Shipping, navigation and fisheries, including—

- (a) Shipping and navigation on the high seas and in tidal and inland waters;
- (b) Ports and harbours; foreshores;
- (c) Lighthouses and other provisions for the safety of navigation;
- (d) Maritime and estuarine fishing and fisheries, excluding turtles;
- (e) Light dues; and
- (f) Wrecks and salvage.

10. Communications and transport, including—

- (a) Roads, bridges, ferries and other means of communication if declared to be federal by or under federal law;
- (b) Railways, excluding Penang Hill Railway;
- (c) Airways, aircraft and air navigation; civil aerodromes; provisions for the safety of aircraft;
- (d) Regulation of traffic by land, water and air other than on rivers outside harbour areas wholly within one State;
- (e) Carriage of passengers and goods by land, water and air;
- (f) Mechanically propelled vehicles;
- (g) Post and telecommunications; and
- (h) Wireless, broadcasting and television.

11. Federal works and power, including—

- (a) Public works for federal purposes;
- (b) Inter-State water supplies and rivers and canals so far as not regulated by an agreement between all the States concerned; production distribution and supply of water power; and
- (c) Electricity; gas and gas works; and other works for the production and distribution of power and energy.

12. Surveys, inquiries and research, including—
 - (a) Census; registration of births and deaths; registration of marriages; registration of adoptions other than adoptions under Muslim law or Malay custom;
 - (b) Survey of the Federation; social, economic and scientific surveys; meteorological organisations;
 - (c) Commissions of inquiry.
13. Education, including—
 - (a) Elementary, secondary, and university education; vocational and technical education; training of teachers; registration and control of teachers, managers and schools; promotion of special studies and research; scientific and literary societies;
 - (b) Libraries; museums; ancient and historical monuments and records; archaeological sites and remains.
14. Medicine and health, including sanitation in the federal capital, and including—
 - (a) Hospital, clinics and dispensaries; medical profession; maternity and child welfare; lepers and leper institutions;
 - (b) Lunacy and mental deficiency, including places for reception and treatment;
 - (c) Poisons and dangerous drugs; and
 - (d) Intoxicating drugs and liquors; manufacture and sale of drugs.
15. Labour and social security, including—
 - (a) Trade unions; industrial and labour disputes; welfare of labour including housing of labourers by employers; employer's liability and workmen's compensation;
 - (b) Unemployment insurance; health insurance; widows', orphans' and old age pensions; maternity benefits; provident and benevolent funds; superannuation; and
 - (c) Charities and charitable institutions; charitable trusts and trustees excluding Muslim Wakfs; Hindu endowments.
16. Welfare of the aborigines.
17. Professional occupations other than those specifically enumerated.
18. Holidays other than State holidays; standard of time.
19. Unincorporated societies.
20. Control of agricultural pests; protection against such pests; prevention of plant diseases.
21. Newspapers, publications; publishers; printing and printing presses.
22. Censorship.
23. Subject to item 5(f) of the State List: theatres; cinemas; cinematograph films; places of public amusement.
24. Federal housing and improvement trusts.
25. Co-operative societies.

LIST II — STATE LIST

1. Muslim Law and personal and family law of persons professing the Muslim religion, including the Muslim Law relating to succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, legitimacy, guardianship, gifts, partitions and non-charitable trusts; Muslim Wakfs and the definition and regulation of charitable and religious trusts, the appointment of trustees and the incorporation of persons

in respect of Muslim religious and charitable endowments, institutions, trusts, charities and charitable institutions operating wholly within the State; Malay custom; Zakat, Fitrah and Bait-ul-Mal or similar Muslim revenue; mosques or any Muslim public place of worship, creation and punishment of offences by persons professing the Muslim religion against precepts of that religion, except in regard to matters included in the Federal List; the constitution, organization and procedure of Muslim courts, which shall have jurisdiction only over persons professing the Muslim religion and in respect only of any of the matters included in this paragraph, but shall not have jurisdiction in respect of offences except in so far as conferred by federal law; the control of propagating doctrines and beliefs among persons professing the Muslim religion; the determination of matters of Muslim Law and doctrine and Malay custom.

2. Land, including—
 - (a) Land tenure, relation of landlord and tenant; registration of titles and deeds relating to land; colonization, land improvement and soil conservation; rent restriction;
 - (b) Malay reservations;
 - (c) Permits and licences for prospecting for mines; mining leases and certificates;
 - (d) Compulsory acquisition of land;
 - (e) Transfer of land, mortgages, leases and charges in respect of land; easements; and
 - (f) Escheat; treasure trove excluding antiquities.
3. Agriculture and forestry, including—
 - (a) Agriculture and agricultural loans; and
 - (b) Forests.
4. Local government outside the federal capital, including—
 - (a) Local administration; municipal corporations; local, town and rural board and other local authorities; local government services; local rates; local government elections;
 - (b) Obnoxious trades and public nuisances in local authority areas;
 - (c) Housing and provision for housing accommodation, improvement trusts.
5. Other services of a local character, that is to say:—
 - (a) Fire brigades, except in the federal capital;
 - (b) Boarding houses and lodging houses;
 - (c) Burial and cremation grounds;
 - (d) Pounds and cattle trespass;
 - (e) Markets and fairs; and
 - (f) Licensing of theatres, cinemas and places of public amusement.
6. State works and water, that is to say:—
 - (a) Public works for State purposes;
 - (b) Roads, bridges and ferries other than those in the Federal List, regulation of weight and speed of vehicles on such roads; and
 - (c) Water, subject to the Federal List; water supplies and canals; control of silt; riparian rights.
7. Machinery of the State Government, subject to the Federal List, but including—
 - (a) Civil List and State pensions;
 - (b) Exclusive State services;
 - (c) Borrowing on the security of the State Consolidated Fund;
 - (d) Loans for State purposes;
 - (e) Public debt of the State; and
 - (f) Fees in respect of any of the matters included in the State List.

