COLONIAL OFFICE

Report of the Federation of Malaya Constitutional Commission 1957

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MAY IT PLEASE YOUR MAJESTY AND YOUR HIGHNESSES,

We, the undersigned Commissioners, appointed to make recommendations for a form of Constitution for a fully self-governing and independent Federation of Malaya within the Commonwealth, have the honour to submit the attached Report for the consideration of Your Majesty and Your Highnesses.

CHAPTER I - GENERAL INTRODUCTION

1. When the Secretary of State visited Malaya in August, 1955, he held discussions with Their Highnesses the Rulers and with the new Alliance Ministers on the next steps to be taken in the direction of self-government for the Federation. It was then agreed in principle that a Commission should be appointed to review the Constitution of the Federation and that the composition and terms of reference of the Commission should be discussed at a conference to be held in London early in 1956. The Federation of Malaya Constitutional Conference met in London in January and February, 1956, and agreement was reached that full self-government and independence within the Commonwealth should be proclaimed by August, 1957, if possible, and that a Commonwealth Constitutional Commission should be appointed to make recommendations for a Constitution for the Federation of Malaya. The composition and terms of reference of the Commission were agreed and it was decided that the members should be appointed as soon as possible. These recommendations were submitted to Her Majesty the Queen and to the Conference of Rulers, and on 7th March, 1956, Federation of Malaya White Paper No 15 of 1956 was published in which it was stated that: The approval of Her Majesty the Queen and the Conference of Rulers has now been signified to the recommendations of the Constitutional Conference for the appointment of an independent Commission to make recommendations for a form of constitution for a fully self-governing and independent Federation of Malaya within the Commonwealth.

2. It was decided in agreement with the Conference of Rulers that the Commission should be a small body; that the Chairman and one other member should be nominated by the United Kingdom, and that Canada, Australia, India and Pakistan should each be invited to nominate one member. The Rt Hon Lord Reid, LLD, FRSE, a Lord of Appeal in Ordinary, and Sir Ivor Jennings, KBE, QC, Litt D, LLD, Master

of Trinity Hall, Cambridge, were nominated by the United Kingdom Government; the Rt Hon Sir William McKell, GCMG, QC, a former Governor-General of Australia, was nominated by the Australian Government; Mr. B Malik, a former Chief Justice of the Allahabad High Court, was nominated by the Government of India; and Mr. Justice Abdul Hamid of the West Pakistan High Court was nominated by the Government of Pakistan. These nominations were duly approved by Her Majesty and by Their Highnesses the Rulers. A member was nominated by the Canadian Government but he had to withdraw at the last moment on medical grounds. As delay in the presentation of the Report would have left insufficient time for its adequate consideration and for the necessary arrangements to be made before the proclamation of independence in August, 1957, and as it would have taken some time before another Canadian member could be nominated and could arrive in Malaya, it was agreed with great regret not to take advantage of the offer of the Canadian Government to make a further nomination, and it was decided that the five members already nominated and approved would constitute the full Commission.

3. The members of the Commission were appointed in the name of Her Majesty the Queen and Their Highnesses the Rulers with terms of reference as follows:

To examine the present constitutional arrangements throughout the Federation of Malaya, taking into account the positions and dignities of Her Majesty the Queen and of Their Highnesses the Rulers; and

To make recommendations for a federal form of constitution for the whole country as a single, self-governing unit within the Commonwealth based on Parliamentary democracy with a bicameral legislature, which would include provision for:

(i) the establishment of a strong central government with the States and Settlements enjoying a measure of autonomy (the question of the residual legislative power to be examined by, and to be the subject of recommendations by the Commission and with machinery for consultation between the central Government and the States and Settlements on certain financial matters to be specified in the Constitution;

(ii) the safeguarding of the position and prestige of Their Highnesses as constitutional Rulers of their respective States;

(iii) a constitutional Yang di-Pertuan Besar (Head of State) for the Federation to be chosen from among Their Highnesses the Rulers;

(iv) a common nationality for the whole of the Federation;

(v) the safeguarding of the special position of the Malays and the legitimate interests of other communities.

4. Two understandings were reached at the London Conference in relation to these terms of reference. First it was understood that nothing in the terms of reference proposed for the Constitutional Commission was to be taken as in any way prejudging the position of Her Majesty the Queen in relation to the Settlements of Penang and Malacca; and second, that sub-section (iv) of the terms of reference was not to be

taken as precluding the Commission from making recommendations which would allow British subjects or subjects of Their Highnesses the Rulers to retain their status as such after they had acquired the proposed common nationality.

5. The agreement of the Conference of Rulers to the terms of reference and the two understandings was subject to a rider which read as follows: 'Their Highnesses wish it to be understood that they do not wish the word "nationality" in paragraph (iv) to be interpreted by the Commission in a strict legal sense but to be used widely enough to include both nationality and citizenship so that, if the Commission so wishes, it can preserve the combination of nationality and citizenship which is expressed in the Federation of Malaya Agreement 1948, but naturally without any restriction on the expansion of citizenship so as to produce what in effect would be "a common nationality"'. The terms of this rider were accepted by Her Majesty's Government and conveyed to our Chairman.

6 The Chairman arrived in Malaya at the end of May, 1956, and the other members arrived during June. The first meeting of the full Commission could not be held until 30th June, but before that date various preliminary and tentative arrangements had been made by the members who had arrived, so that a full programme of work was ready before our first meeting.

7. Our first step was to invite written memoranda from all organisations and individuals who desired to submit to us information or views for our consideration. We left it to the authors of each memorandum to decide whether or not their views should be made public and undertook not to disclose the contents of any memorandum which its authors did not wish to be published. In response to this invitation we received 131 memoranda. We have set out in Appendix I of this Report a list of the names of all those organisations and individuals from whom memoranda were received. It will be seen from this list that those who submitted their case to us were widely representative of all communities and interests and all sections of the population.

8. We made it known that we were prepared to hear evidence in support of any memorandum either in Kuala Lumpur or locally, and that we would hear such evidence either in public or in private at the option of those submitting it. We held 31 meetings at which such evidence was given, 18 in Kuala Lumpur and 13 in the other States and in the Settlements. We have indicated in Appendix I the organisations and individuals by or on behalf of whom evidence was given. We obtained much valuable material and much assistance from the memoranda and evidence submitted to us and we wish to express our thanks to all those who assisted us in this way.

9. We are particularly indebted to Their Highnesses for the memorandum submitted on their behalf and for the submissions of Counsel who appeared in support of this memorandum. And we are also particularly indebted to the parties of the Alliance for their memorandum and to the Alliance leaders who gave us supplementary explanations of it.

10. Our first duty under our terms of reference was to examine the present constitutional arrangements throughout the Federation and for this purpose we were authorised by the Federation Government to obtain information both in writing and

orally from Federal officers. In Kuala Lumpur Federal officers from many departments attended our meetings and we obtained much essential information from them. We desire to express our appreciation of the trouble taken by them to give us full information on all matters about which we wished to hear.

11. We visited in turn each of the States and Settlements. In each State after paying our respects to the Ruler we conferred with the Mentri Besar, the British Adviser and State officers. In each Settlement we conferred with the Resident Commissioner and Settlement officers. We desire to express our thanks to them for the information and assistance which they gave us. Both in Kuala Lumpur and in the States and Settlements we had many opportunities of meeting informally members of the Legislative Council of State and Settlement Councils, and of the Councils of the Municipalities and other local authorities, and also many representatives of political organisations and other persons drawn from all sections of the community. The knowledge which we were able to gain in this way has been of great value to us. We were cordially received by The Highnesses, by Federal, State and Settlement Governments, Ministers and officers, and by a large number of unofficial hosts to all of whom we wish to express our warmest thanks.

12. In Malaya we held in all 118 meetings of the full Commission including meetings at which we heard evidence, meetings at which Federal officers attended to give us information, conferences with State and Settlement officers, and meetings for private discussion. In addition, numerous meetings of a less formal character were held by one or more of the members of the Commission. We have always had in mind the need to avoid delay but we have also had in mind the need for thorough investigation. By October we considered that we had obtained all the information necessary to enable us to prepare our Report and frame our recommendations.

13. At a comparatively early stage in our work we found that various practical difficulties might arise if we remained in Malaya to prepare our Report, and we decided that it would be inappropriate to prepare our Report in the United Kingdom. Various reasons prevented us from going to other Commonwealth countries and we found that the most convenient course would be to prepare our Report in Rome. We decided that for the initial stages of this work we should divide into groups. These groups did much of the basic work of framing and drafting our recommendations before the full Commission reassembled in Rome early in December.

14. In making our recommendations we have had constantly in mind two objectives: first that there must be the fullest opportunity for the growth of a united, free and democratic nation, and secondly that there must be every facility for the development of the resources of the country and the maintenance and improvement of the standard of living of the people. These objectives can only be achieved by the action of the people themselves: our task is to provide the framework most appropriate for their achievement. We must start from the present position as we find it, taking account not only of the history and tradition of Malaya but also of existing social and economic conditions. Much that is good has already been achieved and we would not seek to undo what has been done. But many existing arrangements are inappropriate for a self-governing and independent country, and, in recommending the form which the necessary political and administrative changes should take, we

have borne in mind that the new provisions must be both practicable in existing circumstances and fair to all sections of the community.

15. Approaching our task in this way we think it essential that there should be a strong central Government with a common nationality for the whole of the Federation. Moreover we think it also essential that the States and Settlements should enjoy a measure of autonomy and that Their Highnesses the Rulers should be constitutional Rulers of their respective States with appropriate provisions safeguarding their position and prestige. We have made provision for a new constitutional Head of State for the Federation and for the Settlements becoming States in the new Federation. We have adopted without substantial change proposals for the acquisition of citizenship of the Federation which have been agreed by the main parties representing all races. We recognise the need for safeguarding the special position of the Malays in a manner consistent with the legitimate interests of other communities, and we have given particular consideration to this need. We have framed our recommendations on the basis that Malaya will remain within the Commonwealth and we have found general agreement on this matter.

16. We present our recommendations in the form of a draft Constitution for the Federation, which is appended to this Report as Appendix II; draft Constitutions for the States of Malacca and Penang, which are appended to this Report as Appendices III and IV; and specific recommendations of the changes which will be necessary in the existing State Constitutions, which are incorporated in the draft Constitutions for the Federation as a Schedule. We think that the effect of our recommendations can best be appreciated when seen in this way in their full context, but we propose to explain the more important of them in less technical language in the succeeding chapters of this Report and to set them out briefly in a final summary.

17. We have set out our recommendations in English. Various Malay names and items have been suggested to us but we do not feel competent to determine which Malay words are appropriate to be used in the various contexts. The only Malay names which we have used are ‘Yang di-Pertuan Besar' as the title of the new Head of State of the Federation, 'Mentri Besar' which is the name always given to the head of the administration in a Malay State, and 'Merdeka' which is the word commonly used throughout Malaya to denote self-government and the new independent status of the Federation. It was suggested on behalf of Their Highnesses that the new Head of State should be called ‘Yang di-Pertuan Agong' to avoid confusion with the Head of State in Negri Sembilan who is the Yang di-Pertuan Besar. We recognise the force of this suggestion but we think we ought in presenting our Report, to adhere to the name used in our terms of reference. It was also represented to us that the country should in future be known as Malaysia, but we do not think that it is within our province to consider this proposal and we therefore express no opinion on it but to use the word Malaya which is in our terms of reference.

18. In drafting the Constitution we have had to consider a very large number of questions. Many of these questions have been the subject of representations formal and informal from various organisations and individuals. In reaching our decisions on them we have tried to give full weight to the various views expressed to us and we shall give our reasons for making these decisions. But very many of the questions which we have had to consider are technical and not controversial. On these matters

we have made all enquiries in the Federation which seemed likely to assist us and we have relied on our experience. It would, we feel, be cumbersome and unnecessary to explain in every case why we have reached each particular decision and in the succeeding chapters of the Report we shall only refer to these technical matters if we think that some explanation would be helpful. Where we refer to a recommendation in our Report we shall give a reference to the article in the draft Constitution which embodies the recommendation.

CHAPTER II - HISTORICAL INTRODUCTION

19. Before the Japanese occupation, the States and Settlements of the Federation of Malaya, together with Singapore, formed three distinct political groups; these were (1) the Crown Colony called the Straits Settlements, which included the Settlements of Singapore, Malacca and Penang, (2) the Federated Malay States, comprising the States of Negri Sembilan, Pahang, Perak and Selangor which had entered into a Federation by treaty in 1895, and (3) the remaining five States of Johore, Kedah, Kelantan, Perlis and Trengganu known as the Unfederated Malay States. In the Straits Settlements there was the normal form of Crown Colony government, with a Governor, an Executive Council and a Legislative Council. The Executive Council was wholly composed of official members, and the Legislative Council wholly nominated but containing equal numbers of official and unofficial members. The centre of government was at Singapore.

20. In those Malay States which became the Federated Malay States British authority rested upon Agreements concluded with the Rulers at various dates from 1874 onwards. Before the Treaty of Federation in 1895, British Advisers in the States were responsible directly to the Governor of Singapore, but after that date they became subordinate to a Resident-General in Kuala Lumpur who, in turn, was responsible to the Governor of Singapore in his capacity as High Commissioner of the Federated Malay States. Although not identical, these Agreements preserved the sovereignty of the Ruler in his State and bound him to accept the advice of a British officer on all matters of general administration in his State except those relating to the Muslim religion and Malay custom. The supreme authority in each of the States was vested in the Ruler-in-Council. Subjects of the Rulers were also British protected persons and the States themselves were protected States. The Federation Agreement of 1895 did not define the respective functions of the Federal and State Governments, and the rapid development of the country resulted in a steady transfer of many of the powers previously exercised in the Federated States by the British Residents and State Councils to a central authority not in close touch with the Rulers. In 1909 a Federal Council was established, and in 1927, the Rulers withdrew from active participation in the work of that Council. Up to that time there had been a tendency to strengthen the Federal Government at the expense of the State Governments. During the next few years however, attempts were made to reverse this tendency. The State Councils were strengthened and given statutory and administrative powers previously exercised by the Chief Secretary as the principal executive officer of the Federation; the post of Chief Secretary was replaced by that of Federal Secretary, and the control of many of the larger departments was gradually transferred to the States. But the control of broad policy and of finance remained in the hands of the Federal Government and the High Commission retained the power of giving advice through the Residents.

21. The Unfederated States in the North, Kedah, Kelantan, Perlis and Trengganu came under British protection in 1909 when Siam transferred to Britain her suzerainty over these territories, and, under a series of Agreements, a British Adviser was appointed to each State. The fifth of the Unfederated States, Johore, had confided the control of its foreign affairs to the care of Great Britain by a Treaty of 1885, but it was not until 1914 that an Agreement was concluded with the Sultan under which a

British officer was appointed as General Adviser. In these States the executive authority rested with the local State Government and was exercised by Malay officials of whom the Mentri Besar was the Head and there was a friendly co-operation between the State administration and the British Adviser which made it unnecessary for the ultimate power of 'advice' to be exercised. It was the policy of these States to preserve the Malay way of life and to develop their administrations on the basis of the considerable degree of self-government which they enjoyed.

22. After the period of enemy occupation the Malayan Union was set up in 1946 under an Order-in-Council. This Order-in-Council was in operation from 1946 to 1948 but it was never fully implemented. During this period new proposals were under consideration which led to the creation of the Federation of Malaya in 1948, in which each State and Settlement was to retain its own individuality but all were to be united under a strong central government. The Constitution of the Federation was based upon the Federation of Malaya Agreement of 1948 between the Crown and the Rulers jointly, and upon a series of State Agreements between the Crown and the nine Malay Rulers individually. These were brought into effect by Order-in-Council on 1st February, 1948.

23. The Head of the new Federal Government was the High Commissioner who had wide legislative and administrative powers. In some respects he acted purely as a representative of His Majesty; in other respects he acted in pursuance of authority jointly delegated to him by His Majesty and Their Highnesses the Rulers. Under the Federation Agreement a Federal Legislative council was set up consisting of the High Commissioner as President, three ex-officio members (the Chief Secretary, the Attorney-General and the Financial Secretary), eleven Official Members and thirty-four Unofficial Members. It was provided that the Federation Government should have powers to make laws with respect to all the matters set out in the Second Schedule to the Agreement, and it would seem that it was the intention to make that Schedule as comprehensive as possible, but the High Commissioner was given authority to override Legislative Council decisions by refusing his assent to a Bill or, if he considered it expedient in the interests of public order, public faith, or good government of the Federation, by declaring that any Bill or motion not passed by the Council within such time and in such form as he considered reasonable and expedient should nevertheless have effect as if it had been passed by the Council.

24. The Agreement also provided for the establishment of a Conference of Rulers consisting of all the Ruler of the Malay States. It was contemplated that the Conference would consider draft legislation, new draft salary schemes or major amendment to existing salary schemes, any draft scheme for the creation or major reorganisation of any department or service of the Federal Government, and major changes in immigration policy. It was the duty of the High Commissioner to explain to the Rulers the Federal Government's policy on matters of importance to the States and to ascertain their views on such matters. In the same way it was the responsibility of each of the Rulers to inform the High Commissioner of all matters which, in the opinion of any Ruler were either conducive or detrimental to the welfare of his State as a whole so that the High Commissioner could ascertain the views of the Conference upon such matters. The Rulers could comment on Bills, but they also undertook to accept the advice of the High Commissioner in all matters connected

with the government of the Federation save as excepted in clause 5 of the Agreement. The High Commissioner's powers were accordingly extremely wide.

25. The administrative authority of the High Commissioner extended to all subjects except those which became the responsibility of the States. Under the Agreement there was established a Federal Executive Council to aid and advise him in the exercise of his functions but he could act in opposition to the advice given to him by members of the Council. The Second Schedule to the Agreement provided for the compulsory delegation of executive authority to the States and Settlements over a number of matters, and in certain other cases it provided that executive authority should be exercised by the States and Settlements in so far as the Federal Legislative Council might consider it to be appropriate. There was also a general provision in clause 18 of the Agreement authorising the High Commissioner to entrust, either conditionally or unconditionally, to the Government of any Malay State with the consent of the Ruler, or to the Government of a Settlement, or to their respective officers, functions in relation to any matter to which the executive authority of the Federation extended.

26. The States had very limited legislative powers. According to clause 100 of the Agreement the Councils of State could pass laws on any subject omitted from the Second Schedule. They could also legislate on matters relating to the Muslim religion or the custom of the Malays and on any other subject in respect to which by virtue of a law made by the Federal Legislative Council they were for the time being authorised to pass laws. The Rulers had reserved powers in respect of State affairs similar to those of the High Commissioner in respect of Federal affairs. State Administrations under Mentri Mentri Besar were set up in each of the former Federated Malay States and were continued in each of the former Unfederated Malay States. There was provision for the establishment of State Executive Councils at meetings of which the Ruler of the State concerned would normally preside. Each Ruler was empowered to act in opposition to the advice given to him by members of the Council if in any case it should in his judgment be right so to do. The State Agreements provided that the prerogatives, powers and jurisdiction of the Rulers would be those which they possessed on the first day of December, 1941, subject to the provisions of the Federation Agreement and the State Agreements. The Rulers undertook to govern their States according to written constitutions and accepted the responsibility of encouraging the education and training of the Malay inhabitants of the States so as to fit them to take a full share in the economic progress, social welfare and government of the States and of the Federation. A British Adviser was appointed in each State and the Rulers undertook to accept the advice of their Advisers on all State affairs other than those relating to the Muslim religion and Malay custom. Johore was in fact granted a Constitution in 1895. Trengganu's Constitution dates from 1911. Appropriate amendments were made in these Constitutions, and the other States received their Constitutions in 1948, following on the 1948 Agreements. State budgets were balanced by a system of grants made from Federal revenue.

27. The Settlements of Malacca and Penang were included in the Federation by Order-in-Council. There were set up in each a Settlement Council with legislative powers similar to those of the Councils of State, and a Nominated Council with powers similar to those exercised by the State Executive Councils. The chief executive officer in each Settlement was the Resident Commissioner and executive

action was taken in the name of the High Commissioner. The reserved powers exercised by the Rulers in the States were exercisable by the High Commissioner in the Settlements.

28. In this brief review of the provisions of the 1948 Agreements it is necessary to mention two further points both of which are of considerable importance. In the preamble to the Federation Agreement it was stated as a matter of policy '... that there should be a common form of citizenship in the said Federation to be extended to all those who regard the said Federation or any part of it as their real home and the object of their loyalty.' Secondly the last paragraph of the preamble recorded the desire of His Majesty and Their Highnesses that progress should be made towards eventual self-government, and the agreement of His Majesty and Their Highnesses that, as a first step to that end and as soon as circumstances and local conditions would permit, legislation should be introduced for the election of members to the several legislatures to be established pursuant to the Federation Agreement.

29. Having described the salient features of the constitutional arrangements adopted in 1948 we must now trace the development of the Federation during the last nine years. It is part of our terms of reference to examine the present constitutional arrangements throughout the Federation, and while we were in Malaya we obtained information about the amendments made to the Agreement and about the practical application of the constitutional arrangements and the growth of conventions. We propose in the remainder of this chapter to describe the major amendments and to outline the more important conventions which have evolved to make the Agreement work effectively.

30. The first major step forward in the Federation's political advance came in 1951 with the introduction of the 'Member' system in the Legislative Council. Under this system nine of the nominated members were made responsible for various departments and functions of government with portfolios such as Home Affairs, Education, Health, etc. The system was quasi-ministerial, and we have been advised that one of its advantages was that it enabled the conduct of public business to be decentralised from the Chief Secretary and at the same time ensured that all departments of government were directly represented through their respective Members in the Federal Legislative Council. In the following year an amendment to the Agreement provided for the Executive Council being expanded so that all Members with portfolios could become members of the Executive Council. In the light of experience gained new portfolios were created and other adjustments made up to the time when the first elections to the Federal Legislative Council were held in July, 1955.

31. The next important change occurred when amendments were made to the law of citizenship. New legislation was enacted in 1952 by the Federal Government and by each of the State Governments providing for automatic citizenship on a wider basis and for the acquisition of citizenship by registration or naturalisation upon less stringent terms than those which had operated formerly. Those who became citizens by operation of law included all those who by operation of law or otherwise were already Federal citizens under the provisions of the 1948 Agreement; subjects of the Rulers as defined in the State legislation; and a limited class of citizens of the United Kingdom and Colonies.

32. The only other important change to which we feel we need refer at this stage is that relating to the composition of the various legislatures throughout the country and the introduction of elections. As a result of the work of a representative committee which was appointed in July, 1953, to consider the matter, and which reported early in 1954, it was possible to hold the first elections to the Federal Legislative Council in July, 1955. The Alliance, consisting of the three political parties, the United Malays National Organisation, the Malayan Chinese Association and the Malayan Indian Congress, won fifty-one of the fifty-two seats for elected members, and Tengku Abdul Rahman Putra, the President of the UMNO and leader of the Alliance, became the Chief Minister of the new Government. In addition to the elected members the new Council consisted of the Speaker, appointed by the High Commissioner with the concurrence of the Rulers; the ex-officio members, the Chief Secretary, the Attorney-General and the Financial Secretary, the nine Mentri Mentri Besar of the Malay States, and one representative of each of the Settlements, and thirty-two appointed members. The thirty-two appointed members consisted of twenty-two 'Members for Scheduled Interests', three 'Members for Racial Minorities' and seven 'Nominated Members'. Of the Members for Scheduled Interests, six were representative of commerce, six of planting, four of mining, two of agriculture and husbandry, and four of the trade unions. The Members for Racial Minorities were chosen by the High Commissioner to represent the Ceylonese community; the Eurasian community and the Aborigines. Two of the Nominated Members were officials and the other five were chosen by the High Commissioner after consultation with the Chief Minister. Side by side with these developments arrangements were made for the election of members to the State and Settlement Legislatures, and by the end of 1955 all the Legislatures in the country had a proportion of elected members directly representing the people.

33. During our examination of the present constitutional arrangements we have noted that a number of conventions have evolved and that the Federation Agreement is not operated in a way which a study of that document itself might lead one to expect. The Agreement gives very wide powers to the central authorities who could, if they so desired, legislate against the wishes of the State Governments on almost all questions other than those touching the Muslim religion and Malay custom. There is also provision to enable the Federal Government to override the State Governments on administrative issues. We were informed, however, that in practice the Federal Government has never introduced either a major change of policy or a legislative measure without first obtaining the agreement of all the State Governments concerned. Thus, while the Federal authorities have the powers to carry out almost any policy they wish, the convention has developed that they do not exercise these powers. Instead, there is consultation between the Federation and State and Settlement Governments through the medium of correspondence and later if necessary, at meetings of the Conference of Federation Executives. At these conferences the Federal Ministers meet the Mentri Besar of the States and the Resident Commissioners of the Settlements. They are held before every meeting of the Federal Legislative Council and we were informed that agreement is reached on the attitude to be adopted by the Federal Government on all matters which are set down for consideration at the following Council meeting. The Conference, although it has no legal status, plays an important part as a means of achieving consultation and coordination between the several Governments. But there have been delays, and in

some cases reforms which appear to be desirable have been held up owing to objections by even a single State. We understand that it has not been the policy that the High Commissioner and British Advisers should use their powers to give advice which must be accepted. The solution of problems has been found by discussions in the States themselves, in the Conference of Federation Executives, or at meetings between the High Commissioner with his advisers and the Conference of Rulers with their advisers.

34. After independence the High Commissioner, as part of the constitutional machine, will disappear. This disappearance will destroy the foundation of the present system since it depends on his overriding powers. In addition, it is our view that a major factor contributing towards the effective operation of the 1948 Agreement has been the presence of members of the Civil Services working under the direct control of the High Commissioner through a central establishment organisation. When confronted with day to day problems officers of the larger departments have been able to apply their specialist knowledge acquired during their service with both the Federal and State Governments and they have helped to make the system work by their personal contacts.

35. We conclude this chapter by mentioning the major changes introduced as a result of the agreement reached at the London Conference a year ago. It was then agreed that the Federation Agreement should be amended to enable the Alliance Government to operate more as a Cabinet Government than had been the case previously. The Conference recommended for approval by Her Majesty's Government and the Conference of Rulers important changes affecting the position of the High Commissioner and the Federal Executive Council. These required amendment of clauses 31 and 32 of the Agreement so that any member of the Council could in respect of matters within his responsibility submit questions to the Council, and also that the High Commissioner should, subject to certain conditions, act in accordance with the advice of the Council. It was also agreed that clause 23 of the Agreement should be amended to make provision for the office of Chief Minister and to provide that the members of the Executive Council other than the Chief Secretary and the Attorney-General should be appointed by the High Commissioner after consultation with the Chief Minister. Members of the Legislative Council who were not officials were appointed as Minister of Finance, Minister for Commerce and Industry, and Minister for Internal Defence and Security to take the place of civil servants who had previously carried out the functions now assumed by these Ministers. The Chief Secretary was to remain responsible for matters relating to the public service; for the administrative work involved in the constitutional changes which were to take place, and for external affairs. Her Majesty's Government retained responsibility for external defence, and special arrangements were made in this respect to cover the interim period between the date of the Conference and Merdeka Day. It was also agreed that the time had come when the British Advisers should be withdrawn and that the withdrawals should be completed within about a year. Finally it was agreed, looking ahead to the time when the Federation would be independent, that the Agreement should be amended to provide for the establishment of independent Public, Judicial, and Police Service Commissions; that a Federation Armed Forces Council should be set up as soon as possible, and that a compensation scheme should be worked out for loss of career in respect of public servants. We have been given details of these

changes and have borne them in mind when considering our recommendations for the future.

CHAPTER III - CITIZENSHIP

Citizens by Operation of Law and Registration

36. Many different proposals have been submitted to us in memoranda and in evidence with regard to qualification for citizenship of the Federation. We have carefully considered them all and we have come to the conclusion that the best proposals for dealing fairly with the present situation are those put forward by the Alliance. The parties of the Alliance have given full consideration to this matter and apart from a few minor points they have reached agreement. We are satisfied that this agreement is a reasonable and proper compromise between the views of the parties, each of which has the most widespread support from the race which it represents, and we are further satisfied that this agreement is a better way of doing justice between the races than any other that has been suggested or has occurred to us. Those affected by the proposals which we adopt and recommend can conveniently be divided into four categories: (i) persons who now have rights of citizenship, (ii) persons born in the Federation on or after Merdeka Day, (iii) persons born in the Federation before Merdeka Day and resident in the Federation on Merdeka Day, and (iv) persons resident in the Federation on Merdeka Day but not born there.

37. (i) We recommend that all who have rights of citizenship before Merdeka Day should continue to have such rights. Those who have already established their rights of citizenship should continue to be citizens after Merdeka Day and they will not require to make any further claim. Those who are now citizens by operation of law but who have not yet established their rights and those who are now entitled under clause 126 of the Federation Agreement to be registered as citizens as of right should continue to be entitled to claim the rights of citizenship or to claim to be registered after Merdeka Day. If those now entitled as of right to be registered as citizens make their claims before Merdeka Day they will remain citizens after that day and we do not think that they should lose their rights simply because of delay in making their claims until after Merdeka Day. Mr Justice Abdul Hamid does not agree that Article 15(1) should be included.

38. (ii) We recommend that all those born in the Federation on or after Merdeka Day should be citizens by operation of law. We received many representations that the principle which has come to be known generally in Malaya as *jus soli* should be given retrospective effect. We are not satisfied that it is entirely possible or desirable to provide that all those who were born in Malaya, whatever be the date of their birth wherever they may be now, and whatever be the present nationality, should be retrospectively made citizens of the Federation by operation of law. A great majority of them will, however, be qualified to obtain citizenship by registration as of right under Articles 15 and 16 referred to in paragraphs 37 and 39 of this Report.

39. (iii) We recommend that citizenship should be obtainable without undue difficulty by those born in the Federation before Merdeka Day and now

resident there, provided that they intend to reside in the Federation permanently, and are prepared to take an oath of allegiance and declare that they will not exercise any right or privilege which they may have under the nationality laws of any foreign country. We do not recommend that applicants should be required to renounce foreign citizenship because under the laws of certain countries a citizen has no power to renounce his citizenship, and therefore all that he can do is to undertake not to exercise his rights as a foreign citizen. We agree that the only conditions which should apply to such an applicant are that he should be over 18 years of age, that he should be of good character, that he should have resided in the Federation for five out of the preceding seven years, and that he should have an elementary knowledge of the Malay language. With regard to residence it has been represented to us that sometimes an unduly narrow interpretation has been put on this term and we therefore provide that periods of temporary absence from the Federation should be included in the applicant's periods of residence.

40. In view of the large number of applications which will probably have to be dealt with, we think that investigations which may cause delay should be avoided and we agree that an applicant should be deemed to be of good character if he has not within the previous three years been in prison serving a sentence of imprisonment of more than one year. We further agree that the language test should be waived in favour of all who make application within one year from Merdeka Day. We see force in the point that an applicant often has difficulty in ascertaining the facts necessary to support his claim, such as the date of his birth and the length of his periods of residence in the Federation, and we therefore recommend that, provided an applicant makes his application within one year, he should be entitled if it is incomplete to supplement it at any time within 18 months of Merdeka Day by adding such facts as he was unable to give when the original application was made. We think that it is important that applications should be made as soon as possible, and that this concession is preferable to a general extension of the time during which the language test should be waived. Applicants who do not apply until one year has elapsed will have to pass the language test but they should only be required to have an elementary knowledge of Malay, whereas those who acquire citizenship by naturalisation should be required to have an adequate knowledge of the language. We heard a number of criticisms of the language test but those which we found to have any substance related to the early days of the test and we found no recent case where it appeared to be unfair or unduly severe.

41. (iv) We recommend that citizenship should be open as of right but on somewhat different terms of those who are resident in the Federation on Merdeka Day but were not born there. Those to whom this recommendation applies are very numerous, and, in order that a sense of common nationality should develop, we think that it is important that those who have shown their loyalty to the Federation and have made it their permanent home, should participate in the rights and duties of citizenship. The only differences between the conditions which apply to applicants under this head and those which apply to applicants under the immediately preceding head, are that under this head: (i) the applicant must have resided in the Federation for eight out of the previous twelve

years and (ii) that the language test should only be waived if the applicant is over 45 years of age. It might be unreasonable in some cases to expect persons over 45 years of age to learn Malay, and it might also be unreasonable in some cases to expect younger people to have an extensive knowledge of Malay. We therefore think that we are justified in recommending that the test should be waived entirely for those who apply promptly and are over 45, and that others should have to show only an elementary knowledge of the language. We do not think that this method of acquiring citizenship should be open to those whose period of residence in the Federation has been comparatively short. Under our definition of residence a person will not be excluded from this class by reason of temporary absence from the Federation on Merdeka Day. On one matter Mr Justice Abdul Hamid takes a view different from that of the majority.

42. We further recommend that women who are or have been married to citizens and children of citizens who are under twenty-one should be entitled to be registered as citizens if they are not citizens already.

43. We recommend that all applications for registration as citizens under these articles should be dealt with by a prescribed authority and we recommend that this authority should also deal with all cases where there is doubt whether a person is a citizen by operation of law. We shall later make recommendations with regard to the procedure to be followed in dealing with these matters. We recommend that an Election Commission, composed of members of high standing, should have wide responsibilities in connection with elections, as the immediate purpose of most applicants who claim citizenship under the foregoing provisions will be to obtain a vote, and in view of the similarity of the duties of the prescribed authority and the Commission, we think that it will be convenient if these matters are dealt with by this Commission and we recommend that it should be the prescribed authority. But we provide that Parliament may, at any time, create a different prescribed authority if that is thought to be desirable.

Naturalisation

44. The other method of acquiring citizenship is by naturalisation and for this we recommend that the applicant should have to comply with the following conditions: that he has attained the age of 21; that he is of good character; that he has resided in the Federation for ten out of the preceding twelve years; that he intends to reside there permanently, that he has an adequate knowledge of the Malay language; and that he should be bound to take an oath of allegiance and should declare that he will not exercise any right or privilege that he may possess under the nationality laws of any foreign country. It was represented to us that a ten-year period of residence is unnecessarily long, but conditions in the Federation are such that it appears to us difficult in many cases to infer loyalty to Malaya and an intention to reside there permanently from any shorter period of residence. In view of the restriction on immigration during the last twenty-four years we doubt whether there are very many persons who would benefit if the period of residence were shortened. It is a general rule that the grant of naturalisation is within the discretion of the Government and we

think that that rule should be followed. We therefore recommend that applications for naturalisation should be dealt with by the Government and not by the Election Commission. In the existing law there is provision for waiving certain conditions precedent to naturalisation for those who have served in the armed forces, and we think that the present position should not be altered.

Termination of Citizenship

45. In our view a citizen, whether by operation of law or by registration under Articles 15 or 16, should not be liable to be deprived of his citizenship on any ground unless he also is or becomes a citizen of a foreign country. But we think that the Federation must be entitled to protect itself against disloyalty of any citizen who either voluntarily acquires foreign citizenship, or takes advantage of his being a foreign citizen if he has dual nationality by reason of the law of his country of origin. We therefore recommend that any such citizen should be liable to be deprived of his citizenship in the Federation. We further recommend that any citizen by registration or by naturalisation should be liable to be deprived of his citizenship in the Federation if he has obtained it by fraud or concealment. We recommend in accordance with ordinary practice that any citizen who has not obtained his citizenship by birth or descent should be liable to be deprived of his citizenship if he is also a citizen of another country and he has shown himself by act or speech to be disloyal or disaffected towards the Federation, or has been imprisoned for not less than two years within five years after naturalisation, or has traded with the enemy in any war. Further, no person should be deprived of his citizenship unless the Federal Government is satisfied that it is not conducive to the public good that he should continue to be a citizen of the Federation of Malaya. Anyone against whom it is proposed to take action to terminate his citizenship must be informed of the grounds of the proposed action and be given an opportunity to have his case referred to a committee of inquiry of which the Chairman must have judicial experience.

Subjects of the Rulers

46. We turn now to the second understanding contained in our terms of reference 'that subsection (iv) of the terms of reference (a common nationality for the whole of the Federation) is not to be taken as precluding the Commission from making recommendations which would allow British subjects or subjects of Their Highnesses the Rulers to retain their status as such if they have acquired the proposed common nationality.' We shall deal first with subjects of the Rulers. Before 1952 there appears to have been no legal definition of the subject of a Ruler but that term is now defined in clause 124(f) which was added to the Federation Agreement in that year, and elaborate provisions for acquisition of such rights have since been made in the Nationality Enactments of all the States. Under the Federation Agreement all subjects of a Ruler are citizens of the Federation by operation of law. We think that to allow this provision to remain would be inconsistent with the creation of a common nationality for the whole of the Federation, because citizenship of the Federation must depend on, and be conferred by Federal law and not State law. Accordingly, we do not include in our proposed qualifications for citizenship any reference to being a

subject of a Ruler. We think that it would also be inconsistent with the conception of common nationality that any person who is not a Federal citizen should be a subject of a Ruler, but the majority of us see no strong objection to persons who are Federal citizens being also subjects of a Ruler, and with this limitation we think that the definition of a subject of a Ruler can be left to State law. Sir William McKell and Mr Justice Abdul Hamid are unable to agree with this view. They consider that for each of the nine Rulers to have subjects of his own would not conform to the principle of a common citizenship, the preservation of which is imperative if Malaya is to have a united people. But we are all agreed in drawing attention to the fact that fundamental rights are effective in the States just as in the Federation and in particular that the provision against discrimination applies universally. Accordingly, we recommend that no State should have the right except to the extent permitted by the Constitution, to discriminate in favour of subjects of the Ruler of the State against other Federal citizens.

Commonwealth Citizens

47. The second understanding in our terms of reference also refers to British subjects. The British Nationality Act 1948 (which we shall refer to as The Act of 1948) introduced the term 'Commonwealth citizen' as an alternative to 'British subject' and in the present context we shall use the term Commonwealth citizen. The Act of 1948 introduced an important new conception of territorial citizenship within the Commonwealth which we have discussed in greater detail below. It created the status of ‘Citizen of the United Kingdom and Colonies', and enacted that every such citizen should also have the status of a Commonwealth citizen. The Act could not legislate for those countries of the Commonwealth which were already independent and self governing, but its provisions have in fact been adopted by most of them, and each now recognises that its own citizens and the citizens of all the others have the common status of Commonwealth citizen, so that they are not aliens in any other Commonwealth country. This new status does not automatically confer any special rights; for example each Commonwealth country has its own laws regarding immigration and these laws can, and frequently do, apply so as to exclude people coming from other Commonwealth countries. However, we regard its existence as a valuable link between the peoples of the Commonwealth and we recommend that the status of Commonwealth citizen should be recognised in the Constitution of the Federation.

48. We have said that Commonwealth citizens do not automatically have any special rights, but in some Commonwealth countries they have been granted greater rights than aliens: for example in Britain they have practically all the rights accorded to a citizen of the United Kingdom and Colonies. We think that where citizens of the Federation have been given in some other Commonwealth country some special rights and privileges the Parliament of the Federation ought to have power to make a similar concession to citizens of that country who come to Malaya, and we so recommend.

Dual Citizenship Within the Commonwealth

49. At present there are a large number of British subjects or Commonwealth citizens permanently residing in Malaya, many of whom are Federal citizens. But whether they are Federal citizens or not they have a territorial citizenship in the Commonwealth being mostly either citizens of the United Kingdom and Colonies or citizens of India, Pakistan or Ceylon. We received many representations and enquiries from British subjects in the Settlements with regard to their citizenship, and we found that large numbers of them who are now citizens of the United Kingdom and Colonies wish to retain that status in addition to becoming citizens of the Federation.

50. Before we can deal with that matter we must first set out the present legal position which is complicated and not altogether easy to understand. Before 1948 there was only one category of British subject. Every person was either a British subject, a British protected person or an alien. As we have said, the Act of 1948 introduced a new conception of territorial citizenship within the Commonwealth. By virtue of its provisions certain British subjects including, with minor exceptions, all those born in the United Kingdom or a colony and also many others became citizens of the United Kingdom and Colonies. We have already noted that the Act introduced the term 'Commonwealth citizen' as alternative to the term 'British subject', and that it provided that every citizen of the United Kingdom and Colonies should also have the status of British subject or Commonwealth citizen. The Act of 1948 specified in section 1(3) those countries which were then independent self-governing countries of the Commonwealth including India, Pakistan and Ceylon, and it provided that any person who was a citizen of any of these countries under its law should by virtue of that citizenship, also have the status of British subject or Commonwealth citizen. It left for the moment without territorial citizenship any British subject who had not become a citizen of the United Kingdom and Colonies by British law or a citizen of one of the other Commonwealth countries under its law. But it contained important provisions, which apply to many persons in Malaya, with regard to persons who in 1948 were potential citizens of other Commonwealth countries by reason of their connections with those countries. If under a citizenship law subsequently passed by any of these countries a potential citizen of that country did not actually become a citizen of that country, then such a person was not left without territorial citizenship but he became a citizen of the United Kingdom and Colonies.

51. In 1948 there were large numbers of British subjects in Malaya who were born in British India or in Ceylon and who were therefore potential citizens of India, Pakistan or Ceylon. But since 1948, laws have been passed in these countries which exclude from citizenship those potential citizens of these countries who had ceased to reside or be domiciled there. Persons so excluded from citizenship in these countries became, and are now, citizens of the United Kingdom and Colonies. Accordingly, the position now is, broadly speaking, that British subjects born before 1948 and now resident in any part of the Federation, are citizens of the United Kingdom and Colonies if they or their fathers were born in the United Kingdom, or in the Settlements, or any other colony, or in any of the Malay States, or if they or their fathers were born in British India or Ceylon and they have not become citizens of India, Pakistan or Ceylon. Children of citizens of the United Kingdom and Colonies born since 1948 are also citizens of the United Kingdom and Colonies.

52. There is a distinction between British subjects by birth and British subjects by descent, A child born in a foreign country is a British subject if his father was a British subject by birth, but not if his father was only a British subject by descent unless his birth was registered in accordance with the provisions of the Act of 1948. The Malay States are not foreign countries for the purpose of this distinction because they are places 'where by treaty capitulation grant usage sufferance or other lawful means' the Crown exercised jurisdiction over British subjects. So a person residing in a Malay State may be a citizen of the United Kingdom and Colonies though his ancestral connection with British territory is remote. For example, if the paternal great grandfather of a Malay was born in one of the Settlements and migrated say in 1880 to a State then under British protection then his sons, grandsons and great grandsons have become British subjects by birth, and those alive in 1949 or born since 1948 have all become citizens of the United Kingdom and Colonies.

53. As a result of all these provisions there are now in all parts of the Federation very large numbers of British subjects of all races who are today citizens of the United Kingdom and Colonies. These include not only Malays, Chinese, Indians, Ceylonese and others born in the Settlements or whose paternal ancestors have migrated from the Settlements to other parts of the Federation, but also many who have never had any connection with the Settlements, such as Chinese born in Singapore or Hong Kong, Indians born in British India and Ceylonese born in Ceylon. There are other legal complications which may affect appreciable numbers of persons resident in the Federation but to which we have thought it unnecessary to refer. In view of all these matters we feel confident that there are now large numbers of persons resident in the Federation who are citizens of the United Kingdom and Colonies but who are unaware of that fact. The fact that a person has become the subject of a Ruler does not prevent him from being also a citizen of the United Kingdom and Colonies.

54. Under British law, and also under the laws of several other Commonwealth countries a person can now be a citizen of other Commonwealth countries and also a citizen of the United Kingdom and Colonies. For example, if a citizen of the United Kingdom and Colonies goes to reside in India or Pakistan he can become a citizen of India or Pakistan and he is not required to renounce his United Kingdom citizenship, and similarly if a citizen of India or Pakistan goes to reside in the United Kingdom or a colony he can become a citizen of the United Kingdom and Colonies and he is not required to renounce his Indian or Pakistani citizenship. For special reasons the law of Ceylon is different. As the conception of territorial citizenship within the Commonwealth only dates from 1948 in British law, the existence of dual territorial citizenship within the Commonwealth is not yet fully appreciated. But dual citizenship in International Law has long been common.

55. It has been represented to us that dual citizenship within the Commonwealth is undesirable in that it may lead to divided loyalty. We do not agree, and we think that this view is based on some misunderstanding. It is well recognised in International Law and custom that a person who has dual citizenship owes undivided loyalty to the country in which he is residing, and that the Government of the other country of which he is also a citizen should not seek to interfere between him and the Government of the country in which he is residing. In the same way we think that, in

the case of dual territorial citizenship within the Commonwealth, the person with such dual citizenship owes undivided loyalty to the country in which he is residing, and that the Government of the other Commonwealth country of which he is a citizen ought not to seek to come between him and the Government of the country in which he is residing. For example, if dual citizenship is permitted by the law of the Federation, we think that if a citizen of the Federation who is also a citizen of the United Kingdom and Colonies is residing in the Federation then the Government of the United Kingdom ought not to seek to afford him protection or to issue a British passport to him; and if a person with that dual citizenship is residing in the United Kingdom or a colony then the Government of the Federation ought not to seek to afford him protection or issue a Malayan passport to him. This position is now well recognised and we need not say anything more this matter.

56. For the above mentioned reasons we do not recommend that citizens of the United Kingdom and Colonies or of other Commonwealth countries should be required to renounce such citizenship as a condition of obtaining citizenship of the Federation. We are also influenced by the fact that any such recommendation would create great practical difficulties. Under the law of the United Kingdom a person is not permitted to renounce citizenship of the United Kingdom and Colonies unless he already has another citizenship, so, unless the law of the United Kingdom is altered, it would not be possible to require renunciation of that citizenship before acquisition of citizenship of the Federation. And even if the Parliament of the United Kingdom were willing to alter the law of the United Kingdom, it would obviously not be possible to deprive all persons resident in the Federation of their citizenship of the United Kingdom and Colonies, and we can see no practicable method of enacting that some but not all of such persons should be deprived of that citizenship. The matter is made still more difficult by the fact, which we have already noted, that there must be many persons in the Federation who are citizens of the United Kingdom and Colonies without being aware of their position. Even if the law of the United Kingdom were altered there would we think still be very great difficulty if the law of the Federation tried to prevent dual citizenship within the Commonwealth.

CHAPTER IV - PARLIAMENT AND THE EXECUTIVE

57. We are directed by our terms of reference 'to make recommendations for a federal form of constitution for the country as a single, independent, self-governing unit within the Commonwealth based on Parliamentary democracy with a bicameral legislature', and to include provision for ‘a constitutional Yang di-Pertuan Besar for the Federation to be chosen from among Their Highnesses the Rulers'. This in our view requires us to make recommendations for the establishment of a Federal Parliament for the whole country consisting of the Yang di-Pertuan Besar and two Houses; for Parliament to be free, subject to the limitations contained in the Constitution, to pass laws relating to any subject within the Federal sphere; and for Federal Ministers to be responsible to Parliament. We shall therefore deal in turn with (i) the position of the Yang di-Pertuan Besar, (ii) the constitution of the Lower House, (iii) the constitution of the Upper House, (iv) the powers of the two Houses, and (v) the responsibility and tenure of office of Ministers and the duration of each Parliament. We shall also deal in this chapter with elections and with amendment of the Constitution, and we shall deal in the next chapter with the question of the subjects that should be within the Federal sphere for legislation.

Yang di-Pertuan Besar

58. (i) The Yang di-Pertuan Besar will be the Head of the State, but he must be a constitutional Ruler. He must therefore act on the advice of his Ministers with regard to all executive action. He will be a symbol of the unity of the country. High Commissioners from Commonwealth countries and Ambassadors or other diplomatic representatives from foreign countries will be accredited to him. The choice of the Prime Minister and the dissolution of Parliament should, we recommend, be his constitutional responsibility, and he will be entitled to be kept informed with regard to important public affairs and to make his views known to the Prime Minister. He will be entitled to confer honours; and commissions and appointments will be granted or made by him or in his name. He will have important formal functions to perform. We recommend that Parliament should vote a Civil List to each Yang di-Pertuan Besar for the duration of his appointment.

59. We recommend that the proposals of Their Highnesses the Rulers with regard to the appointment of the Yang di-Pertuan Besar should be accepted without substantial change. We could not recommend a shorter duration than five years for the appointment because we expect that each successive Yang di-Pertuan Besar will devote himself to promoting the unity and welfare of the country in many ways, and a shorter period of office would hardly enable him to do that effectively. Their Highnesses' proposals for the first and subsequent appointments follow the present system of precedence among them. These proposals may seem unduly complicated, but we have not been able to find a better way to ensure that so far as possible the position of Yang di-Pertuan Besar shall be held successively by a Ruler of each of the nine existing States, and it is not within our terms of reference to suggest that

appointments should be made from the States of Malacca and Penang. We agree that appointments should be made by the Conference of Rulers constituted as it is at present. We also make recommendations for the appointment of a Deputy Yang di-Pertuan Besar who will act during any period when the Yang di-Pertuan Besar is absent from the country or incapacitated by illness or in case of a vacancy.

The House of Representatives

60. (ii) We recommend that the Lower House of Parliament, which we shall call the House of Representatives, should be wholly elected by single-member constituencies on a territorial basis. We have received no important representations that any other system should be adopted, and we do not think that any other system would be appropriate in the circumstances. We think that the appropriate number of members would be 100 which is not significantly different from the total number of members of the present Legislative Council. We shall explain later our recommendations for the delimitation of constituencies, the making up of voters' rolls and the conduct of elections. We think that it is inappropriate that there should be nominated members in the House of Representatives, and we recommend that the Speaker of the House of Representatives should be elected by the House from among its members.

The Senate

61. (iii) By a majority we recommend that the members of the Upper House, which we shall call the Senate, should not be elected by direct election, but that the majority should be elected by indirect election and the rest should be nominated for a term of years by the Yang di-Pertuan Besar. We make this recommendation only on the basis that the powers of the Senate with regard to legislation other than amendment of the Constitution will not be equal to the powers of the House of Representatives but will be revising and delaying powers, and that Ministers will be able to continue in office notwithstanding an adverse vote in the Senate. We have decided not to recommend that membership of a State Legislative Assembly should be a disqualification for membership of the Senate or House of Representatives because we think that such a disqualification might deprive the Legislative Assemblies of useful contacts with the Federal Parliament and that if such a disqualification were imposed it might be difficult to find for State Legislative Assemblies enough members of suitable experience.