8. State holidays.
9. Creation of offences in respect of any of the matters included in the State List.
10. Inquiries for State purposes, including commissions of inquiry and collection of statistics with respect of any of the matters included in the State List.
11. Indemnity in respect of any of the matters in the State List.
12. Turtles and riverine fishing.

LIST III — CONCURRENT LIST

1. Social welfare; social services subject to Lists I and II; protection of women, children and young persons.
2. Scholarships.
3. Protection of wild animals and wild birds; National Parks.
4. Animal husbandry; prevention of cruelty to animals; veterinary services; animal quarantine.
5. Town and country planning, except in the federal capital.
6. Vagrancy and itinerant hawkers.
7. Public health, sanitation (excluding sanitation in the federal capital) and the prevention of diseases.
8. Drainage and irrigation.
9. Rehabilitation of mining land and land which has suffered soil erosion.

APPENDIX B

EXTRACTS FROM FINANCIAL PROVISIONS OF THE MALAYAN CONSTITUTION

National
Finance
Council.

108. (1) There shall be a National Finance Council consisting of the Prime Minister, such other Minister as the Prime Minister may designate, and one representative from each of the States, appointed by the Ruler or Governor.

(2) The National Finance Council shall be summoned to meet by the Prime Minister as often as he considers necessary and whenever the representatives of three or more States demand a meeting, but there shall be at least one meeting in every twelve months.

(3) At any meeting of the National Finance Council the Prime Minister may be represented by another Minister of the Federation, and the Prime Minister or, if he is not present, the Minister representing him, shall preside.

(4) It shall be the duty of the Federal Government to consult the National Finance Council in respect of (a) the making of grants by the Federation to the States; (b) the assignment to the States of the whole or any portion of the proceeds of any federal tax or fee; (c) the annual loan requirements of the Federation and the States and the exercise by the Federation and the States of their borrowing powers; (d) the making of loans to any of the States; (e) the making of development plans in accordance with Article 92; (f) the matters referred to in Item 7(f) and (g) of the Federal List; (g) any proposal to introduce a Bill for such a law as is mentioned in Article 109 (2) or Article 110 (3) or (3A); (h) any other matter in respect of which this Constitution or federal law makes provision for consultation with the National Finance Council.

(5) The Federal Government may consult the National Finance Council in respect of any other matter, whether or not it involves questions of finance, and the Government of a State may consult the said Council in respect of any matter which affects the financial position of that State.

109. (1) The Federation shall make to each State in respect of each financial year — Grants to States.
 (a) a grant, to be known as a capitation grant, which shall be calculated in accordance with the provisions of Part I of the Tenth Schedule; (b) a grant for the maintenance of State roads, to be known as the State road grant, which shall be calculated in accordance with the provisions of Part II of that Schedule.

(2) Parliament may from time to time by law vary the rates of the capitation grant; but if the effect of any such law is to reduce the grant, provision shall be made in that law for securing that the amount of grant received by any State in respect of any financial year is not less than ninety per cent. of the amount received by that State in the preceding financial year.

(3) Parliament may by law make grants for specific purposes to any of the States on such terms and conditions as may be provided by any such law.

(4) The amounts required for making the grants mentioned in the preceding provisions of this Article shall be charged on the Consolidated Fund.

(5) If, in accordance with Article 103, a Contingencies Fund is created, the power to make advances from that Fund for meeting an urgent and unforeseen need for expenditure shall include power to make such advances to a State for meeting such a need.

(6) The Federation shall pay into a fund, to be known as the State Reserve Fund — (a) in respect of the first financial year in which Part VII is in operation, the sum of four million dollars; and (b) in respect of every succeeding financial year such sum as the Federal Government may, after consultation with the National Finance Council, determine to be necessary; and the Federation may from time to time, after consultation with the National Finance Council, make grants out of the State Reserve Fund to any State for the purposes

NOTE: The provisions of parts I and II of the tenth schedule are as follows:—

TENTH SCHEDULE

GRANTS AND SOURCES OF REVENUE ASSIGNED TO STATES

PART I

CAPITATION GRANT

1. (1) The capitation grant payable to each State in respect of a financial year shall be at the following rates — (a) for the first 50,000 persons at the rate of \$15 per person; (b) for the next 200,000 persons at the rate of \$10 per person; (c) for the remainder at the rate of \$4 per person, and shall be based on the population of the State as determined at the last census taken before the beginning of the preceding financial year.