62. By a majority we recommend that there should be two members of the Senate from each State and that there should be eleven nominated members. We think that there should be a substantial majority of elected members even though the powers of the Senate are to be considerably less than the powers of the House of Representatives; and we recommend that Parliament should have power to reduce the number of nominated members or abolish them if a time should come when that is

thought desirable. We also recommend that Parliament should have power to increase the number elected to the Senate from each State from two to three. We provide that the members from each State should be elected by the State Legislative Assembly but we think that it may be found at some future time that this system of indirect election is undesirable and we therefore recommend that Parliament should have power to introduce a system of direct election by the people of each State in place of indirect election which we regard as appropriate in present circumstances, We recommend that the nominated members of the Senate should be nominated by the Yang di-Pertuan Besar and that these members should be persons who have rendered distinguished public service or have achieved distinction in the professions, commerce, industry or agriculture or in cultural activities or in social service or are representative of racial minorities or are competent to represent the aborigines. As conditions may change we do not think that it should be obligatory to nominate any particular number of members from each of these categories. We do not recommend that the Senate should be wholly elected because we think that at least in the initial stages it would be valuable to have in the Senate persons who might be unwilling to stand for election but who have given distinguished service to the Federation or who possess the special qualifications above referred to. We are also impressed by the fact that in the memoranda and evidence submitted both on behalf of the Rulers and by the Alliance Parties stress is laid on the need for there being nominated members in the Senate. Sir William McKell and Mr Justice Abdul Hamid do not agree with the recommendations in this and the preceding paragraph and their reasons are given in a note appended to this chapter.

63. We recommend that each member of the Senate should be elected or nominated for a period of six years and that, if any member dies or ceases to be a member before the end of his period of membership, his place should be filled for the remainder of his period of membership by election or nomination as the case may be. A member will be eligible for re-election or re-nomination. We think that, in order to obtain continuity, dissolution of Parliament should not affect membership of the Senate, and that half the members of the Senate ought to be elected or nominated every three years. We therefore recommend that in the first instance each State Legislative Assembly should elect one member for a period of six years and one member for a period of three years, and that six of the nominated members should be nominated for a period of six years and five for a period of three years. The President should be chosen by the Senate from among its members.

Powers of the Two Houses

64. (iv) Our recommendations will give to the Senate much less direct control over legislation and administration than to the House of Representatives. We are directed to base our recommendations on Parliamentary democracy, and in our view the principles of Parliamentary democracy require that ultimate responsibility should rest with that House of Parliament which has been elected by direct elections. But we do not envisage the Senate as a body of secondary importance. Our recommendations are made with the intention of enabling the Senate to become an influential forum of debate and discussion, and a body which

will contribute valuable revision to legislation and which will be able to impose a measure of delay in exceptional cases. We recommend that Bills other than money Bills may be introduced in either House. A Bill as passed by one House will go to the other House and any amendments made there will be sent back to the House in which the Bill originated. If these amendments are accepted the Bill will become law on receiving the assent of the Yang di-Pertuan Besar.

65. If the Senate rejects a Bill passed by the House of Representatives or insists on amendments which the House of Representatives will not accept, then we recommend that there should be delay until twelve months have elapsed from the date when the Bill was sent by the House of Representatives to the Senate and that it should then be competent for the House of Representatives to pass a resolution approving the Bill in the form in which it was sent by that House to the Senate but incorporating any amendments made by the Senate which were accepted by the House of Representatives. If such a resolution is passed then the Bill so approved should be submitted to the Yang di-Pertuan Besar for his assent, and on his assent being given the Bill should become law notwithstanding that it has not been passed by the Senate. Such delay will enable public opinion to express itself, and the Senate's power to impose delay should be a safeguard against hasty or ill-considered legislation. But the House of Representatives should in the end have the power to override the Senate, after taking account of the development of public opinion, as no doubt it would do. If a Bill which originates in the Senate is rejected by the House of Representatives, or if the Senate will not accept amendments made in the House of Representatives then the Bill will simply fall. We do not recommend that differences between the two Houses should be resolved by joint sittings. If that procedure were adopted the fate of a Bill might well depend on the votes of nominated members of the Senate, and we do not think that that would be proper.

66. We recommend that a money Bill should only originate in the House of Representatives and that if a Bill, certified by the Speaker as a money Bill, has not been passed by the Senate within twenty-one days after being sent to the Senate, it should then be submitted to the Yang di-Pertuan Besar for his assent and on his assent being given the Bill should become law, notwithstanding that it has not been passed by the Senate. We recommend provision for the submission of an annual budget and estimates of revenue and expenditure to the House of Representatives, for the passing of Supply Acts, and for the establishment of a Public Accounts Committee but we do not think it necessary to refer here to these provisions in detail. We think that subject to exceptions the Rules of Procedure in each House should be left to be made by the House itself. But we recommend that it should be provided in the Constitution that no Bill or amendment which will involve expenditure from the Consolidated Fund may be introduced or proposed except by a Minister, and we also recommend that every Minister should have a right of audience in both Houses. But he can only have a right to vote in the House of which he is a member. We also recommend that the Attorney-General should have a right of audience in both Houses.

67. We recommend that it should be within the power of Parliament to enact what should be the privileges of the two Houses, and this would include power to make provision for disciplinary action being taken against any member or any other person. But we think that it is undesirable both in the interests of the public and in the

interests of Parliament itself that either House should have the power to punish by fine or imprisonment any person accused of breach of privileges. We therefore recommend that in any such case provision may be made by Act of Parliament for trial and punishment by the Supreme Court of persons accused of breach of privilege. Under our recommendations the existing laws of the Federation, in so far as not inconsistent with the provisions of the Constitution will continue in force until altered by Act of Parliament. Accordingly, the existing privileges of the Legislative Council except in so far as repugnant to the above recommendation will continue in force after Merdeka Day and until altered by Act of Parliament.

Responsibility and Tenure of Office of Ministers and Duration of Parliament

68. (v) We recommend that it should be the responsibility of the Yang di-Pertuan Besar to appoint the Prime Minister of the Federation. The Prime Minister must be a member of the House of Representatives. The Yang di-Pertuan Besar would normally appoint the leader of the majority party in the House of Representatives because no one else would be likely to command the confidence of the House, but there may be occasions when it is doubtful who should be appointed, and we see no practicable alternative to leaving the Yang di-Pertuan Besar to choose the person whom he thinks most likely to command the confidence of the House of Representatives. It will then be for the Prime Minister to choose the Ministers who should be appointed. Ministers must be members of either the Senate or the House of Representatives at the time of their appointment. Ministers will form a Cabinet and the ordinary principles of collective responsibility and of secrecy should apply. The Prime Minister will be entitled at any time to require the resignation of any Minister, because Ministers will hold office at the pleasure of the Yang di-Pertuan Besar and the Yang di-Pertuan Besar must rely in these matters on the advice of the Prime Minister.

69. We recommend that the duration of each Parliament should be five years subject to power of dissolution at any time within the life of the Parliament, and that the Constitutional responsibility for dissolving Parliament should rest with the Yang di-Pertuan Besar. Experience has shown that there are substantial objections to the Prime Minister or Government of the day having unrestricted power to insist on a dissolution of Parliament. A Prime Minister may ask for a dissolution in various circumstances and it is not possible to define the circumstances in which his request ought to be granted. Normally the Yang di-Pertuan Besar would accept the advice of his Prime Minister but he should not be bound to do so in all cases. He ought in a critical case to be free to decide what is in the best interests of the country. We recommend that if the Prime Minister ceases to command the confidence of the House of Representatives he must either vacate his office or ask for a dissolution. If the Prime Minister asks for a dissolution and the Yang di-Pertuan Besar refuses his request, then the Prime Minister must vacate his office. It will be open to a Prime Minister who vacates his office to suggest as his successor a member who he thinks will command the confidence of the House but it will rest with the Yang di-Pertuan Besar to decide whether he should accept this advice. We recommend that new

elections should be held within sixty days of dissolution and that the new Parliament should be summoned within ninety days after the dissolution. Any dispute as to the result of an election should be determined by the Supreme Court.

Transitional Provisions

70. We are recommending a wide extension of the existing qualifications for citizenship with special concessions to those who apply for citizenship within one year after the new Constitution comes into effect. All those who are now entitled to vote will be so entitled in future, but we think that it would be undesirable to hold a Parliamentary election before there has been time for those to whom citizenship will now be open to have their names put on the voters' rolls. A Parliament elected on the present limited franchise would not be truly representative of the people of the Federation. We recognise the desirability of holding new elections as soon as possible but we expect that large numbers will take advantage of the new qualifications and that it will take a considerable time to deal with their applications and to prepare new electoral rolls. We have carefully considered the whole matter in light of the information we obtained in all parts of the Federation and we think it improbable that electoral rolls coming into effect at any earlier date than 1st January, 1959, could fairly be regarded as giving adequate representation to new classes of citizens. But, whether that view is accepted or not, it is impossible for the new Parliament to be elected and summoned for some considerable time after the new Constitution comes into force, and we see no practicable alternative to recommending that the existing Legislative Council as at present constituted should fulfil the functions of Parliament until the first Parliament is elected. The present Legislative Council has been in existence for less than two years and is in our view able to continue to discharge the essential functions of Parliament. We therefore recommend that the present Legislative Council should be continued after Merdeka Day and should exercise all the functions of Parliament until it is dissolved. We recommend that it should not be dissolved before 1st January, 1959. That would mean that there must be a dissolution, followed by elections for the new Parliament at some date between 1st January, 1959 and 30th August, 1959 when the life of the present Legislative Council comes to an end. Mr Justice Abdul Hamid agrees that there must be a new roll before an election is held but thinks that no date should be inserted in the Constitution for the dissolution of the Legislative Council.

Election Commission

71. Before any elections can be held for the House of Representatives it will be necessary to delimit constituencies and to prepare electoral rolls for each constituency. We recommend that an independent Commission should have the duty and responsibility of carrying out these matters and of organising and conducting elections and that this Commission should be called the Election Commission and should consist of three members. We regard it as a matter of great importance that this Commission should be completely independent and impartial. We therefore recommend that the Election Commission should be a permanent body, that its members should be appointed by the Yang di-Pertuan Besar and should be persons in

whom all democratic parties and all communities have complete confidence. The independent position of its members should be recognised by providing that they can only be removed from office in the manner provided with regard to a Judge of the Supreme Court, and that their salaries cannot be diminished during their term of office but shall be a charge on the Consolidated Fund.

Delimitation of Constituencies

72. The first question to be decided is whether constituencies should contain approximately equal populations or approximately equal numbers of voters. In most countries it makes little difference which basis is chosen because the proportion of voters to population does not greatly vary between different areas. But in the Federation today the proportion varies very greatly. For example in the present constituency of Kuala Lumpur Barat there were at the last election 8,862 registered voters out of a total population of 132,300, and in the present constituency of Kelantan Utara there were 42,510 registered voters out of a total population of 93,300. We expect that this disparity will be greatly reduced when the new qualifications for citizenship have had time to operate so that a large proportion of the new voters have been included in electoral rolls. But we expect that for a long time to come there will still be very considerable differences between the proportion of voters to population in different areas. This is not due to any defect in our recommendations for new qualifications for citizenship but to there being resident in the Federation today considerable numbers of persons of voting age who would not be qualified for citizenship under any of the proposals which have been submitted to us, or who, even if qualified are unlikely to apply to have their names entered in the electoral rolls. Such persons tend to be concentrated in particular areas and whatever may be the qualifications for citizenship inserted in the Constitution, we would expect that the proportion of voters to population will be considerably smaller in, say, Kuala Lumpur than in rural constituencies.

73. We think that delimitation of constituencies should take place in two stages: the Election Commission should first allocate the total of 100 seats among the States giving each State a quota so that the sum of the eleven quotas is 100. It should then delimit in each State a number of constituencies equal to the quota for that State. We do not think that it would in present circumstances be fair to the various communities to determine the State quotas either solely by reference to the population in each State or solely by reference to the number of voters in each State. In normal circumstances the main object of delimitation is to ensure that so far as practicable every vote is of equal value and we think that the principal factor to which the Commission should have regard is the number of voters in the State; but we think that it is necessary also to have regard to the total population of the State. That means that if two States have equal numbers of voters but the population of one is considerably greater than that of the other then the State with the greater population could have a larger quota than the State with the smaller population.

74. In delimiting constituencies within a State it would be in accord with general practice elsewhere and it is in our opinion necessary in the Federation that regard should be had not only to the number of voters in each constituency but also to the

total population, the sparsity or density of population, the means of communication, and the distribution of different communities. We recommend that the Commission should be required to have regard to these factors, but in order to prevent too great weight being given to any of them, we recommend that the number of voters in any constituency should not be more than 15 per cent above or below the average for the State.

75. It would not be right to make a redistribution on these lines immediately after Merdeka Day because it would be inequitable, and would lead to quite unreasonable results if the numbers of voters now on the electoral rolls in the various States were taken as the basis for fixing State quotas, and it will not be possible to ascertain the number of voters in each State for the election until shortly before the election is held. We have given much consideration to the basis to which the first election under the new Constitution should be held and we have come to the conclusion that the simplest and fairest thing to do is to retain the existing 52 constituencies and divide each into two so that in the first Parliament there shall be 104 members. The result will be that there will be the following numbers of constituencies in each State. Johore 16; Kedah 12; Kelantan 10; Malacca 4; Negri Sembilan 6; Pahang 6; Penang 8; Perak 20; Perlis 2; Selangor 14; Trengganu 6. For the reasons given below in paragraph 76 it will be necessary to have a general redistribution after the election of the first Parliament and it would cause great inconvenience if it were necessary also to have a redistribution before the election of that Parliament. Our proposals will avoid the necessity of two redistributions within such a short time. The existing constituencies are not in fact based on equality of population because some contain more than double the population in others and they are not based on equality of numbers of voters because there the disparity is even greater than in the case of the population. But, taking the two factors of numbers of voters likely in our view to be included in the new electoral rolls, and present estimated population, the present distribution of constituencies, though far from perfect, appears to us with few exceptions to be reasonable. We have calculated the number of seats which should be allocated to each State on various assumptions and the results of our calculations confirm us in our view that sub-divisions of each of the existing constituencies into two is the best method of delimitation for the first elections under the new Constitution. We recommend that that method should be adopted.

76. We recommend that the first redistribution should take place after the election of the first Parliament and before the election of the second. By that time large numbers of voters who take advantage of the new qualifications for citizenship will be on the electoral rolls and the number of voters in each State should be a fair basis. Moreover the results of the 1957 census will then be available. We also recommend that further redistributions should be made periodically.

77. We recommend that the Commission should also delimit the constituencies for the election of State Legislative Assemblies. We shall later recommend that the qualifications for voting in State elections should be the same as for Federal elections and that the same electoral rolls should be used, and we recommend that State constituencies should for the first State Elections under the new Constitutions be delimited by sub-division of Federal constituencies having regard to the same matters as we have specified in connection with the delimitation of Federal constituencies. Taking this method we recommend that the number of elected members in the first

State Legislative Assemblies under the new Constitutions should be as follows: Johore 32; Kedah 24; Kelantan 30; Malacca 20; Negri Sembilan 24; Pahang 24; Penang 24; Perak 40; Perlis 12; Selangor 28; Trengganu 24. Thereafter it should be for each State Legislature to determine the number of its elected members, and immediately after each Federal redistribution the Commission should redistribute the State constituencies in each State. We recommend that for the purpose of each redistribution there should be added to the Commission two Federal officers with special knowledge of the topography of and the distribution of population in the Federation but that the duties of these officers should only be advisory and they should have no vote in the Commission.

Elections

78. We recommend that it should be the duty of the Commission to receive and deal with applications from persons who claim to be entitled to be put on an electoral roll. Some of these persons will have certificates of citizenship but many will not. We were informed that at present election officers only receive applications during one month in each year, but we think that in order to expedite the preparation of new rolls it will be necessary, at least in the initial stages, to receive and deal with applications over much longer periods. We were informed that in past years election officers sent out representatives to interview people and discover whether they were qualified and wished to be included in electoral rolls, and we think that it will probably be found desirable that this practice should be generally adopted. The qualifications necessary to enable a person to be put on the roll without having a certificate of citizenship will be comparatively simple and will generally depend on questions of fact such as his age or where he was born. We were informed that there has seldom been reason to suspect an applicant's veracity about these matters, and we have recommended that an applicant's word should be taken unless there is reason to suspect the truth of his statements. Accordingly it will not be necessary to have a very highly trained staff to deal with applications. We recommend that Federal and State Governments should, as far as possible, make available to the Commission the services of their officers, and that where necessary the Federation should provide further staff. We expect that the Commission will be able to deal with applications with reasonable expedition. But if, as we expect, large numbers take advantage of the wider qualifications for citizenship which we recommend, it will take a considerable time to deal with them. Under the existing law new electoral rolls are made up in the early part of each year. But if our recommendation is accepted that there should be no election before 1st January, 1959, it will be unnecessary to make up rolls in 1958 in accordance with existing practice, and the Commission should take all necessary action to ensure that the next electoral rolls come into force on 1st January, 1959. We recommend that any person aggrieved by the refusal or failure of any officer to admit his claim to be put on an electoral roll should be entitled to appeal to the Commission, and that the decision of the Commission on such appeal should be final, subject to appeal to the Supreme Court on any question of law.

79. We recommend that the Election Commission should be made responsible for the organisation and conduct of elections for the Federal House of Representatives, for the State Legislative Assemblies, and for the Municipal Council of Kuala Lumpur,

and that the Commission should be entitled, but not bound, to assume similar responsibility with regard to elections for any other municipality or any other local authority if requested and empowered to do so by the State concerned. In the execution of its responsibility the Commission will determine polling stations and will make all necessary arrangements for elections. The Commission should also be responsible for appointing returning officers; for the proper staffing and equipment of polling stations; for counting votes; and for the declaration of the result of the election in each constituency. If the result declared in any constituency is disputed or maintained to be invalid on any ground such dispute must be decided by the Supreme Court. All Governments should be required to co-operate with the Commission and to afford to them all possible assistance in the performance of their responsibilities.

Amendment of the Constitution

80. It is important that the method of amending the Constitution should be neither so difficult as to produce frustration nor so easy as to weaken seriously the safeguards which the Constitution provides. We are all of opinion that a referendum would not be a suitable method in the Federation, and that amendments should be made by Act of Parliament provided that an Act to amend the Constitution must be passed in each House by a majority of at least two-thirds of the members voting. In this matter the House of Representatives should not have power to overrule the Senate. We think that this is a sufficient safeguard for the States because the majority of members of the Senate will represent the States. Our recommendation is that, except where the Constitution itself provides that any of its provisions can be altered by ordinary legislation, amendment of the Constitution should only be competent by an Act of Parliament passed in each House by a majority of two-thirds of the members present and voting being also a majority of the total number of members of the House. We do not think that it would be appropriate that the present Legislative Council when performing the functions of Parliament should have any general power of amendment of the Constitution. That power should commence with the first Parliament under the new Constitution. But experience in other countries shows that there are likely to be unforeseen difficulties in the process of transition to the new constitutional arrangements and we recommend that the Legislative Council performing the functions of Parliament should have power to make temporary amendments of the Constitution to remove any such difficulties.

Note by Sir William McKell and Mr Justice Abdul Hamid on Paragraphs 61 and 62

Under our terms of reference we are asked to make recommendations for a federal form of constitution for the whole country as a self-governing unit based on parliamentary democracy with a bicameral legislature. This involves in our opinion the setting up of a Federal Parliament consisting of two Houses, each House being fully elected on an adult franchise. We find that we are unable to agree with the majority of our colleagues in the recommendation made by them concerning the Constitution of the Federal Legislature.

This recommendation provides for a Federal Legislature consisting of two Houses, one a House of Representatives to be elected by the people of an adult franchise, and the other a Senate consisting of thirty-three members. Eleven of the members of the Senate are to be nominated by the Yang di-Pertuan Besar on the recommendation of the Government, the remaining twenty-two to be elected by the members of the State Legislative Assemblies under a system of indirect election. It will be seen that none of the members of the Senate are to be elected by the people. We consider that a Senate so constituted does not conform to a system of parliamentary democracy, and is not in keeping with the aspirations of a people whose desire it is to enjoy self-government in the real sense and democracy in its purest form. Merdeka, to the celebration of which the people of Malaya are looking forward, means to them freedom, freedom to govern themselves through representatives of their own choice under a system in which their parliamentary institutions shall be exclusively representative of the people's will.

We consider that the Senate should consist of an equal number of members from each State, to be elected on the same franchise as that on which members will be elected to the House of Representatives. It would then be in every respect a House of Representative of the States, and one in keeping with modern democratic constitutions and with the terms of reference. The Constitution envisages the House of Representatives as the predominant Chamber, enjoying complete powers with respect to finance; and in all matters except the alteration of the Constitution its will must ultimately prevail. It is difficult for us to appreciate that the people, who are responsible for its election, should not be trusted with the election of the members to the Senate.

The principle of nominated members, as recommended by the majority report, in our opinion is completely out of step with a system of parliamentary democracy. Nominated members owe no responsibility whatever to the people; they are not elected by them nor can they be removed by a popular vote. They can be nominated again and again irrespective of their service. In the recommended Constitution they will comprise one-third of the Senate; in the absence of or with the vote of one other Senator they will be able to prevent the passage of a Bill to amend the Constitution, and with the support of six other Senators can hold up legislation for one year. They will be appointed on the recommendation of the Government and will in the main represent special interests. Despite this fact, they will enjoy the rights of full membership and will be able to exercise a vote on all matters which come before the Senate.

We are also opposed to the principle of indirect election, the system under which the State Legislatures may elect twenty-two members of the Senate. We are unable to see any justification for allowing the State Legislature to intervene between the people and their representatives. Under this system, the responsibility of the Senators is to the persons who elected them, i.e. to the members of the State Legislatures, and not directly to the people, who have no opportunity of passing judgement on their conduct. The duties of the State Assemblies relate to domestic powers vested in them under the Constitution, but it should not be a part of their function to choose for the people their representatives in the national parliament, whose function it is to exercise powers national in character untrammelled by considerations of local concern.

Moreover, election by the State Assembly lends itself to the most grave abuses, as the experience of the USA has very clearly shown. Their original Constitution provided for the indirect election of Senators, but on account of the grave nature of developments under the system it was abandoned in 1913 in favour of popular elections. So serious did the position become that even before the Constitution was amended a majority of the State Parliaments did not exercise their right to elect members to the Senate but made provision for election by the people.

We are also unable to agree with the recommendation that a person be permitted to sit in both the Federal and State Legislatures. This representation involves a member in conflicting duties and responsibilities and thus militates against his effectiveness and loyalty in either sphere. This has been generally recognised, as indicated by the fact that the USA and every Commonwealth country which has a Federal system prohibits dual membership. It has been suggested that the number of persons available in Malaya with the necessary qualifications to carry out the responsibilities of parliamentary representatives is so limited that such a provision is necessary. We are unable to accept this view. Malaya has a population of over six million people, and we refuse to believe that among them there could not be found twenty-two more men of common sense and character with the necessary ability to carry out effectively the work of the parliamentary institutions without recourse to the system of dual membership.

CHAPTER V - DIVISION OF LEGISLATIVE AND EXECUTIVE POWERS

General

81. The resources of many of the States and Settlements in finance and power of administration are restricted and all must continue to depend in varying degrees on assistance from the Federation. Our terms of reference not only require us to recommend a measure of autonomy for each of the States and Settlements but also appear to preclude us from recommending any changes in their existing boundaries, and we have therefore not considered certain representations that changes should be made in this respect. But we have made provision in our recommendations for such changes being possible in future if all the States or Settlements concerned agree to them. In spite of the fundamental constitutional differences between the present positions of the States and of the Settlements we think that in future they should have the same degree of autonomy. We propose that the Settlements should in future be called States and we shall use the word States to denote both except where we wish to distinguish them.

82. We have already explained the way in which powers are now divided between the Federation and the States and we have noted some of the difficulties which have arisen from this division. We think that it would be impracticable to continue the present system in so far as, with regard to many matters, it confers legislative power on the Federation and executive power on the States. If Malaya is to be a democratic country the Government of each State must be controlled by its elected Legislative Assembly, and we must envisage the possibility that from time to time the party in power in one or more of the States may differ in outlook, and policy from the party in power in the Federation. It appears to us that in such circumstances the present division of powers would probably lead to friction and might well have graver consequences. We therefore recommend that in future legislative power and executive responsibility should always go together. We have specified those subjects which we think ought to be Federal and those which we think ought to be State subjects, and where necessary we shall give our reasons later for our allocation. We shall also explain why we propose that there should be concurrent powers. But, before proceeding to deal with specific subjects, we wish to emphasise that with regard to any which are in the Federal List not only should the Federal Parliament have the sole power to legislate but the Federal Government should also have the ultimate responsibility for determining policy and controlling administration. And similarly, with regard to any subject in the State List, in general the State Legislature should have the exclusive power to legislate and the State Government should have the exclusive responsibility for determining policy and controlling administration. We say that 'in general' the State Legislative Assembly and the State Government should have these powers and responsibilities because we think it necessary to recommend that in certain particular circumstances which we shall explain later the Federation should have overriding powers.

83. When we say that exclusive responsibility should rest with the Federal Government or with the State Government as the case may be we do not intend to

hamper or discourage cooperation between the States and the Federation. On the contrary we think that close co-operation between them will promote the interests of all concerned and be of great benefit to the nation. It is unnecessary to make any general reference to such co-operation in the Constitution, but there are two matters which we think ought to be dealt with specifically. In the first place, we recommend that there should be a general power of delegation conferred on both Federal and State Governments with regard to the performance of any of their executive functions. The Federal Government should be authorised to delegate any particular functions or duties to a State Government or to State officers, and State Governments should be similarly authorised to delegate to the Federal Government or Federal officers or to any other State Government or its officers. But any such delegation should require the consent of the Government to which or to whose officers the delegation is made and should be on such terms and conditions as may be agreed. We further recommend that an Act of Parliament may require a State to undertake executive authority for a specified purpose subject to payment to the State of the costs incurred by it. There are many instances of delegation at present and we think it essential that extensive use should be made of this power in future if only to avoid unnecessary duplication of staff and to make full use of technical resources.

84. The other matter on which we think it necessary to make a recommendation is the power of Parliament to legislate with regard to State subjects. We do not recommend that Parliament should be entitled to override the wishes of any State on any State subject except in particular circumstances to which we shall refer later; but it must be recognised that the States do not have facilities for drafting complicated legislation and that in any case it is desirable with regard to many State subjects that the laws in force in the various States should be as uniform as possible. We therefore recommend that Parliament should have power to pass an Act on any State subject but that such an Act should not come into force in any State until it has been adopted by an Enactment of the State Legislative Assembly and that in adopting such an Act the State Legislative Assembly should be entitled to make such modifications as it deems appropriate. In this way the supremacy of a State on State subjects would be preserved; if a State Legislature agrees with the policy of such a Federal Act it will adopt that Act, but if it disagrees it will either take no action for the moment or make amendments to meet its own views. In making this recommendation we have particularly in mind legislation with regard to land and kindred subjects and with regard to local government.

Land

85. The future prosperity of Malaya depends on the proper use of the land. Hitherto the rubber and tin industries have made outstanding contributions to the country's economy and the present relatively high standard of living of the people could not have been achieved without them. It is essential that the orderly development of these industries should be facilitated. But it would be most unwise to neglect the development of Malaya's other natural resources. The population has increased rapidly in recent years. In 1931 it was 3,787,758; it is now about 6,250,000, and we are informed that it may well reach 12,500,000 in 25 years' time. Even now Malaya only produces about half the basic foodstuffs necessary to feed the people and

further development of agriculture is urgently necessary if Malaya is not to have to rely to a dangerous extent on imported foodstuffs. We understand that the Federal Government has already improved over 200,000 acres of existing padi land and has in hand a programme for the development of some 60,000 acres of new padi land. But clearing of further land for agriculture must proceed with care and deliberation. Already erosion and soil conservation present formidable difficulties and ill-considered schemes for rapid development might easily have disastrous consequences. If the agricultural possibilities of Malaya are to make their maximum contribution to the nation's welfare, a planned policy appears to us to be essential. This policy should involve a complete land use survey for the country as a whole, the introduction of a soil conservation programme, the encouragement and expansion of agriculture, and the conservation and development of forests having regard to Malaya's future timber requirements.

86. The present position with regard to land is not the same in all parts of the Federation and is not at all satisfactory. In the Settlements the law is substantially similar to the law of England. In the old Federated States the law is substantially uniform, subject to certain specialities in Negri Sembilan. In the old Unfederated States the law is not uniform. The Federation has the power to legislate on land matters to the extent of ensuring common policy and a common system of administration, due regard being paid to customary tenure and usage and other necessary variations in any State or Settlement. We understand that during the years 1948 to 1952 there was considerable discussion as to whether land legislation should be effected by the States and Settlements or whether, under Head 101 of the Second Schedule to the Agreement, it should be by the Federal Legislative Council; and that it was finally decided that such legislation could only be effected by the Federal Council. The Federal Land Laws (Enabling) Ordinance of 1952 authorises the Councils of State and Settlement Councils to pass laws modifying existing Enactments or Ordinances subject to the prior approval of the High Commissioner in Council, but nothing has as yet been done to achieve greater uniformity. The recommendation which we have already made with regard to the power of Parliament to pass laws on State subjects was framed with this question in mind.

87. In each of the States, other than Negri Sembilan and excluding the Settlements, the general position is that all the land belong to the Ruler as State property and that all rights to land vested in individuals or corporate bodies depend on grants made by the Ruler-in-Council. Formerly, grants were not infrequently made in perpetuity, and without conditions, but in recent times the practice has been to make grants or leases for a limited period and to attach conditions whereby the grantee is required to use the land in a particular way or prohibited from using it except for certain purposes. With regard to certain grants, particularly of agricultural land, the law implies conditions limiting the grantee's right of use. Whenever a grant or lease expires or comes to an end by reason of breach of a condition the land reverts to the Ruler. The administration of State land is in the hands of the State Government. Subject to various restrictions with regard to revision of rents and other matters, the Ruler-in-Council is free to make such grants or leases or to give such licences as he may think fit and to attach such conditions as to user alienation or otherwise as he may determine. In every State a large part of the State revenue is derived from premiums and rents from alienated land and from profits derived from State land. Compulsory acquisition or resumption of land is also a matter for the State

Government. The Torrens system of registration of title has been adopted in all the States, but not in the Settlements, and registration is carried out by State officers. There is a Federal Commissioner of Lands who acts as adviser to the Federal, State and Settlement Governments on land matters and who has powers of inspection which have been tacitly accepted by the States and Settlements although not laid down by law.

88. In our judgement land must remain a State subject and we so recommend. We think that it would be neither practicable nor desirable to transfer the general administration of land to the Federation, and moreover the States could have no real autonomy if they were deprived of their right to deal with their land. We found general agreement that land should remain a State subject, but we are convinced by many representations and by our own investigations that in many respects the present position is not satisfactory. We are informed that it is proposed to set up an expert Commission to make recommendations with regard to various matters of administration and we have endeavoured to frame our Proposals so that its recommendations, if approved, can be carried out. We also have in mind the need for a more uniform system of law and procedure. We realise that it would not be possible for some considerable time to bring the law in the Settlements into line with that in the rest of the Federation and we did not have sufficient information for us to express an opinion whether that will ultimately be desirable, but we have framed our proposals in such a way as to enable each of the Settlements to adopt general legislation by the Federation in whole or in part if and when they may think that that should be done. We have already recommended that the Federal Parliament should be entitled to pass Acts on State subjects, but that any such Act should not come into force in any State unless it is adopted by the State, and that a State may adopt such an Act in whole or in part or by stages and subject to such modifications as the State legislature may determine. In making this recommendation we had primarily in mind a new National Land Code which we hope will be drafted and enacted without undue delay but after due consultation with the States. We would expect that the Code could then be adopted by each of the States with perhaps a few amendments and that it could be considered in the Settlements how far and how soon it would be appropriate to adopt its various provisions. Sir William McKell considers that the National Land Code, making provision for uniform land law, is of such importance to the future of Malaya that the Federal Parliament should, after consultation between the Federal and State Governments, have power to apply the Code in any State or States that fail to adopt it.

89. We would draw attention at this stage to our proposals for facilitating schemes for national development which we shall explain in detail later. The matters to which we have alluded earlier in this chapter are, in our opinion, so important that we would have had difficulty in recommending that land should be a State subject if we had not found it possible to combine this recommendation with another that the Federation should have all powers necessary to carry out in the national interest development schemes such as we shall later describe. There are many other matters with regard to which the Federation is vitally interested in land and its use, and we now proceed to consider these and to make recommendations for reconciling Federation and State interests.

Acquisition of Land for Federal Purposes

90. The Federation needs land for a great variety of purposes such as sites for offices, houses, research stations, etc, as well as land for national public utilities and means of communication. In the Settlements the matter is comparatively simple and our proposals are set out in Article 83 but the position in the States is complicated and unsatisfactory. We find it necessary to examine the present position in the States in some detail not only in order to explain the basis of our recommendations for the future but also because we think that it is highly desirable to propose a basis for the settlement of the unresolved conflict of views between the Federation and the States with regard to their respective rights in land presently in the possession of the Federation. In some cases it may be possible for the Federation to acquire land by agreement from a private owner if that owner has an unrestricted title and is willing to sell, but in general the Federation must acquire the land which it needs from the State to which it belongs. For a long time there has been controversy between the Federation and the States as to the terms on which such land should be acquired. Under the Federation Agreement the Federation have full legislative power with regard to the compulsory acquisition of land, the executive authority being with the States subject to the provisions of clause 21 but we were not informed of any recent federal legislation on this matter. In the Federation Agreement of 1948 an attempt was made to solve this controversy. Clause 140 was intended to define the rights of the parties in land then in the possession of the Federation, and clause 21 was intended to establish a role for the future. But unfortunately neither of these clauses is easy to interpret, clause 140 being particularly obscure.

91. We have received much information about this matter and it appears that in the past the Federation has been unwilling to accept any title less than a permanent title unrestricted by conditions, and that the States have been unwilling to grant such titles; so generally land needed by the Federation has simply been handed over by the States without any title being granted to the Federation. Sometimes the land has been declared to be reserved, but often nothing formal has been done and the Federation merely holds the land by informal licence from the State. In some cases existing buildings on the land were built by the State before the land came into the possession of the Federation, but in most cases buildings and other improvements have been erected by the Federation after the land came into its possession, Where the land was in the possession of the State when it was handed over, generally no payment was made by the Federation to the State; where the land was in private ownership the Federation had to pay the cost of compulsory acquisition by the State, but even in these cases no title was granted to the Federation when the land was handed over to it.

92. No serious practical difficulties have arisen so long as the Federation has remained in occupation of the land. No State has attempted to dispossess the Federation or to restrict the use which the Federation makes of the land, but difficulties arise when the Federation wishes to dispose of it. The Federation maintains that it is entitled to sell the land in the open market and keep the price, and that the State is bound to grant a permanent unrestricted title to the purchaser. The States maintain that the land reverts to the State without the Federation having any right to receive any payment either for the land or for improvements made by the Federation. Much land occupied by Public Utility Corporations such as the Central

Electricity Board is held by them without any title in the same way as land is held by the Federation, and similar controversies arise with regard to land held by them.

93. Two questions arise for the future. First, who is to determine what land the Federation ought to have, and secondly on what terms and on what title should the land be acquired. On the first question we think that it must be for the Federation to determine what land is needed for federal purposes and that the Federation must also have the right to determine what land is needed for the purposes of national public utilities. In the past, the selection of the land needed has been made by agreement between the Federation and the States: this has sometimes caused delay, but we know of no case in which the requirements of the Federation have not ultimately been met. We would expect that in future at least the great majority of cases will be settled by agreement, but if there should be differences of view, the Federation must be the judge of its own requirements, and we recommend that it should have power to require the States to make available land which it requires for federal purposes, either for its own use or for the use of public or statutory authorities.

94. As regards the terms of acquisition and the title to be granted to the Federation, we have sympathy with the State view that when the Federation no longer requires the land it ought not to be entitled as of right to sell the land in the open market on an unrestricted title but that State policy with regard to restrictions of use ought to be taken into account. We therefore recommend that without prejudice to the parties' right to agree to any other terms or form of acquisition if they choose to do so:

1. Where the land is in the possession of the State the Federation should be entitled to acquire such interest in it as the Federation may choose, i.e., the Federation should have the option of taking a grant or a lease. In the case of a grant, the grant should be in perpetuity and without restrictive conditions as to use and the Federation should pay the market value of the land; but when the land ceases to be required for federal purposes it should revert to the State if the State pays to the Federation either the market value or the amount paid by the Federation Government to acquire the land plus the market value of improvements made by the Federation whichever is the less. But if the State is unwilling to pay this sum then the Federation should be entitled to sell the land in the open market and keep the price and the State Government must grant an unrestricted title to the purchaser. In the case of a lease the Federation ought to pay rent for the land and if the Federation still requires the land at the expiry of the lease it should be entitled to have an extension of the lease.

2. Where the land is in the possession of an individual or corporation, the State should be bound to acquire it compulsorily and to make a grant to the Federation in the terms set out above, and the Federation ought to pay the cost to the State of compulsory acquisition or the market value of the land whichever is the greater.

These recommendations should also apply to land to be acquired for federal purposes by public or statutory authorities.

95. With respect to land now in the possession of the Federation without title we find ourselves in considerable difficulty. We could simply leave the existing

confusion unresolved recommending that clause 140 of the Federation Agreement should continue in force. We cannot express an authoritative judgement on the meaning of that clause: we are not a Court and we have not heard argument on the question. The existing controversy would then have to be the subject of litigation, and there is also the question of the parties' rights in land of which the Federation has acquired possession since 1948. We think that it is within our province to recommend a basis on which the existing conflict of views could be resolved and which is in our view fair and reasonable taking all the facts into consideration. The legal position may be different according to whether or not the land came into the possession of the Federation before 1948, but we think that for the purpose of a compromise all land now in the possession of the Federation should be treated alike. We therefore recommend that all land which is now reserved for federal purposes should continue to be so reserved for as long as it continues to be required for federal purposes and that all land now occupied by the Federation without reservation should become reserved land. The Federation will then have the option of requiring a title to be granted in terms of Article 78, in which case they must make the payment which that article requires, or of allowing the present state of affairs to continue until the land is no longer required for federal purposes. In that event we recommend that on the Federation giving up possession of the reserved land the State should be entitled to take the land if it pays the market value of any improvement made by the Federal Government together with any sum which the Federal Government may have paid in connection with the acquisition of possession of the land. If the State does not pay that sum then the Federation should be entitled to sell the land in the open market and the State should be bound to grant to the purchaser a title in perpetuity without restrictive conditions. Mr Justice Abdul Hamid thinks that Article 79 should be omitted.

96. We further recommend that all disputes with regard to valuations which may arise between the Federation and any State should be referred for decision to a Lands Tribunal consisting of three members. The Chairman should be a person who is or has been a judge of the Supreme Court or is qualified to be appointed to that office, and should be appointed by the Chief Justice. One member should be appointed by the Federation, and one member should be appointed by the State which is a party to the dispute. The decision of the Lands Tribunal should be final.

Research and Technical Assistance

97. It is convenient to deal next with the general subjects of research, technical assistance and advice to States and individuals, and surveys and collection of information and statistics. These matters are of great importance over the whole field of governmental activities in the Federation, but we may best illustrate their value by reference to their use in relation to land, including agriculture, mining and forestry; and the improvement of land by irrigation and drainage, rehabilitation or otherwise. Research into such matters as improved strains of crops, control of plant diseases and insect pests, improved methods of cultivation, as well as various other research activities at present under the jurisdiction of the Veterinary Department, cannot be carried out effectively except on a nation-wide basis. None of these matters involves interference with the ordinary administration of land. They are all at present

conducted by Federal Departments and the States have neither the technical nor the financial resources to deal with them adequately. Admirable work has been and is being done both in research and in affording advice and assistance and we have heard of no instance where there is any conflict of interest between Federal Departments carrying out this work and State authorities. There may be some instances where State authorities are slow to adopt the advice of Federal officers, but in such cases there may be room for differences of opinion. We therefore recommend that these matters should in general be federal subjects and in particular that the existing powers of the Federal Departments of Agriculture, Lands, Forestry and Social Welfare should be continued and that the Federation should be entitled to set up a similar department to deal with soil conservation.

Agriculture

98. At present each State has its own agricultural department which is not subject to directions by the Federal Department. Under Heads 105 and 108 of the Second Schedule to the Federation Agreement, the Federation has power to legislate with regard to agriculture, control of agricultural pests and animal husbandry to the extent of ensuring common policy and a common system of administration, but the whole executive authority is conferred on the States. In fact the functions performed by the Federal Department, apart from research, are almost wholly advisory in character. The Federal Department advises the State authorities with regard to a wide variety of matters and it also has experimental and demonstration stations in most if not all the States, and has a large number of officers who give advice and assistance to those who cultivate the land. These services are extremely valuable and the Department will have powers to continue and extend them under our last recommendations. Apart from the improvement of land the whole work of administration of agricultural land, including padi land and land for growing rubber, is carried out by State officers. The State decides to whom land is to be granted or let and, subject to certain restrictions, the State determines the rent and any restrictive conditions. There is some general supervision of land holders by District Officers and other State officers. We think that this system should continue subject to the recommendations which we have made and shall make with regard to improvement and development and advice and assistance. We therefore recommend that agriculture should be a State subject.

Soil Conservation

99. Future agricultural development necessarily must depend on the preservation and fertility of the soil. We could not help but notice during the course of our travel in the Federation that a considerable amount of erosion of the soil had taken place. This was indicated by the siltation of rivers and streams, by bank erosion, and by hillsides lost to cultivation. We have no desire to exaggerate the effects of erosion but the problem appears to us to be of sufficient importance to require urgent attention. There is at present no organisation or department in Malaya with the power or responsibility to exercise a protecting care over the soil. Several authorities have a limited power to deal with some aspects of erosion, but the action which has been taken is of a piecemeal and uncoordinated character and only touches the fringe of the problem.

We believe that it is important for the future of Malaya that the Federal Government should have power to set up a soil conservation service as a central authority to work in cooperation with the States in carrying out a soil conservation programme, and we have made provision in the draft Constitution for this purpose. Through such a service the Federation could, by means of discussion and dissemination of information, educate the people on the land in the principles of proper land use. It could make grants in aid to the States, and it could join with them in financing and controlling conservation activities. The service, through its skilled staff, could also make a valuable contribution to the task to which we have also referred elsewhere, of rehabilitating the considerable areas of land which have been ruined by defective agricultural and mining methods in the past.

Forestry

100. Some three-quarters of the area of the Federation is covered with forest. Much of this is in areas which are so broken and mountainous that they cannot be worked, and in any case the forest areas must be retained for protective purposes. Today, Malaya meets all its domestic timber requirements and has a surplus for export, but within 50 years, unless there is a change in present policies, Malaya will be unable to meet even its own local demands, and will become a heavy importer. This is simply because a sufficient amount of the revenue received from timber is not being used for the purpose of regeneration and the establishment of forest reserves.

101. Head 107 of the Second Schedule to the Federation Agreement provides that the Federal Legislature has limited power to make laws with respect to forests, but confers all executive authority on the States. The Federation has a Department of Forestry which carries out research work for the whole of the Federation, advises the States on all forest matters, and also supplies most of their expert staffs, but it has no executive power. The States exercise actual control over all forest activities within their borders, and most of them derive a substantial part of their revenue from royalties and fees in connection with the cutting of timber. We fully recognise their need for this money, and the difficulty which they find in reserving sufficient of it for forests expenditure, but the danger for the future should be faced. We propose that the States' power over forests, and the revenue derived there from, should be retained, and we hope that with greater financial autonomy they will be able in future to deal more adequately with their forests. However, we believe it will be of great value to the States for the Federal Department to continue its present activities and to cooperate with the States in drawing up plans for future development, and we have made recommendations which will give it these powers. In accordance with any plans which may be prepared, it will be possible for the Federal Government, in consultation with any State or States concerned, to take advantage of our proposals for schemes of national development, to develop selected forest areas more intensively than the States themselves can afford to do, to the ultimate financial advantage of the States themselves.

Water, Drainage and Irrigation

102. Head 103 of the Second Schedule to the Federation Agreement provides that the Federal Legislature has power to make laws with respect to inland water, watersheds, water supplies, water storage, water power, irrigation and canals, drainage and embankments, control of silt and riparian rights, to the extent of ensuring a common policy and a common system of administration; but that the whole executive authority with respect to these matters is with the States. This gives a very inadequate picture of the present position. At present, control of inland waters, including all rivers and streams, water supplies and storage is exercised by the States, and, subject to rights of navigation and to special provisions where the interests of two or more States or the interests of the Municipality of Kuala Lumpur are concerned, we recommend that they should be State subjects. We are informed that in the States but not in the Settlements riparian rights are held to belong to the State and not to the riparian owners and we have included this subject in List H. Water power has been little developed and there has not been sufficient control of erosion and silting. We regard these as important matters. We recommend that water power should be a Federal subject but that soil conservation, owing to its close connection with the use of land should be a State subject. We further recommend that there should be concurrent powers with respect to the rehabilitation of land which has suffered soil erosion and we shall later recommend that the Federation should have power to deal with all these matters by way of schemes for national development and the conservation of natural resources.

103. Irrigation and drainage require separate treatment. At present, small works are undertaken by the States, but the States cannot afford to pay for large and expensive schemes, and they do not have either the technical staff to plan them or the heavy plant and equipment necessary to carry them out. They need financial aid from the Federation and technical assistance from the Federal Drainage and Irrigation Department. In practice all capital works are initiated in consultation between State authorities and the Federal Department and detailed plans are prepared by the Department. The work is done by the State, the Department giving technical assistance and lending such heavy plant and equipment as the State may require. The Federation provides by special grant the whole capital cost of the works and the State undertakes to maintain the works after completion at its own expense, collecting such rates as it may see fit from those who have benefited from the scheme. We recommend that drainage and irrigation should be placed in the Concurrent List of subjects. This will allow the Federation, by Act of Parliament, to assume direct technical and financial responsibility for these matters to such extent as may be enacted, to assume powers necessary to maintain works which they have provided, and to levy rates from those receiving benefit from such works. This recommendation will not prevent the continuation of the present practice if that is thought desirable because we recommend elsewhere that the Federation and the States should have full powers to delegate any of their functions, that the Federation should have power to give technical advice and assistance to the States, and that the Federation should have power to make special grants to the States for development purposes. It will therefore be open to the Federation and any State to agree in future to carry out any drainage or irrigation schemes in the same way as in the past, and we do not in any respect seek to condemn existing methods. But, in view of the importance of developing agriculture

and of the large part which drainage and irrigation must play in such development, we have thought it necessary to make the above recommendations.

Tin Mining

104. In our opinion the present position is not entirely satisfactory. The State decides whether a prospecting permit or licence should be granted and also decides whether and for what period and subject to what conditions a mining lease should be granted. There is often considerable delay in deciding whether to grant a prospecting permit or licence, and to some extent that is inevitable, because no general plan has been adopted, and on each application consideration must be given to possible injurious consequences if mining is permitted at a particular place. A wide variety of matters may have to be considered including the interests of the existing agricultural population, pollution of water supplies, and the prevention of silting. We do not take the view that any of these interests should be neglected but we think that examination must be made of the possibility of better organisation. We are informed that the gross value of the tin mined from one acre of land may be as high as $70,000 and it would therefore appear to be in the national interest to spend quite considerable sums on preventive measures in order to enable rich tin bearing land to be mined. We have received representations that unreasonable conditions with regard to rehabilitation of land and other matters are sometimes imposed in leases. We are not able to affirm that that is so, but there is neither a right of appeal nor any technically qualified impartial body to determine general policy with regard to mining leases. Moreover, the States have little direct incentive to develop mining in new areas. Such development may involve a State indirectly in considerable expense, and, beyond a premium and a small rent, the State gets no direct return from the production of tin. The heavy export duty all goes to the Federation. We need not stress the importance to the Federation of the tin mining industry. Besides its contribution to the general prosperity of the country it makes a large contribution to the Federal revenue. It is estimated that in the immediate future the revenue from tin export duty may amount to $50 million per annum and income tax on profits derived from tin mining may amount to $20 million per annum. It is therefore vital that our recommendations should be wide enough to permit such changes in present arrangements as are thought necessary.

105. We are informed that it is proposed that a Mines Committee should be set up in each State where tin is produced in substantial quantities to advise the state authorities on the granting of prospecting permits and licences and mining leases. It is also proposed that where possible mining leases should be in standard form, that areas of land likely to be tin bearing should be designated and so far as possible reserved for mining, and that provision should be made for meeting the cost of preventive measures to avoid silting and to safeguard water supplies. We later note with approval a proposal that a percentage of the tin export duty should be paid to the State in which the tin is produced, and it seems probable that present difficulties could be remedied by a combination of these proposals. Our recommendations are framed in a way which will make this possible. By Head 120 of the Second Schedule to the Federation Agreement mining is made a federal subject as regards both legislative and executive functions. But in fact the main functions of the Federal Department of Mines are advisory. The Federation exercises executive control over actual mining operations

and enforces regulations dealing with safety and the employment of labour; but it exercises little control over prospecting, and none over the granting of prospecting permits or licences or the granting of leases. The advisory functions of the Department of Mines will continue under our earlier recommendations.

106. We recommend that the States should continue to be responsible for the granting of prospecting permits and licences and for the granting of leases, and that the Federation should continue to be responsible for the control of mining operations. Each State will have power to agree to the proposals outlined in paragraph 105 above or to make any other agreement with the Federation as to the manner in which it should exercise its powers, and, in the event of further action being necessary, the Federation will have powers to act under our recommendation relating to National Development. We believe that these recommendations will afford a proper basis for the development of the tin mining industry.