(2) Notwithstanding subsection (1), if a capitation grant falls to be made in respect of a financial year beginning before the first day of January, nineteen hundred and fifty-nine, it shall be based on the population of the State as determined at the census taken in the year nineteen hundred and fifty-seven.

PART II

STATE ROAD GRANT

2. The State road grant payable to each State in respect of a financial year shall be calculated by multiplying — (a) the average cost of maintaining a mile of State road at the minimum standard determined for such roads by the Federal Government after consultation with the National Finance Council; by (b) so much of the mileage of State roads in that State as qualifies for grant.

3. For the purposes of section 2 the mileage of State roads in a State shall be taken to be that mileage as on the thirty-first day of December of the basis year, and the average mentioned in paragraph (a) of that section shall be taken to be the average throughout the Federation in the basis year.

4. A length of State road qualifies for grant if it is actually maintained by the Public Works Department of the State at or above the minimum standard mentioned in section 2 (a); except that any length not qualifying for grant in the preceding financial year qualifies for grant only if the Federal Government has agreed to its so qualifying.

5. In this Part of this Schedule — (a) "State road" means any public road other than a federal road, and any other road other than a federal road to which the public has access; (b) "basis year" means the financial year beginning two years earlier than the financial year in respect of which the grant is made.

Assignment
of taxes and
fees to the
States.

110. (1) Subject to Clause (2), each of the States shall receive all proceeds from the taxes, fees and other sources of revenue specified in Part III of the Tenth Schedule so far as collected, levied or raised within the State.

(2) Parliament may from time to time by law substitute for any source of revenue specified in sections 1, 3, 4, 5, 6, 7, 8, 12 or 14 of Part III of the Tenth Schedule or for any source of revenue so substituted another source of revenue of substantially equal value.

(3) Each State shall receive, on such terms and conditions as may be provided by or under federal law, ten per cent. or such greater amount as may be so provided of the export duty on tin produced in the State.

(3A) Parliament may by law provide that each State shall receive, on such terms and conditions as may be prescribed by or under federal law, such proportion as may be so prescribed of the export duty on minerals (other than tin) produced in the State.

In this Article minerals means mineral ores, metal and mineral oils.

(3B) Without prejudice to the power to impose conditions conferred by Clause (3) or (3A), Parliament may by law provide for prohibiting or restricting, in, or except in, such cases as may be provided by or under the law, the levying of royalties on or similar charges in respect of minerals (whether under a lease or other instrument or under any State enactment, and whether the instrument was made or the enactment passed before or after the coming into operation of this Clause).

(4) Without prejudice to the provisions of Clauses (1) to (3A), Parliament may by law— (a) assign to the States the whole or any portion of the proceeds of any tax or fee raised or levied by the Federation; and (b) assign to the States the responsibility of collecting for State purposes any tax or fee authorised by federal law.

(5) The amounts receivable by the States under Clause (1), (2) or (4) shall not be paid into the Consolidated Fund; and the amounts receivable by the States under Clauses (3) and (3A) shall be charged on the Consolidated Fund.

NOTE: Part III of the tenth schedule is as follows:—

PART III

SOURCES OF REVENUE ASSIGNED TO STATES

1. Revenue from toddy shops.
2. Revenue from lands, mines and forests.
3. Revenue from licences other than those connected with mechanically propelled vehicles, electrical installations and registration of businesses.

4. Entertainments duty.
5. Fees in courts other than federal courts.
6. Fees and receipts in respect of specific services rendered by departments of State Governments.

7. Revenues of town boards, town councils, rural boards, local councils and similar local authorities other than — (a) municipalities established under any Municipal Ordinance; (b) those town boards, town councils, rural boards, local councils and similar local authorities which have power under written law to retain their revenues and control the spending thereof.

8. Receipts in respect of water supplies, including water rates.
9. Rents on State property.
10. Interest on State balances.
11. Receipts from land sales and sales of State property.
12. Fines and forfeitures in courts other than federal courts.
13. Zakat, Fitrah and Bait-ul-Mal and similar Muslim revenue.
14. Treasure trove.

111. (1) The Federation shall not borrow except under the authority of federal law. Restriction on borrowing.

(2) A State shall not borrow except under the authority of State law, and State law shall not authorise a State to borrow except from the Federation or, for a period not exceeding twelve months, from a bank approved for that purpose by the Federal Government.

112. (b) Subject to Clause (2), no State shall, without the approval of the Federation, make any addition to its establishment or the establishment of any of its departments, or alter the rates of established salaries and emoluments, if the effect of doing so would be to increase the liability of the Federation in respect of pensions, gratuities or other like allowances. Restriction on alterations in establishments of States.

(2) This Article does not apply to — (a) non-pensionable appointments the maximum salaries of which do not exceed four hundred dollars per month; or (b) pensionable appointments the maximum salaries of which do not exceed one hundred dollars per month.

PUSTAKA
NEGERI
SARAWAK