107. There remains the question of rehabilitation of land from which tin has been mined: large areas of such land are at present practically useless, and we regard it as a matter of importance that progress should be made in this matter. But we understand that further research and experiment are required to discover the best and most economical methods of dealing with the matter. At present it is for the State to insert in mining leases such conditions as it may choose. We understand that it is often difficult to enforce these conditions and we have already referred to representations that they are sometimes unreasonable. We are informed that enquiry is being made into the question of whether the Federation should assume general responsibility for rehabilitation through a Mining Lands Rehabilitation Fund. We therefore recommend that rehabilitation of mining land and land which has suffered erosion should be placed in the Concurrent List of subjects. The result of this would be that the State would continue to have full power to deal with the subject until Federal legislation is passed, but that such legislation could enable the Federation to take responsibility for the work either wholly or to such extent as might be enacted.

National Development Including Conservation of Natural Resources

108. As we have already stated, we recognise that the States will need technical assistance from Federation Departments on a wide variety of subjects. At present, the powers of Federation Departments with regard to such matters as agriculture, forestry, mining and natural resources are largely advisory and not executive, and we recommend that these powers should be continued and strengthened. In order that Federation Departments may exercise their powers effectively they must have power to conduct research of all kinds, to provide information demonstrations and other assistance for those concerned in various industries, to make surveys and to collect all information and statistics which they may require. With this assistance we expect that the States will undertake much useful development from their own resources. We also recommend that, in addition to the normal annual grants which we shall deal with later, the Federation should be authorised to take special grants or loans to the States on such terms and conditions as the Federation may determine, and such special grants or loans may be found to be a suitable method of assisting development by the States. We note that development on these lines is contemplated by the Land

Development Ordinance of 1956, under the terms of which, a Federal Land Development Authority has been established. It is the duty of this Authority to promote and assist the investigation, formulation and carrying out of projects for the development and settlement of land in the Federation. The Authority has a Land Development Fund under its control and power to make loans to Local Land Development Boards. These Boards are to be established in specified areas in the States and Settlements as the need for them arises. They, too, will have funds at their disposal, and their duties generally in their areas of authority will be the same as those of the Federal Authority in respect of the Federation as a whole. This is a good example of the kind of arrangement we have in mind.

109. But the magnitude of the problem of national development is such that it is necessary to contemplate the promotion of schemes which are beyond the resources of a Single State even with such assistance. There may be schemes which cut across State boundaries, and, within the boundaries of a particular State, it may be necessary to initiate development of a kind which is primarily in the national interest rather than in the interest of the particular State. We think that such development ought to be the direct responsibility of the Federation, but we do not think that it is possible to give the Federation a completely free hand without undermining the autonomy of the States and possibly causing friction between the States and the Federation. We have in mind a wide variety of matters which are of national importance and which may have to be dealt with as national problems. We would instance agriculture, including extension and improvement of padi cultivation; drainage and irrigation schemes; the development of the rubber industry; the introduction of new crops and the development of cultivation of crops, such as cocoa, which are now grown on a comparatively small scale; mining and forestry in all their aspects; industrial development; and the conservation of natural resources including soil conservation and the prevention of erosion. And we have in mind not only direct federal control but also the encouragement of development in an orderly manner by private organisations and individuals.

110. We think that there ought to be two general limitations of federal power to promote development by legislating with regard to land or other State subjects. In the first place we recommend that, before the Federation can initiate any scheme of development or conservation which involves interference with State rights, there should be an examination of the scheme and a report on it by an expert body, followed by consultation between the Federation and the States in the National Finance Council. And secondly, in view of the wide powers of interference with State rights which a scheme of development or conservation may involve, we recommend that any such scheme should be confined to a specified area or specified areas. Subject to these limitations, we recommend that the Federal Parliament should have power to pass any legislation required to carry into effect any development or conservation scheme which is declared in such legislation to be in the national interest. To avoid doubt we think it well to provide expressly that the Federation should be entitled to require a State to reserve for the purposes of the scheme any land within the specified area which is not already in private occupation, and thereafter from time to time to require the State to grant to the Federation or its nominees titles to such land on such terms and conditions as the Federation may specify. With regard to any land within the specified area which is already in private occupation and which the Federation requires for the purpose of carrying out the scheme, the Federation

should be entitled to require the State to acquire it compulsorily and to grant it to the Federation in the manner which we have already recommended.

111. We think that a State ought not to suffer direct financial loss by reason of such a scheme being brought into operation. We therefore recommend that any diminution of existing State revenue from the development area should be made good to the State by additional annual grant. On the other hand the Federation ought to obtain repayment of sums expended by it before further payment is made to the State. We therefore recommend that all revenue accruing from the scheme should go to the Federation until all expenditure made by the Federation in promoting and maintaining the scheme and in paying such additional annual grants to the State has been met, and that thereafter any net revenue should go to the State concerned. It may be that a State will be willing to contribute to the expense of carrying out such a scheme and that the Federation will be willing that it should do so. In that event we recommend that revenue accruing from the scheme should first be applied pari passu in repaying expenditure made by the Federation and by the State respectively in promoting and maintaining the scheme.

112. Schemes for national development will involve considerable areas of land and we think that there ought to be further provision for cases where the Federation wishes in the national interest to set up some particular industrial or other undertaking and there is difficulty in acquiring the necessary land. We recommend that the Federation should be entitled to acquire land and grant it to any person for the specified purpose if a resolution authorising such grant is passed by both Houses of Parliament. If land is so vested in any person then he should be bound to dispose of it to the Federation when it is no longer required for the specified purpose.

Other Matters

113. External affairs and defence must be federal subjects and we so recommend. The effect of our recommendations would be that the powers of the Federation to deal with these matters would be comprehensive and would enable the Federation to take action on all subjects, including subjects in the State List, to such extent as might be necessary for these purposes. In particular the Federation should be entitled to take an action necessary to implement future treaties and existing treaties which continue in force and to provide for visiting forces. We further recommend that police and internal security, extradition and fugitive offenders, aliens, and immigration should be federal subjects, but that appointments in the police should be matters for the Police Service Commission in accordance with recommendations which we shall make in Chapter VIII. Civil and criminal law and procedure are at present federal subjects, and we recommend that this should continue. The Second Schedule to the Federation Agreement, in addition to specifying in Head 8 civil law and procedure, in Head 11 criminal law generally except offences against Enactments of any State or Settlement, and in Head 12 criminal procedure, sets out under various heads a large number of particular matters which are generally and properly regarded as parts of civil and criminal law and procedure. We have been unable to ascertain why this was done and our recommendation includes all such matters except in so far as we specifically recommend that certain particular matters should be State subjects.

114. Clause 5 of the Federation Agreement provides that nothing in the Agreement shall apply in any Malay State to matters relating to the Muslim religion or the custom of the Malays. From the time of the earliest treaties these matters have always been reserved to the States and we recommend that they should be State subjects both in the old States and in the new States of Malacca and Penang. We recommend the continuance of the existing power of the States to create offences in relation to the breach of State Enactments. Such offences are and should continue to be prosecuted in the ordinary Criminal Courts, and pardon in respect of such offences is and should continue to be a State subject. Though the Federation Agreement vests in the Federation the responsibility for criminal law and procedure, it also requires that the responsibility for the pardon of offenders in the State be 'exercised by the Ruler in Council with legal advice from the Attorney-General's Department'. The Ruler in Council will be replaced by the State Executive Council which would be an unsuitable body to exercise the power of pardon as regards offences against Federal law. This function has therefore been transferred under our draft to the Yang di-Pertuan Besar who will be advised by the Minister of Justice or the appropriate Minister. We shall deal in later chapters with the appointment of judges and magistrates and with the functions of the Judicial Service Commission, the Public Service Commission and the Police Service Commission, and with financial matters including Federal and State pensions and superannuation schemes.

115. We recommend that the Federation should continue to have full power to make enquiries and obtain information and statistics with regard to all subjects including State subjects, and these powers should include power to hold commissions of inquiry and to require State authorities to make returns or supply information. We further recommend that the States should have similar powers with regard to State subjects. The census and registration of births and deaths and registration of marriages should be federal subjects.

116. We recommend that matters of trade, commerce and industry, shipping and navigation and fisheries should continue to be federal subjects. Again, for reasons which we have been unable to ascertain, a number of particular branches of trade and industry are set out separately in different heads in the Second Schedule to the Federation Agreement and our recommendation includes all such matters: it also includes control and regulation of internal and external trade and registration of businesses. We also recommend that professional qualifications and the regulation of professions should continue to be federal subjects. We recommend that all matters connected with the employment of labour including the regulation of trade unions, conditions of labour, workmen's compensation, safety provisions and industrial disputes should continue to be federal subjects.

117. We recommend that social welfare should be put in the Concurrent List of subjects. We think that the Federation should be entitled to determine and carry out national policy in this matter but that there may well be cases where by reason of local circumstances a particular State wishes to introduce and is able to afford some particular form of social service not dealt with by federal legislation, and we see no reason to prevent such a State from moving in advance of national policy. The effect of putting this matter in the Concurrent List would be that the Federation would be entitled later, if it saw fit to do so, to assume general responsibility for that form of

social service and supersede the State Enactment. For similar reasons we have included town planning in the Concurrent List.

118. We recommend that local government should be a State subject. In this connection we would again draw attention to our recommendation in paragraph 84 that the federation should be entitled to legislate on any State subject leaving it to each State to adopt such legislation if it saw fit to do so. We think that a large degree of uniformity is desirable in local government legislation, but that conditions in a particular State may require special treatment, and, in view of the close relationship between State authorities and local government authorities we think that State views on questions of local government should prevail. We think, however, that the Federal capital, Kuala Lumpur, is in a special position. We do not think it practicable to make Kuala Lumpur federal territory and we have received no representation that this should be done. But we think that the Federation ought to be able to control the development and administration of its capital and seat of Government. We therefore recommend that the Federation and not the State of Selangor should have power to legislate with regard to the local government and town planning of Kuala Lumpur, and that for administration that Municipality should be directly under the Federation. There are a number of other functions at present carried out by State and local authorities such as licensing of places of public amusement and of dramatic performances. With regard to these we think that the present powers need not be altered.

119. With regard to road traffic the present position is that trunk roads are constructed, maintained and paid for by the Federation; State roads are constructed, maintained and paid for by the State; and roads and streets of the three Municipalities are constructed, maintained and paid for by the Municipalities. We see no need for any change in this respect. The regulation of road traffic is a matter for the Federation, and we recommend that this should continue to be a federal subject but with power to the State to regulate the weight and speed of vehicles on State roads, bridges and ferries. We think that on these matters there should be consultation between the State and Federal authorities with a view to preventing damage to road surfaces or to the structure of bridges and ferries. Other means of communication and telecommunications are and should remain federal subjects. With regard to the Post Office and other pan-Malayan departments, the Federation should have power to continue existing arrangements or to make new agreements with other governments.

120. We think that a change is necessary with regard to educational and medical services and we recommend that these should become federal subjects excepting sanitation which should be carried out by local authorities under local government legislation. We recommend that Public Health should be placed in the Concurrent List because it is impossible to draw a hard and fast line between those aspects of public health which are of a purely local character, and those which require wider treatment. At present certain local authorities have health officers who are responsible for many aspects of Public Health and we think that this should continue. Under Head 79 of the Second Schedule to the Federation Agreement, education services, and under Heads 94 and 97, medical services are federal subjects as regards legislation. The only compulsory delegation of executive authority to the States is under Head 79 which confers on the State executive authority as regards primary, secondary and trade school education excluding measures designed to ensure a common policy and a

common system of administration. Otherwise there need be only such delegation to the States as the Federation may determine. A system has, however, evolved in practice under which much the greater part of the educational and medical services of the country are administered by State authorities. But most of the technically qualified officers engaged in this work are Federal officers seconded for State service, and the State administrations are controlled by the fact that the Federation pays, by way of special grants, practically the whole cost of these services and retains a strict control over expenditure by the State authorities. The cost of these services is very large: in 1956 it was estimated that grants to the States would amount to $94 million in respect of educational services and to $40 million in respect of medical and health services. Our investigations have disclosed no substantial advantages arising from the State being responsible for the administration of medical and health services and little advantage arising from the States being responsible for the administration of educational services except that local opinion can be expressed. On the other hand the present system is more cumbrous and administration is more expensive than it need be if these were wholly federal subjects. We found little opposition in the States to our suggestions that these should become wholly federal subjects. With regard to education we have noted the recent Report of an influential Committee under the Chairmanship of the present Federal Minister for Education. We think that the proposals of the Committee could be implemented more easily if education were a purely federal subject, and under these proposals there would appear to be extensive opportunities for local opinion to influence the development of education to each area.

Residual Legislative Power

121. Our terms of reference contain the following passage: 'The question of residual legislative power to be examined by and to be the subject of recommendations by the Commission.' The present position is that the Rulers have agreed to specific powers being exercised by the Federation under the Federation Agreement of 1948 but that any residual powers that may exist have been retained by the States. We see no advantage in altering the position and we recommend that it should continue. The situation of the residual powers makes no difference to the construction of any of the specific powers in the Federal List: for example the defence power is just as wide under our recommendation as it would be if the residual powers were transferred to the Federation. Moreover it is unlikely that the residual power will ever come into operation because the Legislative Lists, read in the light of the clauses in Article 68, appear to us to cover every foreseeable matter on which there might [be] legislation. The only real effect of leaving the residual power with the States is that if some unforeseen matter arises which is so peculiar that it cannot be brought within any of the items mentioned in any of the Legislative Lists, then that matter is within the State powers.

CHAPTER VI - THE JUDICIARY

122. As the law now stands, the establishment, jurisdiction, powers, fees and expenses of all Courts, excluding Muslim Courts, are within the legislative powers of the Federation. This provision must be read, however, subject to the express terms of the Federation Agreement, which provide for a Supreme Court consisting of a High Court and a Court of Appeal. The Chief Justice and so many other judges of the Supreme Court as may be required are appointed by the High Commissioner for and on behalf of Her Majesty and of Their Highnesses the Rulers. Subject to these and other provisions of the Agreement, the constitution, powers and procedure of the Supreme Court are determined by federal law. Subordinate courts are constituted in accordance with the Federation Agreement and federal law. The Presidents of Sessions Courts are appointed by the High Commissioner on the recommendation of the Chief Justice. First Class Magistrates, however, are appointed by the High Commissioner in a Settlement and by His Highness the Ruler in a State, in each case on the recommendation of the Chief Justice. Other magistrates - who, we understand, seldom exercise judicial functions - are similarly appointed, but without recommendation from the Chief Justice. All matters of civil and criminal law and procedure are within the legislative authority of the Federation, subject to the qualifications as to Muslim law and Malay custom mentioned in Chapter V. We do not propose any considerable changes in these arrangements, though we have tried to draw a clear distinction between Federal and State powers, which are now covered in the Sixth Schedule by Head 4 of the Federal List and Head 1 of the State List. In effect we agree that the constitution and powers of Qadis' Courts and other matters relating to Muslim law and Malay custom should be within State jurisdiction, while all other matters relating to civil and criminal law and procedure, including marriage, divorce, legitimacy, etc, should be within Federal jurisdiction.

123. We recommend the continuance of the present Supreme Court, which will retain its present powers and procedure. Its jurisdiction will, however, be considerably enlarged. First, we consider that the function of interpreting the Constitution should be vested not in an ad hoc Interpretation Tribunal, as provided by the Federation Agreement, but (as in other federations) in the ordinary courts in general and the Supreme Court in particular. The States cannot maintain their measure of autonomy unless they are enabled to challenge in the Courts as ultra vires both Federal legislation and Federal executive acts. Secondly, the insertion of Fundamental liberties in the draft Constitution requires the establishment of a legal procedure by which breaches of those Fundamental Liberties can be challenged. Thirdly, it seems desirable that a method of securing a rapid decision on a constitutional question should be provided, and accordingly we have in Article 121 made provision for reference to the Supreme Court on the lines adopted in Canada, India and Pakistan. Finally, we have provided in Article 119 that the Supreme Court should have original jurisdiction in conflicts between the Federation and a State or between two or more States.

124. The power to appoint the Chief Justice should in our view be transferred from the High Commissioner to the Yang di-Pertuan Besar, and so should the power to appoint other Supreme Court judges, though the Chief Justice must be consulted

about every such appointment. We do not approve of the suggestion that Supreme Court judges be appointed by the Judicial and Legal Service Commission, since a body suitably composed for appointing subordinate judges (containing for instance, the Attorney General) would not be suitably composed for appointing Supreme Court judges. We recommend that a person should be qualified for appointment as a judge of the Supreme Court if he has been an advocate of the Supreme Court for ten years or has served for ten years in the judicial or legal services of the Federation. The Chief Justice would no doubt make such enquiries among his colleagues as would enable him to appreciate the qualifications of all available candidates.

125. Since under the new Constitution the powers of Her Majesty's Government and the High Commissioner will disappear, it has been necessary to insert the provisions, usual in democratic Constitutions, for the maintenance of the independence of the Supreme Court. Under our proposals a judge cannot be removed except by an order of the Yang di-Pertuan Besar in pursuance of an address passed by a majority of two thirds of each House of Parliament; and before any such motion is moved there must be proved misconduct or infirmity of mind or body. Subject to this provision, the age of retirement has been fixed at 65. Given tropical conditions, it is perhaps not desirable to have life appointments, as in the United Kingdom; on the other hand, the experience of India, Pakistan and Ceylon suggests that the age of 62 is a little too low. We have also provided that, as is customary, the remuneration of a Supreme Court judge shall not be varied to his disadvantage during his term of office and that it shall be changed on the Consolidated Fund. The question of motions discussing the conduct of a judge, but not going so far as a motion for his removal, is a little more difficult. On the one hand judges should not be immune from criticism; on the other hand they ought to be able to sit 'fairly and freely, without favour and without fear', and in particular should not exercise their functions with an eye upon the activities of party politics. The provisions of Article 125 seem to us to steer a reasonable middle course. We have thought it wise to maintain the existing flexibility of the organisation of the Supreme Court. Its additional functions will require a larger attendance of judges in Kuala Lumpur, and it may be found economical to centralise judicial work by sending judges on circuit or by having fewer judges located in the States. This seems to us to be a matter which ought to be regulated from time to time and not laid down in the Constitution. We ought, however, to mention the request of counsel for Their Highnesses that what was called the existing 'veto' against the stationing of a judge in a State, except with the approval of the Ruler, should continue. Clause 79(2) of the Federation of Malaya Agreement, 1948, provides that 'After the appointed day no judge of the Supreme Court shall be appointed to reside in any Malay State unless His Highness the Ruler of that State shall first have been consulted.' We understand that no judge has been appointed to reside in any State without the consent of the Ruler having first been obtained but in our view this is not a matter which comes within the jurisdiction of a State authority. Two other matters affecting the Supreme Court require to be dealt with, though only one is referred to in the Constitution. As mentioned above the Supreme Court includes a High Court and a Court of Appeal. The latter has been frequently reinforced by the Chief Justice of Singapore. We see no reason why this arrangement should not continue, so long as it proves convenient, and we have inserted a provision authorising the continuance of the provisions of the existing law with regard to the sitting of judges from outside the Federation.

126. The more difficult question is that of appeals to the Privy Council. The Rulers, the Alliance and the legal profession all expressed a desire that appeals to the Privy Council should continue to be competent. But the views strongly expressed that the existing procedure governing appeals would be inappropriate because under that procedure the advice of the Judicial Committee of the Privy Council must be made operative by an Order-in-Council in the United Kingdom. It was pointed out that as Her Majesty will not in future be the Fountain of Justice in the Federation it would not be appropriate that any such Order-in-Council should be required. In our opinion there would be great advantages if appeal to the Privy Council were preserved. Not only would it be a valuable link between countries of the Commonwealth but in the present position in the Federation it would, we think, be advantageous if the final decision on constitutional questions lay with a Tribunal which has experience of other federal constitutions. One suggestion which occurs to us is that the decision of the Privy Council on an appeal from the Federation might be sent direct to the Supreme Court of the Federation which would then be bound to apply it. If this suggestion were accepted and the necessary legislation passed in the United Kingdom we would suggest the insertion of the following provision in the Federal Constitution

125A. (1) Subject to the provisions of this article, and until Parliament otherwise provides -

(a) an appeal shall lie from the Supreme Court to the Judicial Committee in any cause or matter in which such appeal could have been entertained from the Supreme Court of the Federation of Malaya by Her Majesty in Council immediately, before Merdeka Day; and

(b) the Judicial Committee shall have power to grant special leave to appeal to such Committee in any cause or matter in which the Judicial Committee could have advised Her Majesty immediately before Merdeka Day, to grant such leave.

(2) Where an appeal is entertained by the Judicial Committee in accordance with this article, the judgement of the said Committee shall be reported to the Supreme Court, and thereupon the Supreme Court shall make such order as may be necessary to give effect to the judgement.

(3) In this article 'The Judicial Committee' means the Judicial Committee of the Privy Council established by Acts of the Parliament of the United Kingdom.

127. In some Commonwealth countries the Attorney-General holds a political office. In others the political functions normally exercised by a political Attorney-General are exercised by a Minister of Justice or Minister of Law, while the Attorney-General (or Advocate-General) exercises the more professional functions of giving independent legal advice to the government, representing the government in the courts, and perhaps assuming responsibility for public prosecution. On the whole we prefer the latter. In the United Kingdom the political and the professional functions of the Law Officers are conventionally kept distinct and the latter are not regarded as

within the jurisdiction of the Cabinet. It would be difficult to keep the functions distinct in a country exercising responsible government for the first time; and it is significant that India, Pakistan, and Ceylon have all preferred the non-political Attorney-General. In the draft Constitution we have assumed this solution, though the United Kingdom practice of having political Law Officers has not expressly been excluded.

128. As in the Federation Agreement, the provisions relating to subordinate courts have been made elastic. The removal of the powers of the High Commissioner makes necessary, however, the insertion of new provisions relating to the appointment of judges and magistrates. At the London Conference it was agreed that there should be a Judicial Services Commission during the transition to independence, and we agree that there should be a Judicial and Legal Service Commission after Merdeka Day. This question is therefore dealt with in Chapter VII. It will no doubt be necessary, at some future time to apply the principle of separation of powers more strictly and thus deprive public officers of magisterial powers. In any case, the administration of criminal justice being wholly in Federal hands, it is necessary that the appointment of magistrates be vested in a Federal body.

CHAPTER VII - FINANCE

129. The present financial relations between the Federation and the States have evolved gradually; they are not based on any consistent principle, and it is impossible to describe the present position in a manner which is both brief and accurate. We have obtained from Federation and State officers, and published accounts, extensive information on all aspects of the matter, but we do not think that it would serve any useful purpose to burden our Report with a full and comprehensive statement of the present arrangements. We shall confine ourselves to those points which we think it is important to have in mind in making our recommendations for the future. For this purpose we do not think it necessary to make any distinction between the States and the Settlements and we shall use the term State to include the Settlements. Each State has a State Budget, and State accounts are kept showing all sums received and paid by the State Financial Officer. Moreover the State Budgets are in some respects subject to Federal control. As we have already explained there are many matters in regard to which policy is determined by the Federation but executive control is vested in the States, and there are varying degrees of control of State expenditure on these matters. With regard to education, medicine and the capital cost of drainage and irrigation, the Federation pays substantially the whole of the State expenditure and in these matters Federal control is far reaching. Where a State is unable to balance its Budget, and requires special assistance from the Federation in the form of 'transitional grant' the whole Budget is controlled. The sources of revenue directly available to the States are few. The States derive much of their revenue from land, either from State land or from premiums and rents, but otherwise they are limited by the Federation Agreement to comparatively unimportant sources of revenue.

130. We can illustrate the dependence of the States on the Federation by the estimated expenditure and revenue for 1956. The total combined expenditure of the Federation and the States was estimated at nearly $900 million excluding items to be met from loans. Federal expenditure was estimated at $605 million and State expenditure at $292 million. But Federal revenue was estimated at $744 million and State revenue at only $99 million. The difference between this sum and the estimated expenditure of $292 million, i.e. $193 million had to be met by grants or allocations from the Federation. The extent to which the States depend on the Federation varies from State to State. In Johore 60% of the State's expenditure was met from federal grants and allocations last year, whereas in Perlis the percentage so met was 83%. We would add that about 80% of the federal revenue is derived from four sources: export duties on rubber (22.2%), and on tin (7.1%), income tax (19.5%) and import duties (31.8%).

131. Until 1956 federal control was even more extensive than it is now, and every year there were disputes between the Federation and the States as to the amount of the sums to be granted. A Committee was appointed in 1954 to review the matter, and as a result of its report a new system has been introduced: the grants and allocations now made to the States are: 1. capitation grant; 2. allocation of petrol import duty; 3. grants in respect of educational, medical and drainage and irrigation services, and, in the case of some States; 4. development grant; 5. special transitional grant. In theory, grants can be made under clause 119 of the Federation Agreement, but in fact clause

119 has been so narrowly interpreted that such grants are not likely to be made and none has been made in respect of the year 1956.

132. Capitation grant is calculated on the number of persons over the age of 19 in the State at the census of 1947. We do not know why no account was taken of children: the age of 19 appears to have been taken because the Census Report shows separately the numbers over that age. The amount of grant per head is determined each year by the Federation after consultation with the States and no principles are laid down for its determination. The States hoped for a grant for 1956 of $16, per head but the grant was fixed at $12 per head. The total sum to be paid to the States under this head in 1956 was $30 million.

133. Petrol import duty is allocated to the States to the extent of 30% of its total yield. This proportion is allocated in proportion to the sales of petrol in each State in the year next but one preceding. This tax appears to have been chosen for two reasons: in the first place it is easy to ascertain the amount of petrol sold in each State, and secondly the amount of petrol sold in a State may be supposed to bear some relation to the mileage of roads in the State, and maintenance of State roads is a heavy item of State expenditure. But there is no close relation between the cost to the State of maintaining its roads and the amount of petrol sold in the State. If the sum allocated to each State last year is divided by the mileage of State roads the result varies from $4,600 per mile in Penang and Selangor to $623 per mile in Perlis and $1,000 in Trengganu, whereas the cost per mile to these States of maintaining their roads is respectively $4,400 in Penang, $3,700 in Selangor, $2,200 in Perlis and $3,000 in Trengganu. The allocation does not take account of the fact that many roads are trunk roads maintained by the Federation and that roads within the Municipalities of Kuala Lumpur, Malacca and Georgetown are maintained by the Municipalities without cost to the States. The total amount of petrol import duty allocated to the States last year was approximately $10,500,000.

134. Subject to minor exceptions, about which there is some controversy, the whole cost to the States of educational and medical services, and the capital cost of drainage and irrigation schemes, is paid to the States by the Federation. State estimates for these subjects are subject to close scrutiny and control by the federal departments. In the case of education and drainage and irrigation grants, any unexpended parts of the grants revert to the Federation; but any unexpended parts of grants for medical and health services can be retained by the States, and may be expended, subject to certain conditions, on items of capital expenditure for these services. In 1956 the total estimated grants for these services amounted to over $138 million, which is over 47 per cent of the total expenditure of the States for all purposes.

135. Development grant is required by paragraph 7 of Part III of the Fifth Schedule to the Federation Agreement to be paid each year to Kelantan, Pahang, Perlis and Trengganu. The amount to be paid is not determined by the Federation Agreement; at present it is one-quarter of the capitation grant to the State. Development grant is not earmarked for any particular purpose and the State is free to spend it as in the case of capitation grant. The total amount of estimated development grant paid to these States in 1956 was $1 1/2 million. Since the development grant is taken into consideration in determining whether a State is entitled to transitional grant, a State which runs a

deficit cannot spend its development grant on development, but must use it to reduce its deficit on current account.

136. Special transitional grant is payable under paragraph 8 of Part III of the Fifth Schedule to the Federation Agreement. It may be paid to any State when its estimates show that there is not likely to be a surplus of revenue over expenditure, and we understand that in practice it is not paid unless there has been full scrutiny of the State Estimates by the Federation Government. The Federation Estimates for 1956 provide for transitional grants to Kedah, Negri Sembilan, Pahang, and Perlis. The grant, if paid, is required to be of such amount as will ensure a surplus not exceeding $500,000 or to be the equivalent of a capitation grant of $2, whichever is the less; and in spite of grants so calculated Kedah, Pahang and Perlis still had estimated deficits for 1956. Kelantan, Penang and Trengganu also had estimated deficits, but these appear to be due to the assumption, for which the legal foundation is doubtful, that 'expenditure' for the purposes of the relevant paragraph does not include expenditure on 'Public Works Non-Recurrent'. We must add that for 1956 special grants 'in respect of initial reserve' were paid to all States. There is no provision for payment in 1957 of further grants in respect of initial reserve and it would appear that further steps will have to be taken if a number of the States are not to have deficits in 1957. The total sum payable in 1956 in respect of transitional grants and grants in respect of initial reserve was $8 1/2 million. There were also grants to the States in 1956 of $7 million under the head 'Revotes' which we do not think it necessary to analyse.

137. The present system of grants had not been in operation for a full year when we left Malaya, and it is perhaps too early to express any definite opinions about it, but our general impression is that, while it is an improvement on the old system, it is not entirely satisfactory even in present circumstances, and that after independence further difficulties may well emerge if it is continued unaltered for any long period. The old system had some advantages. Close control of State finances by the Federation did much to make uniform the system of administration in the States, and it enabled the amount of the grant to each State to be directly related to the needs of that State. But the needs of a State are very much a matter of opinion, and the opinion of the Federation was often different from that of the State. So every year there was prolonged discussion and the ultimate decision of the Federation was not always well received in the States. Moreover, any part of a grant which was not expended during the year reverted to the Federation, and States were inclined towards the end of the year to spend beyond their immediate needs in order to avoid losing any part of their grants. The new system has gone far to avoid these difficulties but there is still room for much argument about the amount of the capitation and development grants and about the way in which deficits in the States are to be dealt with, and arguments on these questions may become more acute as democratic control replaces official control in the States. Furthermore, the States have no assurance as to the total amount of their incomes from grants in future years. They can hardly have any real financial autonomy and they have little direct incentive to economy, if their deficits are to be met each year by the Federation, and it is difficult for them to plan ahead without a firmer assurance of their future financial resources. We have some evidence that this is now affecting the development of State public works.

138. One change which we have already recommended for other reasons will go far to reduce the present financial dependence of the States on the Federation. We have

recommended that educational, medical and health services should become federal subjects, and as a result, grants to the States for these services will cease, and expenditure on these services will no longer be made by the States. If that recommendation had been in operation in 1956, total State expenditure would only have been $159 million and federal grants to the States would only have amounted to $60 million. On the other hand our recommendation in chapter VIII with regard to pensions will add considerably to annual State expenditure and this together with the loss of the currency surplus and certain fees and other income from educational and medical services will probably increase the amounts which have to be made good by federal grants to about $100 million. Our other recommendations with regard to the division of subjects between the Federation and the States may only have comparatively minor effects on State expenditure and revenue and we therefore proceed on the basis that in future, if the present levels of expenditure and revenue are maintained the States will derive rather less than $100 million from their present direct sources of revenue, and will require to get something in the region of $100 million per annum from federal grants.

139. It is convenient at this stage to deal with the principles which we have in mind in making our recommendations. Besides revenue from land, some of which might be regarded as a form of taxation, there are at present certain taxes, duties and fees of a local character which are collected and retained by the States. We understand that in most cases the States are authorised to collect and retain this income under Federal Legislation and we think that this ought to continue. It can be continued under the powers in Article 104 but we recommend by a majority that the States should not have wider powers in this respect than they have at present, and we have not made provision in the Constitution for the States having any taxing powers. Any extension of State powers of taxation would be wasteful in causing duplication of staffs, and would almost certainly hamper the conduct of business on a national scale and retard the development of unity in the nation. Mr Justice Abdul Hamid thinks that the States should be entitled to levy taxation in respect of all matters in the State List and that the Federation should not be entitled to levy taxation in respect of these matters. We also think that it is undesirable in principle to allocate to the States the proceeds of any particular tax or export or import duty. We have already stated what we think to be defects in connection with the allocation of petrol import duty and we think that similar or greater defects would probably attend the allocation of another tax or duty but for special reasons which we give in paragraph 141 we think that part of the tin export duty might be allocated to the States. As conditions may change, however, and the Federation ought to be as free as possible to meet new financial situations, we have drafted our recommendations in such a way as not to make it impossible for this method to be adopted.

140. It follows from the view of the majority that the States must continue to receive large grants from the Federation. But we do not regard such grants as subsidies depending on the favour of the Federation. The States will continue to perform services essential to the life of the community and to be essential parts of the government of the country and there are sources of revenue to which they would fairly be entitled to have access if they were not debated from doing so on economic and financial grounds. It is only necessary to mention in this connection rubber and tin. There is much to be said in theory for a State being entitled to raise further revenue from land planted with rubber or from royalties on tin mining, but we think

that to permit a State to do this might well hamper the development of these industries on which the prosperity of the nation so greatly depends. Nor is it desirable that these industries, whose prosperity is fundamental to the prosperity of the country, should be subjected to taxation by two independent taxing authorities. The export duty is administratively the most convenient way, of taxing them, and that duty must clearly be wholly under federal control. Moreover, we would expect that national policy will endeavour so far as possible to promote equally the prosperity of all parts of the Federation, and if the States were entitled to raise additional revenue directly this objective would become much more difficult to achieve.

141. There is, however, one case where we think that the States concerned might well receive direct shares of a federal duty; we refer to the export duty on tin. Tin mining involves the permanent removal of valuable assets from a State, and we found general acceptance of the view that the State ought to receive some compensation for this. Moreover, to give to a State a direct financial interest in the production of tin would provide a valuable incentive to promote the development of tin mining. It has been suggested to us from several quarters that 10 per cent of the export duty on tin ought to be returned to the State in which the tin was produced, and we think that this is a reasonable proposal.

142. We do not propose to make recommendations which would tie the hands of the Federation in dealing with either the nature or the amount of grants to be made to the States because conditions may change, and the Federation must have the ultimate responsibility for deciding how to deal with the financial situation from time to time. But the question of State finance has occupied much of our attention and it is of vital importance for the future of the country. We are required by our terms of reference to recommend 'machinery for consultation between the central Government and the States and Settlements on certain financial matters to be specified in the Constitution' and we recommend that this matter of grants to the States should be dealt with by the machinery for consultation which we shall later recommend. But it would have been wrong for us to make our recommendations without satisfying ourselves that they are practicable, and we therefore think it proper to suggest a basis for a reasonable solution of the problem. In our view it is of primary importance that the basis of calculation of the amount of grants to meet annual expenditure should be fixed for a period of at least five years, subject only to alteration if there is some general change of circumstances such as a substantial alteration of wage or salary scales or of the price of materials. The States would then have an incentive to make economies, a basis for planning for the future and a responsibility for keeping their expenditure within their income. The States ought not to look to the Federation to meet deficits as a matter of course. We think that grants or loans for schemes of capital development ought to be dealt with separately, and we have dealt with this matter under National Development. Any further power to make grants ought to be limited to specific purposes.

143. The question of payment by the Federation of local rates in respect of federal property has been brought to our notice in many places. In our opinion the Federation ought to pay local rates in the same way as other owners and occupiers of property. We recommend that local government, including local rates, should be a matter within State powers and under this recommendation any State Enactment with regard to local rates will affect property of the Federation. In Article 147 we recommend that

subject to any agreement between the Federation and the State concerned, State law should apply to federal property and that there should be no discrimination between the Federation and other owners of property. We further recommend that the Federation should be entitled to appeal to the Supreme Court on any question of valuation of federal property. We understand that in many cases States have to subsidise local authorities and if such local authorities receive rates from the Federation, State expenditure will be correspondingly diminished. The result of this may be reflected to some extent in the total amount of grant by the Federation to the States. Mr Justice Abdul Hamid thinks that the Federation should only have the same rights of appeal as are open to private individuals.

144. We think that it may be possible to devise a fairly simple formula for calculating the amount of the general grant, subject to some special adjustment in a particular case. Many factors might be taken into account besides total population, e.g., sparsity of population compared with the area of the State, mileage of State roads, and necessary annual expenditure on public works. We have made an examination of State budgets and in present circumstances we would be inclined to think that only two factors need to be taken into account, mileage of State roads and population on a sliding scale. If for instance the total grant were calculated by taking $4,500 per mile of State roads and $18 per head for the first 100,000 of population, $12 per head for the next 200,000, $9 per head for the next 300,000 and $6 per head for the remainder of the population we think that other factors would be allowed for adequately. It may well be that when the new grant comes to be the subject of negotiation some other basis will be found more appropriate and we merely give these figures to show that the basis probably need not be very complicated. For many reasons we think that it would not be practicable to introduce a new grant system in the immediate future but we recommend that a new system should be introduced in 1960.

145. To meet the various requirements we have provided in the draft Constitution for three sources of general revenue for the States, in addition to the taxes and rates which they will continue to levy. These are: (1) grants-in-aid of general revenue made in accordance with some such 'formula' as we have suggested above; (2) the assignment of amounts derived from federal taxation (though in fact we do not think it desirable, in present conditions, that this power should be used, except possibly in relation to a small portion of the export duty on tin); and (3) licence fees and other fees of a local character levied by the States under federal legislation. We have made the grant-in-aid system as flexible as possible, realising that economic conditions change rapidly. Moreover, we have felt it desirable to make provision for special grants to meet emergencies such as flood and drought. Further, in execution of federal policy it may be desirable to encourage the States to undertake schemes of development, especially in relation to agriculture, soil erosion, and irrigation, without setting up the machinery, explained in Chapter V, for development plans. Accordingly, we have suggested a discretionary power to make grants for specific purposes.

Loans

146. At present the States have no public debt, but they are under obligation in certain cases to pay interest and repay capital to the Federation, or to bodies set up by the Federation, in respect of certain expenditure of capital provided by the Federation. We see no reason why arrangements of this kind should not continue, but we think that, in view of the degree of future autonomy which we recommend for the States, there ought in addition to be more general provisions authorising the States to contract loans. We recommend that State loans should be one of the specified financial matters to be referred to the 'machinery for consultation between the central Government and the States and Settlements' which we are directed to recommend by our terms of reference. Under our recommendations there will be power to the Federation to set up a Central Bank. If such an institution is set up then, no doubt, the contracting of loans, whether by the Federation or by the States, will be one of the matters for its consideration. But whether such an institution is set up or not there will have to be consideration from time to time of the question to what extent it is desirable or appropriate in view of the financial conditions of the time that whether money should be borrowed, and whether borrowing should be external or within the Federation. Since currencies are no longer tied to gold, and since in any case the control of credit is an essential element in the control of inflation and the maintenance of employment, it is essential that the Federal Government, aided no doubt by central banking institutions, should be able to regulate the exercise of borrowing powers by all public authorities as well as by private persons and limited companies. Since the States and the local authorities have such limited independent revenues and since it is undesirable that such small borrowing authorities should compete against each other for narrowly limited savings, it seems essential that all loans should be raised by the Federal Government, or by a Central Bank on the security of the federal revenues. On the other hand, we are anxious to avoid the continuance of a tradition, whose existence has been alleged by State Financial Officers, that the States and local authorities should be 'last in the queue' for moneys raised by loan.

147. The solution seems to be to leave the raising of all loans, except overdrafts and other temporary finance from approved banks, to the Federal Government, but to have an annual review of the respective needs of the Federation and the States, the latter being responsible, as the legislative authority dealing with local government, for loans raised by local authorities other than the Municipality of Kuala Lumpur. This review should take place in the 'machinery for consultation' required by our terms of reference. The decision must rest with the Federal Government, but we hope for recognition of the fact that development in the States and under the authority of the State Governments, is one of the important means of securing national development. Accordingly, the Federal Government would raise all loans, but only after considering the needs of the States as well as those of the Federation as a whole.

Local Authority Finance

148. We have recommended that Kuala Lumpur being the capital of the Federation, should be directly under the Federation for local government purposes. It will therefore be for the Federation to impose on the Municipality of Kuala Lumpur such financial controls as it may see fit, and to make loans to the Municipality of such amounts and under such conditions as it may determine. All other local authorities including municipalities will be subject to the laws of the States in which they are situated, and loans to them can be made by the State concerned. If the State concerned desires to make a loan out of its own resources it should be permitted to do so, but if it desires to borrow money in order to make the loan then it must refer the question to the National Finance Council and obtain the consent of the Federation.

Consultative Machinery

149. We are directed by our terms of reference to recommend machinery for consultation between the central Government and the States and Settlements on certain financial matters to be specified in the Constitution. We have already recommended two matters which should be so specified: the basis and method of calculation of grants by the Federation to the States, and the annual loan requirements of the Federation and the States. There are also other matters which involve finance and on which we have recommended that there should be consultation between the Federation and the States, e.g, the initiation of schemes for National Development. We have tried to devise machinery which will be appropriate for the consideration of all such matters and which is sufficiently flexible for use in all matters on which consultation is desirable. In almost every such matter there will be some financial element. We recommend that this machinery should be purely consultative. We do not think that it would be right, or indeed practicable to give any executive functions to the body which we recommend should be formed, or to allow its powers to affect or diminish the ultimate responsibilities of the Federation and the States within their respective spheres. But it is in our view highly desirable that there should be an opportunity for differences of view between the Federation and the States, on any question of importance to both, to be examined and discussed by a body of high authority.

150. We recommend (Article 102) that the body to discuss these matters should be called the National Finance Council - though its functions would not relate only to strictly financial matters - and that it should consist formally of the Prime Minister and one other Minister of the Federation and the Mentri Mentri Besar or Chief Ministers of the States. We anticipate, though in order to provide flexibility we have not so provided, that the Prime Minister, the Mentri Mentri Besar and the Chief Ministers would be accompanied by advisers, both political and official, and that matters of importance might be referred to committees consisting, where desirable, of such advisers. This body would meet annually to consider the various matters in which the States as well as the Federation would be interested. We have recommended that in relation to certain matters it should be the duty of the Federal Government to consult the Council. Further the Federation should be free to bring forward any other questions which require consultation between the Federation and

the States, and the States should be free to consult the Council on any financial matters. These annual meetings would deal with the ordinary questions involving relations between the Federation and the States, but the Prime Minister would have power to summon additional meetings and would no doubt do so where there was a sufficient demand from the States.

Financial Procedure

151. Financial procedure is a technical matter but it has considerable constitutional importance: and accordingly it is desirable that we should give an outline of the scheme which we propose. This is not a matter relating to the Federal Government only. The peculiar economic structure of the Federation makes it necessary that the Federation should raise most of the revenue, and that much of the federal revenue should be expended by the States. Consequently, the level of federal expenditure depends upon the level of State expenditure, and it is essential to ensure that State expenditure should be incurred with due regard to constitutional rectitude and the national economy. The Federation differs, and is bound to differ from other federations in which the States have sufficient independent sources of revenue to 'live on their own'. Since every State must spend federal money, the State Constitutions must contain appropriate provisions for financial control, not differing essentially from those which apply to the Federal Government itself. These provisions are included in the Fifth Schedule, whose adoption by a State ought in our opinion to be a condition precedent to the establishment of the new grant system in that State. In what follows we have for the sake of convenience of exposition dealt with the Federation and the States together.

152. The principle that there shall be no taxation except under authority of law is fundamental. The proceeds of taxes and all other revenues (with minor exceptions) are paid into a national fund called the 'Consolidated Fund' out of which moneys cannot be paid except under the authority of law. The law gives that authority in two ways, by charging on the Consolidated Fund and by votes passed by Parliament. Moneys are charged on the Consolidated Fund when it is of constitutional importance that they ought not to be made the subject of an annual vote. The greater part of the annual expenditure is, however, varied from year to year and included in annual votes. The Minister of Finance would include the whole of the expenditure in his Budget, but only the votes would be included in the Supply Bill. This Bill when enacted, authorises the issue of the total of the votes from the Consolidated Fund and at the same time allocates or 'appropriates' the expenditure according to the votes. The votes are thus binding in the departments and no vote can be exceeded except by express legislative authority which would have to be given by a Supplementary Supply Bill. Within the votes (i.e. among the sub-heads of the Estimates) there can be variations without express legislative authority, though we consider that there should be no transfers between sub-heads except with Treasury approval, and no such transfers at all in the States except by Supplementary Estimate. Matters of this kind would, however, be dealt with by General Financial Orders and accordingly they are not included in the draft Constitution. The responsibility for seeing that expenditure is legally justified is placed in the first instance on the department concerned and in the second place on the Finance Department. There are, however, two further checks

exercised by the Auditor-General, whose functions would continue to extend to the States as well as to the Federation and by the Public Accounts Committee of the appropriate legislature. We have not included a power to surcharge a person responsible for unlawful or excessive expenditure, but such a power could be conferred by legislation.

CHAPTER VIII - THE PUBLIC SERVICES

153. The Report of the Federation of Malaya Constitutional Conference held in London in January and February, 1956, contains many recommendations with regard to the Public Services, and we quote the following passages from this Report which we accept as a summary of the principles which should be applied in the establishment and control of public services generally:

40. The first essential for ensuring an efficient administration is that the political impartiality of the public service should be recognised and safeguarded. Experience has shown that this is best secured by recognising the service as a corporate body owing its allegiance to the Head of State and so retaining its continuous existence irrespective of changes in the political complexion of the government of the day. The public service is necessarily and rightly subject to ministerial direction and control in the determination and execution of government policy, but in order to do their job effectively public servants must feel free to tender advice to Ministers, without fear or favour, according to their conscience and to their view of the merits of a case ...

41. One of the most essential ingredients of a contented and efficient service is that promotions policy should be regulated in accordance with publicly recognised professional principles. The Service must feel confident that promotions will be determined impartially on the basis of official qualifications, experience and merit ...

42 Similarly, a reasonable security of tenure and an absolute freedom from the arbitrary application of disciplinary provisions are essential foundations of a public service ...

43. The most generally accepted method of ensuring the observance of the foregoing principles is by the establishment of an independent Public Service Commission ...

The Report recommends that there should be set up before Merdeka Day three independent Commissions, each with executive authority - viz, a Public Service Commission, a Judicial Service Commission, and a Police Service Commission.

154. We have fully accepted these recommendations, and have endeavoured to apply them in making our own proposals. Accordingly, we have made provision in Part X of the draft Constitution for the permanent existence of these three Commissions. If the Commissions are to perform their functions in the manner contemplated by the Report, we think that it is essential that they should be completely free from Government influence and direction of any kind. The members should either hold office ex-officio or be appointed on a full time basis for not less than five years, and should not be subject to removal from office by the Government. We recommend that members who do not hold office ex-officio should only be removable by Parliament, in accordance with the same procedure as is applicable to a Judge of the Supreme Court.

155. In determining the functions of the Public Services Commission, we feel, as was stated in the London Report, that the broad principle should be that the Legislature and Government are necessarily responsible for fixing establishments and terms of employment, while the Public Services Commission is charged with the internal administration of the service as a professional body and with the responsibility for public service matters including appointments, promotions, and the application, when necessary, of disciplinary provisions in respect of members of the public service. With regard to positions within the public service, we think that they should be considered in three different categories: (1) the higher posts, being those of heads of departments and those of officers of similar status; (2) other posts in the permanent public service; and (3) temporary and casual employees. We consider that appointments to the first group should be made by the Government on the recommendation of the Public Services Commission. They should normally only be open to members of the service who have graduated through its ranks and have the training and experience necessary to fill the higher administrative posts. We consider however that it would be advisable for the Government to have the right to ask for the reconsideration of the appointment to any of these higher positions of a person who in its opinion is not suitable for appointment to the office. Moreover, we desire to make it clear that our recommendations are not intended to interfere in any way with the right of the Government to make appointments to any positions which are outside the public service proper. Appointments to the second group should be the sole responsibility of the Public Services Commission, but for practical reasons the Commission should have power subject to such conditions as it may determine to delegate its authority to make appointments to the lower grades in the permanent public service. The employment of temporary and casual employees should be the responsibility of the department concerned. Transfers within the service from one department to another should be dealt with by the Commission, but transfers and postings inside a department not involving any alteration in grade might be left to the permanent heads of the respective departments.

156. The position of the State services is not dealt with in the London Report. We think that the same considerations apply to them as to the Federal services, and that it is essential in the interests of the proper administration of the States that their services should be controlled by an independent body in the same way as those of the Federation. However, it would be uneconomic to have separate Commissions operating in each State and further we believe it would add to the efficiency of both the Federal and State services if there could continue to be a considerable interchange of officers between them. We therefore recommend that the Public Services Commission ought to have the same powers over State employees as they have over Federal. The State Governments should also enjoy the same powers with respect to their heads of departments as does the Federation.

157. The duties and responsibilities of the Judicial and Legal Service Commission, which corresponds to the Judicial Service Commission proposed by the London Conference, should be similar to those of the Public Services Commission, and should include matters relating to appointments, promotions, and discipline within the judicial and legal services. The Chief Justice and Judges of the Supreme Court will be appointed in accordance with Article 114 of the Constitution and the Attorney-General should also not be appointed by the Commission. The members of the

Judicial and Legal Service are all federal officers; they are comparatively small in numbers, and there should be no difficulty in the Commission dealing with each individual case. All appointments within the Service should be made by the Commission, and we do not think that any of them should be the subject of recommendation to the Government.

158. With regard to the Police Service Commission, we recommend that the Chairman of the Commission should be the Commissioner of Police. The Police Force is a disciplinary service and it is imperative in the interests of the State that its high standards of conduct should be maintained. To ensure this, it is necessary that the Commissioner should have ample powers to regulate and review the behaviour and efficiency of all members of the Force. We think that all powers vested in the Commissioner of Police under existing law should continue to be vested in him and that all powers now vested in the High Commissioner or the Secretary of State should be vested in the Commission. Otherwise the duties and responsibilities of this Commission should be similar to those of the Public Services Commission and should apply to all members of the Police Force.

159. We do not have full information about the existing terms and conditions of service of the various categories of officers who will be affected by the changes involved in the new Constitution or about any changes which it is proposed to make in these terms and conditions before Merdeka Day. It may be therefore that some of the draft articles in Part X of the Constitution will require amendment. But we are of opinion that the principles which we have recommended should be followed.

Pensions

160. At present the Federation Government is responsible for the payment of all pensions to pensionable officers, whether such officers are employed by the Federation or by the States. So long as this arrangement continues, the sanction of the Federation Government is of course necessary for an increase in the number of pensionable posts and for any increase in pensionable emoluments. Since it is difficult to get staff for non-pensionable posts, this arrangement means that State establishments are virtually under federal control; and, so long as it continues, the States cannot have the 'measure of autonomy' contemplated by the terms of reference. On the other hand, it would be undesirable for the states to assume responsibility for the payment of pensions from their own funds. Those funds are limited and must depend in large measure on federal grants. It is, too, desirable that officers should be able to move between the Federal services and the State services without complications arising over pension rights. We therefore recommend that the States should be under obligation to pay each year an appropriate pensions contribution in respect of every pensionable officer in their employment and that the rate of the contribution should be determined by the Federation after consultation with the National Finance Council. The appropriate rate of contributions would no doubt be the subject of actuarial calculation before the matter was referred to the National Finance Council. We recommend that these contributions and also similar contributions from the Federal Government in respect of all pensionable officers in their employment should be paid annually into a National Pension Fund. The

principle should be that the Fund should eventually be self-supporting, i.e., that the amount contributed in respect of an officer with accumulated interest, would meet the contingent liability upon the Fund in respect of his pension. This would not be practicable in the first generation because of the accrued pension rights of existing officers; and accordingly a federal subsidy would be required annually for a considerable period. The National Pension Fund should be managed by the Federal Treasury, which has adequate facilities for investment and accordingly the rate of pension contribution should be fixed by the Federal Government. On the other hand, each State would have power to determine the number of pensionable posts and the salaries attached to them, fully realising, of course, that every increase in the number of pensionable posts or in pensionable emoluments should increase the liability to pay pension contributions.

CHAPTER IX - FUNDAMENTAL RIGHTS

Constitutional Guarantees

161. A Federal constitution defines and guarantees the rights of the Federation and the States: it is usual and in our opinion right that it should also define and guarantee certain fundamental individual rights which are generally regarded as essential conditions for a free and democratic way of life. The rights which we recommend should be defined and guaranteed are all firmly established now throughout Malaya and it may seem unnecessary to give them special protection in the Constitution. But we have found in certain quarters vague apprehensions about the future. We believe such apprehensions to be unfounded but there can be no objection to guaranteeing these rights subject to limited exceptions in conditions of emergency and we recommend that this should be done. The guarantee afforded by the Constitution is the supremacy of the law and the power and duty of the Courts to enforce these rights and to annul any attempt to subvert any of them whether by legislative or administrative action or otherwise. It was suggested to us that there should also be written into the Constitution certain principles or aims of policy which could not be enforced by the Courts. We do not accept this suggestion. Any guarantee with regard to such matters would be illusory because it would be unenforceable in law and would have to be in such general terms as to give no real security. Moreover we do not think that it is either right or practicable to attempt to limit developments of public opinion on political, social and economic policy.

162. Our recommendations afford means of redress readily available to any individual, against unlawful infringements of personal liberty in any of its aspects. We recommend provisions against detention without legal authority of a magistrate, slavery or forced labour (but not against compulsory service) which apply to all persons; and provisions against banishment, exclusion from the Federation and restriction of freedom of movement which apply only to citizens of the Federation. We further recommend that freedom of speech and expression should be guaranteed to all citizens subject to restrictions in the interests of security, public order or morality or in relation to incitement, defamation or contempt of court. And we recommend that freedom of religion should be guaranteed to every person including the right to profess practise and propagate his religion subject to the requirements of public order, health and morality, and that, subject also to these requirements, each religious group should have the right to manage its own affair, to maintain religious or charitable institutions including schools, and to hold property for these purposes. We also recommend provisions against discrimination by law on the ground of religion, race, descent, or place of birth and discrimination on those grounds by any Government or public authority in making appointments or contracts or permitting entry to any educational institutions, or granting financial aid in respect of pupils or students. We recommend that there should be no discrimination with regard to the right to carry on any trade, business, profession or occupation; that no person should be deprived of his property save in accordance with law and that any law for compulsory acquisition or requisition of property must provide for adequate compensation. But, as we shall later explain, these provisions must be modified in

certain respects to take account of the special position of the Malays as must the provisions with regard to the right to hold and dispose of property.

The Special Position of the Malays

163. Our terms of reference require that provision should be made in the Constitution for the 'safeguarding of the special position of the Malays and the legitimate interests of other Communities'. In addition, we are asked to provide 'for a common nationality for the whole of the Federation and to ensure that the Constitution shall guarantee a democratic form of Government. In considering these requirements it seemed to us that a common nationality was the basis upon which a unified Malayan nation was to be created and that under a democratic form of Government it was inherent that all the citizens of Malaya, irrespective of race, creed or culture should enjoy certain fundamental rights including equality before the law. We found it difficult, therefore, to reconcile the terms of reference if the protection of the special position of the Malays signified the granting of special privileges, permanently, to one community only and not to the others. The difficulty of giving one community a permanent advantage over the others was realised by the Alliance Party, representatives of which, led by the Chief Minister, submitted that – "in an independent Malaya all nationals should be accorded equal rights, privileges and opportunities and there must not be discrimination on grounds of race and creed ..." The same view was expressed by their Highnesses in their memorandum, in which they said that they "look forward to a time not too remote when it will become possible to eliminate Communalism as a force in the political and economic life of the country".

164. When we came to determine what is 'the special position of the Malays' we found that as a result of the original treaties with the Malay States, reaffirmed from time to time, the special position of the Malays has always been recognised. This recognition was continued by the provisions of clause 19(1)(d) of the Federation Agreement 1948, which made the High Commissioner responsible for safeguarding the special position of the Malays and the legitimate interests of other communities. We found that there are now four matters with regard to which the special position of the Malays is recognised and safeguarded:

(1) In most of the states there are extensive Malay reservations of land and the system of reserving land for Malays has been in action for many years. In every state the Ruler-in-Council has the power to permit a non-Malay to acquire a piece of land in a Malay reservation but the power is not used very freely. There have been some extensions of reservations in recent years but we do not know to what extent the proportion of reserved land has been increasing.

(2) There are now in operation quotas for admission to the public services. These quotas do not apply to all services, e.g., there is no quota for the police and indeed there is difficulty in getting a sufficient proportion of non-Malays to join the Police. Until 1953 admission to the Malayan Civil Service was only open to British subjects of European descent and to Malays but since that date there has been provision for one-fifth of the entrants being selected from other

communities. In other services in which a quota exists the rule generally is that not more than one-quarter of new entrants should be non-Malays.

(3) There are now also in operation quotas in respect of the issuing of permits or licences for the operation of certain businesses. These are chiefly concerned with road haulage and passenger vehicles for hire. Some of these quotas are of recent introduction. The main reasons for them appear to be that in the past the Malays have lacked capital and have tended to remain on the land and not to take a large part in business, and that this is one method of encouraging the Malays to take a larger part in business enterprises.

(4) In many classes of scholarships, bursaries and other forms of aid for educational purposes preference is given to Malays. The reason for this appears to be that in the past higher education of the Malays has tended to fall behind that of the Chinese partly because the Chinese have been better able to pay for it and partly because it is more difficult to arrange higher education for Malays in the country than for Chinese in the towns.

165. We found little opposition in any quarter to the continuance of the present system for a time, but there was great opposition in some quarters to any increase of the present preferences and to their being continued for any prolonged period. We are of opinion that in present circumstances it is necessary to continue these preferences. The Malays would be at a serious and unfair disadvantage compared with other communities if they were suddenly withdrawn. But, with the integration of the various communities into a common nationality which we trust will gradually come about, the need for these preferences will gradually disappear. Our recommendations are made on the footing that the Malays should be assured that the present position will continue for a substantial period, but that in due course the present preferences should be reduced, and should ultimately cease so that there should then be no discrimination between races or communities.

166. With regard to land we recommend that, subject to two qualifications, there should be no further Malay reservations, but that each State should be left to reduce Malay reservations in that State at an appropriate time. Land is a State subject and we do not recommend giving overriding powers to the Federation in this matter. We do not think that it is possible to lay down in advance any time when a change should be made because conditions vary greatly from State to State. The two qualifications to the rule that there should be no further reservations are: first, that if any land at present reserved ceases to be reserved, an equivalent area may be reserved provided that it is not already occupied by a non-Malay; and secondly that, if any undeveloped land is opened up, part of it may be reserved provided that an equivalent area is made available to non-Malays.

167. The effect of our recommendations is that with regard to other preferences to Malays no new quota or other preference could be created. These preferences can only be lawfully created or continued to the extent to which that is specifically authorised by the Constitution. With regard to the existing quotas which we have referred to above we recommend that the Malays ought to have a substantial period during which the continuance of the existing quotas is made obligatory, but that, if in any year there are not enough Malay applicants qualified to fill their quota of

vacancies, the number of appointments should not be reduced and other qualified applicants should be appointed in sufficient numbers to fill the vacancies. We recommend that after 15 years there should be a review of the whole matter and that the procedure should be that the appropriate Government should cause a report to be made and laid before the appropriate legislature; and that the legislature should then determine either to retain or to reduce any quota or to discontinue it entirely.

168. The Alliance in their memorandum said 'The Constitution should therefore provide that the Yang di-Pertuan Besar should have the special responsibility of safeguarding the special position of the Malays. The majority of us take the view that the Alliance intended that the Yang di-Pertuan Besar should act in this matter as in others as a constitutional Ruler and should accept the advice of his Cabinet. Accordingly we think that the intention of the Alliance was that the whole matter should be dealt with by the Government of the day and Articles 82 and 157 of the draft Constitution give expression to the view of the majority. Mr Justice Abdul Hamid's view is that the words 'special responsibility' imply that in this matter the Yang di-Pertuan Besar should act at his discretion and not on advice. His views are set out in his note appended to this Report.

State Religion

169. We have considered the question whether there should be any statement in the Constitution to the effect that Islam should be the State religion. There was universal agreement that if any such provision were inserted it must be made clear that it would not in any way affect the civil rights of non-Muslims. In the memorandum submitted by the Alliance it was stated the religion of Malaysia shall be Islam. The observance of this principle shall not impose any disability on non Muslim nationals professing and practising their own religions and shall not imply that the State is not a secular State. There is nothing in the draft Constitution to affect the continuance of the present position in the States with regard to recognition of Islam or to prevent the recognition of Islam in the Federation by legislation or otherwise in any respect which does not prejudice the civil rights of individual non-Muslims. The majority of us think that it is best to leave the matter on this basis, looking to the fact that Counsel for the Rulers said to us - 'It is Their Highnesses considered view that it would not be desirable to insert some declaration such as has been suggested that the Muslim Faith or Islamic Faith be the established religion of the Federation. Their Highnesses are not in favour of such a declaration being inserted and that is matter of specific instruction in which I myself have played very little part.' Mr Justice Abdul Hamid is of opinion that a declaration should be inserted in the Constitution as suggested by the Alliance and his views are set out in his note appended to this Report.

Language

170. We received a large number of representations on this subject. After giving full consideration to them we have decided to recommend that Malay should be the national language and that for a period of at least ten years English should continue to be used as an official language. There are many citizens of the Federation who have

had little opportunity in the past of learning to speak Malay fluently, and we think that it would not be fair to them that Malay should become the sole official language in the immediate future. Moreover we think that it would be impracticable to abolish the use of English before 10 years have elapsed. After 10 years it should be left to Parliament to decide when a change should be made and we have framed our recommendations so as to enable Parliament to proceed by stages if it thinks fit to do so. It may be found desirable first to discontinue the use of English for some purposes and then to discontinue its use for other purposes at some later date. We do not recommend that any other language should become an official language. This has not been found necessary in the past and we think that it might lead to great inconvenience. But in the past it has been found desirable that many notices, announcements and other documents should be published in Chinese and Tamil as well as in Malay and English and we think that this will continue to be desirable for some considerable time. Our recommendations will not prevent this being done, but it is impossible to define the circumstances in which it should be done.

171. We have been impressed by representations that the existing law may prevent the election to the legislatures of persons whom the electors may desire to elect, and we recommend two changes: in the first place we think that there should be no language qualification for candidates, and we have drafted Article 41 in such a way as to abolish this qualification and prevent its reimposition. Secondly we think that for ten years there should be a limited right to speak in a legislature in a Chinese or Indian language. Our proposal limits this right to those who cannot speak fluently in either Malay or English, and for practical reasons it is necessary to limit the right to cases where a member who can speak the language in question can take the chair and where there can be a record of the speech. We do not recommend the institution of a system of interpreters: it would be cumbrous and expensive and might be difficult to operate. Our recommendation is based on the view that speeches in Chinese or Indian languages should be exceptional and we would not think it right to open the door for the regular use of these languages in debate. There are some purposes, such as the authoritative text of an Act of Parliament and proceedings in Courts of Justice other than taking of evidence, for which it may be found best to retain the English language for a considerable number of years, but we think that it is right that for all ordinary purposes Malay should in due course become the sole official language. Our recommendations are not intended to put obstacles in the way of that transition, but rather to regulate the transition emerge so that it may take place in a manner fair to all communities.

Emergency Powers

172. Neither the existence of fundamental rights nor the division of powers between the Federation and the States ought to be permitted to imperil the safety of the State or the preservation of a democratic way of life. The Federation must have adequate power in the last resort to protect these essential national interests. But in our opinion infringement of fundamental rights or of State rights is only justified to such an extent as may be necessary to meet any particular danger which threatens the nation. We therefore recommend that the Constitution should authorise the use of emergency powers by the Federation but that the occasions on which, and so far as

possible the extent to which, such powers can be used should be limited and defined. An emergency may arise in many ways. The most obvious examples are war and such serious internal disturbances as constitute an immediate threat to the life of the nation. But the history and continued existence of the present emergency show that organised attempts to subvert constitutional government by violence or other unlawful means may have to be met at an early stage by the use of emergency powers if they are to be prevented from developing into serious and immediate threats to the safety of the State. We recommend different provisions for dealing with these different situations.

173. We must first take note of the existing emergency. We hope that it may have come to an end before the new Constitution comes into force but we must make our recommendations on the footing that it is then still in existence. We do not regard the existing emergency legislation as wholly satisfactory and we shall recommend specific provisions with regard to preventive detention. But any attempt to remodel existing legislation during the emergency might create great difficulties. We therefore recommend that emergency legislation existing when the new Constitution comes into force should be continued in force for one year with power to amend or repeal any part of it. If after one year it is still necessary to keep any part of the legislation in force that should only be done by resolution of both Houses of Parliament. If at any time it is declared by Proclamation that the emergency has ended all emergency legislation should cease to have effect in so far as it authorises infringement of fundamental rights or of State rights.

174. To deal with any further attempt by any substantial body of persons to organise violence against persons or property, by a majority we recommend that Parliament should be authorised to enact provisions designed for that purpose notwithstanding that such provisions may involve infringements of fundamental rights or State rights. It must be for Parliament to determine whether the situation is such that special provisions are required but Parliament should not be entitled to authorise infringements of such a character that they cannot properly be regarded as designed to deal with the particular situation. It would be open to any person aggrieved by the enactment of a particular infringement to maintain that it could not properly be so regarded and to submit the question for decision by the Court. We see no need to recommend that the executive should have any emergency powers to act in such a situation before Parliament enacted legislation to deal with it: we think the emergency powers should not be used in this connection until the whole matter has been debated in Parliament. Mr Justice Abdul Hamid does not agree with the recommendation in this paragraph and his reasons are given in his note appended to this Report.

175. Emergencies, such as war, or internal disturbance, which constitute an immediate threat to the security or economic life of the country or any part of it, may have to be dealt with more promptly. In such cases we recommend that there should be a Proclamation of Emergency, and that the Federal Government should then have power to give directions to any State Government or State officer or authority. In such an emergency we recommend that Parliament should have power to enact any provision notwithstanding that it infringes fundamental rights or State rights. We do not think that it is possible or desirable to set general limits to this power, and we think that it is even necessary to authorise Parliament to extend its own duration for a year, or, if the emergency should last so long, from year to year. If Parliament is not sitting when the Proclamation is made the Government can make ordinances having

the force of law. Parliament must be recalled as soon as possible and must approve of any such ordinances within fifteen days or otherwise the ordinances will cease to have effect.

176. But there is one case where we think that a limit should be set to this power and can be set without detriment to the public interest. We recognise that preventive detention may be necessary: but we recommend that a citizen of the Federation should not be detained under any emergency provisions for more than three months unless an advisory board appointed by the Chief Justice has reported that there is in its opinion sufficient cause for such detention. In order that the person detained may have as full an opportunity as possible of submitting his case we recommend that he should be told the grounds and allegations of fact on which he has been detained, subject to the right of the detaining authority to refuse to disclose facts whose disclosure would in its opinion be against the national interest.

CHAPTER X - THE STATES

177. All the States have written Constitutions: that of Johore dates from 1895 and has been amplified from time to time; that of Trengganu dates from 1911 and the Constitutions of the other States were granted by the Ruler of each State following on the making of the Federation Agreement and the State Agreements in 1948. Under all these Constitutions the Ruler is advised by an Executive Council at which he presides and by a Council of State at which the Mentri Besar presides. The Mentri Besar is appointed by and responsible to the Ruler. The Ruler has power to overrule the advice of his Executive Council and Council of State but we were not informed of an important matter in which this power has been exercised recently in any State. Under our terms of reference our recommendations must include provision for 'the safeguarding of the position and prestige of Their Highnesses the Rulers as constitutional Rulers of their respective States'. In our judgement Their Highnesses are not constitutional Rulers at present. We think that the word 'constitutional' is used in our terms of reference in its ordinarily accepted sense in connection with democratic parliamentary government; it is certainly so used in the immediately following reference to ‘a constitutional Yang di-Pertuan Besar for the Federation'. In our opinion a constitutional Ruler is a Ruler with limited powers, and the essential limitations are that the Ruler should be bound to accept and act on the advice of the Mentri Besar or Executive Council, and that the Mentri Besar or Executive Council should not hold office at the pleasure of the Ruler or be ultimately responsible to him but should be responsible to a parliamentary assembly and should cease to hold office on ceasing to have the confidence of that assembly. In accordance with the views of the Rulers we have not drafted Constitutions for the existing States but we hold ourselves bound to recommend the form of the amendments which are necessary if the Rulers are to become constitutional Rulers in the above sense.

178. In pursuance of our duty to recommend 'a strong central government' with 'a measure of autonomy' to the States, we have made proposals in Chapter V designed to give the States a greater measure of autonomy in limited but important fields while retaining national control where the national interest as a whole requires it. Similarly in Chapter VII we have sought to make the States financially autonomous, but to reserve the main taxing powers to the Federation because in a small country like the Federation of Malaya the operations of twelve independent taxing authorities might well disrupt an economy based largely on two sources of revenue. The result of our proposals is that the Federation would raise most of the revenue and would pay a substantial portion of it to the States to be expended by them under the control of the State Legislatures. It is implicit in such a measure of autonomy that the States should be required to adopt the methods of financial control which the experience of two centuries has proved to be necessary. We recognise that under the existing State Constitutions amendments must be made by the Rulers themselves with the consent of the existing Councils of State; and there is nothing in our terms of reference requiring us to make recommendations about those large portions of the State Constitutions which regulate succession to the Thrones and the position of Ruling Chiefs. In our view the intention of our terms of reference is that the essential amendments should be made before the Federation is required to give guarantees to a State, and the recommendations which we have already made giving increased

autonomy to the States in financial and other matters are made on the footing that the Rulers should become constitutional Rulers in the above sense before our recommendations take effect.

179. The scheme of government recommended by us is a simplified version of that recommended for the Federation. The position of a Ruler as Constitutional Monarch in his State would be much the same as that of the Yang di-Pertuan Besar in the Federation. A bicameral system would be excessively complicated and expensive and accordingly we recommend that the State Legislature should consist of the Ruler and one House to be known as the Legislative Assembly. Executive authority would be exercised by an executive Council presided over by the Mentri Besar, which would be collectively responsible to the Legislative Assembly. We have set out in the Fifth Schedule to the draft Constitution for the Federation the clauses which we think ought to be inserted in each State Constitution as soon as possible and it will be necessary at the same time to delete or amend all existing provisions in the State Constitution which are inconsistent with the provisions of the new clauses. We include not only clauses which we regard as necessary to establish the status of the Rulers as constitutional Rulers of their States but also clauses dealing with financial administration. We regard these as being necessary for the protection of the finances of the Federation. The Federation will continue to make large grants to the States and it must therefore have an assurance that the money which it provides will be spent and accounted for in accordance with established principles.

180. We have set out the sections which we think should be adopted at once by the larger States and ultimately by all States but we have recommended certain alternative provisions which it would be open to any States to adopt for a period. Section 1 of the Schedule will put the Ruler in the same constitutional position in his State as that of the Yang di-Pertuan Besar in the Federation. Section 2 will put the Mentri Besar in a similar position in his State to that of the Prime Minister in the Federation. There is an alternative provision whereby the Mentri Besar need not be an elected member of the State Legislative Assembly provided that he commands the confidence of the Assembly, but we think that it ought to become the rule now in most States and ultimately in all States except perhaps Perlis that the Mentri Besar must be an elected member of the Legislature. Otherwise we do not think that in the long run there can be adequate control of the executive by the elected Assembly. We have substituted the name Legislative Assembly for Council of State because we think it more appropriate for an elected body with Parliamentary powers.

181. Section 3 deals with the Executive Council and provides that the Mentri Besar should be chairman and that the Council should be collectively responsible to the Legislative Assembly in the same way as the Cabinet is collectively responsible to Parliament. The Executive Council must therefore take its decisions in accordance with the political policy of the majority in the Legislative Assembly and it would not be right that the Ruler as a constitutional sovereign should be involved in political matters. It is therefore necessary that he should cease to preside over the Executive Council. As the Executive Council is to be collectively responsible to the Legislative Assembly the appointment of its members must lie in the hands of the Mentri Besar and a new Mentri Besar must be free to appoint a new Executive Council in the same way as the Prime Minister appoints his Ministers. This result follows from our recommendation that members of the Executive Council should hold office at the

pleasure of the Ruler because in appointing or terminating the appointment of a member of the Executive Council the Ruler must act on the advice of the Mentri Besar. We recommend that no person who is not a member of the Legislative Assembly should be a member of the Executive Council but this recommendation does not forbid the summoning of advisers, whether official or unofficial, to meetings of an Executive Council, though such advisers would not have a right to vote and the extent to which they would take part in discussions of policy would be decided by the Executive Council concerned. On matters of finance, for example, it would often be necessary to consult the State Financial Officers. Nor do we contemplate that the State administration would be up into Ministries or Departments. This may become necessary in a large State at some future time; but the burden of administrative expenses is already heavy for a small country and it is not our intention that our proposals should increase it.

182. As the ultimate power in a State will be in the Legislative Assembly it is essential to make adequate provision to ensure that the Assembly truly represents the people of the State. We found that there was general agreement that ultimately all Legislative Assemblies should consist entirely of elected members, but it was strongly represented to us that in some States it would be unwise if not impracticable that there should be an immediate change to a fully-elected Legislative Assembly. The knowledge which we gained in Malaya leads us to accept this representation and therefore we provide as an alternative that it should be permissible to have a number of nominated members not exceeding one quarter of the number of elected members. Taking everything into consideration we think that four years would be an appropriate term for the Legislative Assembly and that there should be a power of dissolution similar to that in the Federal Constitution. The provisions for State elections have been inserted in the Federal Constitution because under our recommendation the electoral rolls will be the same as for federal elections and the Federal Election Commission will be responsible for delimiting the constituencies and conducting the elections. But it is necessary to insert in the State Constitutions provisions similar to those in the Federal Constitution with regard to qualifications and disqualifications for membership of the Legislative Assembly and with regard to procedure in the Assembly. These are necessary to ensure a democratic parliamentary system and should appear in the State Constitution and not in the Federal Constitution. The financial safeguards which we recommend should be inserted in the State Constitution are similar to those in the Federal Constitution; we do not think that it is possible to make these provisions more simple without impairing their value. There must also be provision that none of these essential clauses can be repealed or amended by the State Legislature without the consent of the Federal Parliament.

183. Under our recommendations it is left to each State to determine the method of amendment of its Constitution as regards any provisions other than those provisions which are ‘essential provisions’ within the meaning of Article 66. By amending the Federal Constitution the Federation can alter these essential provisions and it then becomes the duty of each State to bring its Constitution into line with any such alteration. But we recommend another method by which essential provisions in a State Constitution can be amended. It would not be right that a State should have the power to amend any essential provision in its Constitution without the consent of the Federation but if the State Legislature passes a Bill for this purpose by a two-thirds majority then we recommend that that Bill should be submitted to the Federal

Legislature and should become law if it is approved by a two-thirds majority in each House of the Federal Legislature.

184. We regard it as essential that these changes should be made before 1st January, 1959. We have recommended that the first Parliament of the Federation should be elected in 1959. That Parliament will include Senators elected by the State Legislative Assemblies. An Assembly entrusted with this power must, in our view, be truly representative of the people of the State. It must therefore be a wholly elected body or at least predominantly an elected body and it must have been elected on the new electoral rolls which under our recommendations will come into effect on 1st January, 1959. For reasons similar to those which we have given, with regard to the continuance of the existing Federal Legislative Council after Merdeka Day we recommend that all existing Councils of State should also continue in existence after Merdeka Day; but, in order that the new Legislative Assemblies should be in existence in time to elect Senators, we recommend that all existing Councils of State should be dissolved on 1st January, 1959 and that Legislative Assemblies under the amended State Constitutions should be elected within sixty days thereafter. It is also necessary in our view, that the new Legislative Assemblies should be in existence and that the financial safeguards should have been inserted in the State Constitutions before the States can have the increased financial autonomy which our recommendations in Chapter VII will give them.

185. We have already recommended that the constituencies for the election of the first Federal Parliament should be delimited by dividing each existing Federal constituency into two and we recommend for similar reasons that constituencies for the election of the first new Legislative Assemblies should be delimited by sub-dividing the Federal constituencies. The number of elected members in each Legislative Assembly must therefore be a multiple of the number of members from the State in the Federal House of Representatives. If each Legislative Assembly is to be of reasonable size these multiples must differ in different States and we recommend that the following should be the numbers of elected members in each of the first Legislative Assemblies: Johore 32; Kedah 24; Kelantan 30; Negri Sembilan 24; Pahang 24; Perak 40; Perlis 12; Selangor 28; Trengganu 24. Thereafter each State should be free to determine the number of members in its Legislative Assembly and the decision of the State will be carried out by the Election Commission at the next Federal redistribution.

186. We have already stated that it is generally agreed that if any State adopts the alternative proposals to which we have referred, that adoption should only be for a period. We therefore recommend that any State which does adopt these proposals should be free to change to the permanent scheme at any time and that, except in Perlis, the maximum time during which the alternative proposals should remain in operation should be the duration of the first two Legislative Assemblies: that means a maximum duration of eight years but the period will be less if a Legislative Assembly is dissolved before its normal life of four years has elapsed. Owing to the small size of Perlis it may be desired to retain the alternative proposals there for a somewhat longer period and our recommendations make this possible.

187. We have had considerable discussions as to the difficulties which might arise if this time-table were not adhered to. The position has altered since 1948, when the

Rulers could put new Constitutions into force under their own authority. Now in each case the Ruler has to seek the approval of the Council of State. It would be too much to hope that every member of such a Council would agree with our proposals, or with modifications to them acceptable to Her Majesty's Government, the Federation Government, and the Conference of Rulers. By suggesting alternative provisions, we have ourselves created a source of possible conflict, Moreover, the problem is not merely to gel responsible government into existence in the States but also to keep it there. Most Federal Constitutions guarantee the democratic character of the State Constitutions because, without such guarantee, the State Constitutions unlike the Federal Constitution have not the backing of an armed force. It is therefore necessary to contemplate two possibilities. The first, a rather vague one, is that somebody in authority in a State, at some time or other will habitually disregard the provisions of the State Constitution. The other is that, at some time or other, a State may refuse to incorporate in its Constitution the essential provisions referred to in Article 66 of the Federal Constitution or constitutional amendments of these provisions.

188. The majority of us recommend that there should be different remedies to meet these two cases. In the first case we are agreed that Parliament should have a general power to make such provision as it may consider necessary for the restoration of constitutional Government including power to dissolve the State Legislature but any such provision should cease to operate when the State Legislature has been dissolved and a newly-elected Legislature Assembly has met. To deal with the second of these cases the majority of us recommend that after a declaration by the Yang di-Pertuan Besar that a State is in default Parliament should have full power to make laws for that State on all subjects and that the whole executive authority of the State should immediately vest in the Federation. Any right of the State to receive grants would then cease and there should be such discretionary grants as the Federation might determine. Lord Reid is of opinion for the reasons given in his note appended to this Chapter that the provisions of Article 65 should apply to both cases. The majority of us recommend that the two cases should be dealt with differently because we think that the second case may arise during a dissolution of Parliament or at a moment when it would be politically embarrassing to the party in power to have to exercise a discretionary power against a State. This might be particularly true in 1959 when the powers of Parliament would be vested in the legislative Council and that body would be subject to early dissolution. It will of course be realised that Articles 65 and 66 are inserted only by way of precaution. We believe that not only the Rulers but also the members of the Councils of State are anxious to introduce constitutional government as soon as possible and to retain it permanently; but we must recommend suitable provisions in case something goes wrong.

Note By Lord Reid on Paragraph 188

The effect of Article 66 is that if any State has for any reason failed promptly to adopt the essential provisions within the meaning of that article either initially or following on any later, constitutional amendment of Schedule V, the Federal Government has no choice with regard to the steps which it can take to meet that situation. It is bound to make a Declaration in terms of Article 66(1) and thereupon the executive authority in the State vests automatically in the Federation so that no State officer can thereafter take any executive action in the State unless the Federation have given him authority to do so. I am of opinion that it might be embarrassing to the Federal Government if

they were compelled to undertake responsibility in this way for the whole administration of a State, that there is no need for any such automatic provision, and that if a sanction is necessary it should be in general terms similar to those of Article 65 which deals with habitual disregard by a State of its Constitution. I am further of opinion that it is more in accordance with the principles of democracy that the choice of remedy should be left in the hands of the elected representatives of the people of the Federation rather than that the course which they must follow should be imposed on them in advance and without knowledge of the situation as it may arise in future.

CHAPTER XI - THE SETTLEMENTS

189. The position in the two Settlements of Malacca and Penang is different in many respects from that in the States. The Settlements are parts of Her Majesty's dominions for the government of which Her Majesty's Government in the United Kingdom is responsible. Constitutionally the position is unusual. The Settlements are integral parts of the Federation, and the High Commissioner and Their Highnesses the Rulers are empowered, with the advice and consent of the Legislative Council of the Federation, to make laws for the Settlements on the same wide variety of matters as those on which they are empowered to make laws for the States. The ultimate responsibility of Her Majesty's Government is preserved by the extensive reserved powers of the High Commissioner for the exercise of which he is responsible to Her Majesty's Government. As regards administration, the Executive Council of the Federation has the same functions with regard to the Settlements as it has with regard to the States, except that the High Commissioner is not bound to consult with it in the execution of his powers and authorities relating exclusively to the Settlements. Again, the ultimate responsibility of Her Majesty's Government is preserved by the right of the High Commissioner to act in opposition to the advice of the Executive Council. All executive action in the Settlements is taken in the name of the High Commissioner.

190. In each Settlement matters which are not the responsibility of the Federation are dealt with by the High Commissioner in Nominated Council or by the Settlement Council. The Nominated Council is the executive authority for the Settlement. The High Commissioner is bound, subject to certain exceptions, to consult the Nominated Council on all important matters involving the exercise of powers relating exclusively to the Settlements but he has power to act in opposition to the advice of the Council. Members of the Nominated Council may be but need not be members of the Settlement Council, and all members hold their places during Her Majesty's pleasure. The Settlement Council has power to legislate on matters on which it is competent to do so under the Federation Agreement of 1948; it has such executive authority as may be delegated to it, and in the Settlement Council matters of public importance are discussed. There are reserved powers to disallow Bills passed by the Council and to enact Bills which the Council has not passed. The composition of the Settlement Councils has been changed several times since 1948; there is now a majority of elected members in Penang but not as yet in Malacca. A Settlement Council continues for three years unless it is sooner dissolved and a new Council must be reconstituted within three months of a dissolution. In practice, owing to the Resident Commissioners being directly responsible to the High Commissioner, the Settlements do not have the same degree of administrative autonomy as the States. We did not find that this has caused any considerable dissatisfaction but we think that in future the status of the Settlements ought to be equal to that of the States and that they ought to have the same degree of autonomy. We received no representations that the name 'Settlement' should be preserved and we recommend that in future the Settlements should be called States in token of their status of equality with the other States.

191. We do not think that the Settlements can remain part of Her Majesty's dominions. The rest of the Federation never has been and will not now become part of

Her Majesty's dominions. It is generally agreed that the Federation should remain part of the Commonwealth, recognising Her Majesty as Head of the Commonwealth, but the Head of State of the Federation will be the Yang di-Pertuan Besar and the Government of the Federation will not be one of Her Majesty's Governments. The Federation have the same extensive powers and responsibilities in the Settlements as in the States. In the execution of these powers in the Settlements, as in the States, action will be taken by Federal Ministers in the name of the Yang di-Pertuan Besar, and Federal legislation will have effect in the Settlements although it has not received the assent of Her Majesty directly or indirectly. It would, in our view, be inconsistent with the Federation being an independent self governing country that the Governments of the Settlements should retain any connection with Her Majesty's Government in the United Kingdom; and it would be novel and likely to cause difficulties if territories in which a Government, not one of Her Majesty's Governments, has major powers and responsibilities, were to be parts of Her Majesty's dominions. We have therefore drafted Constitutions for the Settlements to come into operation when the Settlements cease to be parts of Her Majesty's dominions and become States autonomous within the limits defined in the Federal Constitution. The new States must be democratic, and we recommend that the essential provisions in the Constitutions of Penang and Malacca should be the same as in the case of the other States. Executive action on State subjects will be taken in the name of the Governor of the State, but the Governor must be a constitutional Head of State and with regard to executive action he must only act on the advice of persons who are answerable for that advice to the legislative Assembly. Legislation on State subjects must be passed by the State Legislative Assembly.

192. The new States will be comparatively small, and we think that the structure of government should be as simple as possible. We see no need for a bicameral legislature. There must be a Chief Minister who is the head of the administration and who is responsible for all executive action and for advice given to the Governor. He must be answerable to the Legislative Assembly and must cease to hold office if he ceases to have the confidence of the Assembly. It will be the duty of the Governor to appoint as Chief Minister a Member of the Legislative Assembly who in his judgment and is most likely to command the confidence of the Assembly. We recommend that unless the Assembly passes a vote of confidence in the Chief Minister within three months the Chief Minister should cease to hold office. On 1st August, 1956, a system of government by committee was introduced in Penang: four committees were set up, each consisting almost wholly of elected members of the Settlement Council, and each committee was to be made responsible for devising policies for the departments of Government allotted to it and for the supervision and general direction of the manner in which such policies are implemented. The Chairman of each committee was to become a member of the Nominated Council. At the time of our visit to Penang this system had barely come into operation and we have no later information as to how it is working in practice. It appears to be a system which could fit into the new constitutional arrangements which we recommend for the Settlements, and we were informed that the introduction of a similar system was under consideration in Malacca. Our recommendations are sufficiently elastic to permit the adoption of a full cabinet system but we think that for the time being the establishment of such a system may be found to be unduly expensive and otherwise impracticable.

193. We think that if the Settlements, when they become States, are to have equality of status with the other States, it must follow that the Governors of these new States should be as independent of control by the Federation as are the Rulers of the other States. But it is not an easy matter to determine how the Governors should be appointed. A Governor must be the constitutional Head of his State: his political functions will not be more extensive than the political functions of the Ruler of a State. He ought in our view to represent the unity of his State and should be above party politics. We therefore think that it would be inappropriate that he should owe his position to election direct or indirect; and we found no substantial body of opinion in the Settlements desiring that the Governors should be elected. We think that the objective which we have in mind will best be achieved if the Governor of each State is appointed for a term of four years by the Yang di-Pertuan Besar after consultation with the Chief Minister of the State and we so recommend. But the Governor after his appointment should not be responsible to the Yang di-Pertuan Besar or to the Federal Government. He should represent and be responsible to the people of his State, and his appointment should only be terminable after a resolution to that effect by a majority of two-thirds of the State Legislative Assembly. It will not be possible for the Yang di-Pertuan Besar to consult the Government of the State with regard to the appointment of the first Governor. For two reasons, the first Governor must be appointed on Merdeka Day. In the first place a Chief Minister must be appointed immediately and he must be appointed by the Governor, and secondly the administration of the State must be carried on without interruption and from Merdeka Day executive action must be taken in the name of the Governor. There must therefore be before Merdeka Day such informal consultation as will enable the Yang di-Pertuan Besar to appoint on that day Governors acceptable to the people of Malacca and Penang. But this is not a matter for which provision can be made in the Constitution.

194. The constitutional structure of the two new States of Malacca and Penang should be similar to that of the Federation and of the other States once their Constitutions have been amended. Our recommendations with regard to the method of appointment and termination of the appointment of the Chief Ministers and with regard to their duties and responsibilities do not differ materially from our recommendations with regard to the Prime Minister and the Mentri Mentri Besar and we need not repeat what we have already said on this matter. Members of the Executive Council must be members of the Legislative Assembly and will be appointed by and hold office at the pleasure of the Governor, but in this matter the Governor must act on the advice of the Chief Minister. In effect therefore the Chief Minister will choose the members of the Executive Council and may terminate any appointment and a new Chief Minister will be free to choose his own Council. The Council will be collectively responsible to the Legislative Assembly but the Chief Minister may assign to any members of the Council responsibility for any department or departments. As in the case of the States our recommendations do not forbid the summoning of advisers to meetings of the Executive Council.

195. We recommend that both Legislative Assemblies should unless sooner dissolved continue for four years and that they should be wholly elected. The Legislative Assembly should consist in the case of Penang of 24 members and in the case of Malacca of 20 members. As in the case of the States each Legislative Assembly will have power to alter the above numbers of members, any such

alteration being put in operation by the Election Commission at the next Federal redistribution. Each Legislative Assembly will elect its own Speaker and determine its own rules of procedure subject to the same limitations as are recommended for the Federal Parliament, and the financial provisions with regard to the Assemblies will be similar to those for the Federation and the other States. The State Legislatures should be entitled to amend the State Constitutions if a Bill for that purpose is passed by a two-thirds majority of the Assembly but amendment of the parts of the Constitution which establish its essential democratic principles should only be competent if approved by the Federal Parliament in the manner which we have already explained in paragraph 183. A State in a democratic Federation must itself be democratic and cannot be permitted to remove from its Constitution the essential provisions. Articles 65 and 66 of the Federal Constitution will apply to Penang and Malacca as they apply to other States. For the same reasons as those which we have already given for the Federation and the States we recommend that the existing Settlement Councils should continue after Merdeka Day and until 1st January, 1959, when they should be dissolved. The name of the Councils between these dates should be Councils of State. Legislative Assemblies will then be elected under the new Constitutions and on the new electoral rolls which will come into operation on 1st January, 1959, and these Assemblies will be available to elect Senators to the first Parliament. As in the case of the States delimitation of constituencies and responsibility for the elections should be the duty of the Election Commission and for the first State elections constituencies should be delimited by subdivision of existing Federal constituencies. Thereafter each State Legislature should be free to determine the numbers of members in the Legislative Assembly.

CHAPTER XII - SUMMARY OF RECOMMENDATIONS

We append a short summary of our recommendations. We only mention here the more important of them and this summary is too brief to be an adequate statement of any of them. We attach to each item a reference to the paragraph where the recommendation in question is set forth in detail.

Citizenship

1. All who have rights of citizenship or were entitled to be registered as citizens before Merdeka Day should continue to have such rights (paragraph 37).

2. All persons born in the Federation on or after Merdeka Day should be citizens by operation of law (paragraph 38).

3. All persons born in the Federation before Merdeka Day and now resident there should be entitled to be citizens provided they have resided in the Federation for five out of the preceding seven years and declare that they intend to reside permanently in the Federation, and are prepared to take an oath of allegiance and declare that they will not exercise any rights under the nationality laws of any foreign country (paragraph 39).

4. All persons resident in the Federation on Merdeka Day should be entitled to become citizens if they have resided in the Federation for eight out of the previous twelve years and comply with the other conditions set forth under item 3 above (paragraph 41).

5. Applicants under items 3 and 4 above should have an elementary knowledge of Malay but the language test should be waived in the case of any applicant who applies within twelve months of Merdeka Day under item 3 and in the case of any applicant over 45 years of age who applies within 12 months under item 4 (paragraphs 40 and 41).

6. Other persons can apply for citizenship by naturalisation provided that they have resided in the Federation for ten out of the preceding twelve years and comply with the normal conditions for naturalisation (paragraph 44).

7. Any citizen who acquires or voluntarily takes advantage of foreign Citizenship and any citizen by registration or naturalisation who obtains citizenship by fraud may be deprived of his citizenship (paragraph 45).

8. Any citizen by naturalisation or by registration under Article 17 may be deprived of his citizenship if he has shown himself disloyal to the Federation (paragraph 45).

9. It should be open to the States to provide for persons being subjects of the Rulers provided that no person can be a subject of a Ruler unless he is a citizen of the Federation (paragraph 46).

10. In accordance with the general law in the Commonwealth, citizens of the Federation and of all other Commonwealth countries should be declared to have the common status of Commonwealth citizens (paragraph 47).

11. Under existing law in the Commonwealth, dual citizenship within the Commonwealth is recognised. For example a person can be at the same time a citizen of India or Pakistan and a citizen of the United Kingdom and Colonies. But a person with dual citizenship owes undivided loyalty to the country in which he is residing. The law in the Federation should conform to this practice (paragraphs 49-56).

Parliament and the Executive

12. The Parliament of the Federation should consist of the Yang di-Pertuan Besar, the Senate, and the House of Representatives (paragraph 57), and Acts of Parliament should be passed by both Houses and receive the assent of the Yang di-Pertuan Besar (paragraph 64).

13. The Yang di-Pertuan Besar should be elected for five years and the method of election should correspond with that recommended by the Rulers (paragraph 59).

14. The House of Representatives should be wholly elected by single member constituencies on a territorial basis. The number of members should be 100 (paragraph 60).

15. The Senate should consist of 22 members elected by the State Legislative Assemblies and 11 members nominated by the Yang di-Pertuan Besar. Parliament should have power to reduce the number of nominated members or to abolish nomination and to increase the number of members from each State and should also have power to introduce a system of direct election of the State members (paragraphs 61-62).

16. Members of the Senate should hold office for six years, half being elected or appointed every three years (paragraph 63).

17. If the Senate refuses to pass a Bill which has been passed by the House of Representatives, the Bill should become law if after the lapse of 12 months the House resolves that it should be submitted for the assent of the Yang di-Pertuan Besar (paragraph 65). In the case of a Money Bill the period of delay should only be 21 days (paragraph 66). The House should not be able to overrule the Senate on a Bill for amendment of the Constitution (paragraph 80).

18. The Prime Minister should be appointed by the Yang di-Pertuan Besar and he should be the person most likely to command the confidence of the House of Representatives. The Prime Minister should then choose the Ministers of his Cabinet. The Yang di-Pertuan Besar should be entitled to choose the Prime Minister but in all other matters except the dissolution of Parliament he should be bound to accept the advice of the Prime Minister or the Cabinet (paragraph 68).

19. The duration of each Parliament should be five years subject to power in the Yang di-Pertuan Besar to dissolve Parliament at any time (paragraph 69).

20. If the Prime Minister has lost the confidence of the House of Representatives he must either resign or ask for a dissolution, of Parliament, and if the Yang di-Pertuan Besar refuses a dissolution of Parliament he must vacate his office (paragraph 69).

21. It would not be right to hold a new election after Merdeka Day until new citizens have been registered and new electoral rolls have been prepared. It would not be fair to prepare the new rolls until citizens under the new provisions have had an opportunity of being put on the rolls. Accordingly the next elections should not be held until after 1st January 1959, and the present Legislative Council should exercise the functions of Parliament meanwhile (paragraph 70).

22. The responsibility for delimiting constituencies, making up the electoral rolls and the conduct of elections should be given to an Election Commission which should be a permanent body independent of the Government (paragraph 71).

23. For the first election the existing 52 constituencies should each be divided into two so that there will be 104 members in the first House of Representatives. On a redistribution, the number of constituencies in each State should be determined by the Election Commission having regard primarily to the number of voters in each State but also to the, total population (paragraph 75).

24. The number of constituencies so allotted to each State should be delimited by the Commission having regard to the total population, the sparsity or density of population, the means of communication and the distribution of the different communities (paragraph 74).

25. The Commission should delimit constituencies for the State Legislative Assemblies and be responsible for State elections (paragraphs 77 and 79).

26. The Election Commission should receive applications for citizenship and determine all questions necessary to decide whether a person is to be put on the electoral roll. The new electoral roll should come into effect on 1st January, 1959 (paragraph 78).

27. Amendment of the Constitution can be made by Act of Parliament provided that in each House the Bill is passed by at least a two-third majority (paragraph 80).

Division of Legislative and Executive Powers

28. The legislative powers of Parliament and of the State Legislatures should be defined by a list of Federal subjects, a List of State subjects and a Concurrent List. Parliament should also have power to implement treaties or agreements (paragraphs 82 and 113).

29. The executive powers of the Federation and of the States should extend to all matters in the Federal and State Lists respectively. With regard to subjects in the Concurrent List the executive powers will be in accordance with Federal or State law (paragraph 82).

30. There should be general power of delegation by agreement of executive power from the Federation to the States or vice versa (paragraph 83).

31. Parliament should have power to legislate on State subjects to bring about uniformity but such legislation should not come into effect in any State until it has been adopted in that State (paragraph 84). This is intended to apply to the new National Land Code among other matters.

32. Land should be a State subject (paragraph 88).

33. The Federal Government should have power to acquire any land compulsorily for federal purposes (paragraphs 93 and 94).

34. When the Federal Government no longer requires land vested in the Federation, the land should revert to the State if it pays either the market value or else any amount paid by the Federation for the land, plus the value of improvements. If the State does not pay this sum the Federation should be entitled to sell the land (paragraph 94).

35. All land now occupied by the Federation without a title should be deemed to be reserved land and the Federation should have an option either to acquire a title on paying the value of the land, less the value of improvements, or to allow the present position to continue (paragraph 95).

36. When the Federation no longer requires reserved land the State should be entitled to obtain possession on payment of the value of improvements made by the Federation. If the State does not pay this sum, the Federation should be entitled to sell the land (paragraph 95).

37. Any dispute between the Federation and a State with respect to valuations should be referred to a Lands Tribunal which should include representatives of the Federation and the State (paragraph 96).

38. The present powers of the Federation with regard to research, technical assistance and advice, and the collection of information should continue (paragraph 97).

39. Agriculture should be a State subject (paragraph 98).

40. In view of the importance of soil conservation a Federal Service should be set up (paragraph 99).

41. Forestry should be a State subject but the Federation should have power to deal with particular areas by schemes for national development (paragraph 101).

42. Irrigation and drainage should be placed in the Concurrent List of subjects (paragraph 103).

43. There should be power to set up a Mines Committee in each state and the Federation should have power to pay a percentage of the tin export duty to the States producing the tin if suitable arrangements are made for tin mining in those States (paragraph 105).

44. Rehabilitation of mining land should be placed in the Concurrent List of subjects (paragraph 107).

45. Existing arrangements for development by means of grants from the Federation for particular purposes may be continued but the Federation should be entitled to assume direct responsibility for development by means of national development schemes for a wide variety of purposes including agriculture, mining, forestry, irrigation and drainage, soil conservation and other purposes (paragraphs 108 and 109).

46. After the Report of an Expert Committee and consultation with the National Finance Council the Federal Parliament should be entitled to pass legislation to carry into effect any development scheme for the above purposes and to have land in the development area reserved for the purposes of the scheme (paragraph 110).

47. Any loss of revenue to the State arising from the development scheme should be made good and after payment of all expenditure incurred by the Federation in connection with the scheme further profits should belong to the State (paragraph 111).

48. The Federation should be entitled to acquire land and to grant it to any person for a particular development purpose if authorised to do so by resolution of both Houses of Parliament (paragraph 112).

49. A wide variety of matters including external affairs, defence, civil and criminal law, and trade, industry and commerce should be federal subjects but the present position with regard to the Muslim religion and the custom of the Malays should be preserved (paragraphs 113-116).

50. Social welfare should be put in the Concurrent List of subjects (paragraph 117).

51. Local government should be a State subject except that the local government of Kuala Lumpur should be the responsibility of the Federation (paragraph 118).

52. Education and medical services should become federal subjects (paragraph 120).

53. The residual legislative power should remain with the States (paragraph 121).

Judiciary

54. The present Supreme Court should be continued and should have the functions of interpreting the Constitution and protecting state rights and fundamental liberties in addition to its ordinary functions (paragraph 123).

55. The Chief Justice should be appointed by the Yang di-Pertuan Besar and other judges should be appointed by the Yang di-Pertuan Besar in consultation with the Chief Justice (paragraph 124).

56. A person should be qualified for appointment as a judge if he has been an advocate of the Supreme Court for ten years or has been for ten years in the judicial or legal service of the Federation (paragraph 124).

57. It should only be competent to remove a judge from office on an address passed by a majority of two-thirds in each House of Parliament (paragraph 125).

58. It would be desirable to preserve appeals to the Privy Council if procedural difficulties can be overcome (paragraph 126).

59. Subordinate courts should be regulated by Federal law (paragraph 128).

Finance

60. The States should have no larger powers to levy rates and fees than they have at present and there should be no double taxation (paragraph 139).

61. The States ought to have more financial autonomy than they have at present and grants should be fixed for five years subject only to variations based on ascertainable factors (paragraph 142).

62. In addition to the general grant there should be power to make grants for special purposes or in case of emergencies (paragraphs 142 and 145).

63. The States should have power to borrow from the Federation and the National Finance Council should discuss each year the loan requirements of both Federation and States. The Federation must then decide the total amount to be borrowed in each year (paragraphs 146, 149 and 150).

64. The National Finance Council should consist of the Prime Minister and one other Federal Minister and the Mentri Besar and Chief Ministers of the States. It should meet at least once in each year. It should have no executive power but a wide variety of matters should be referred to it for discussion (paragraph 150).

65. There should be appropriate safeguards to prevent the expenditure of public money by the Federation or the States otherwise than in accordance with law (paragraph 152).

Public Services

66. The principles set out in the Report of the London Conference, 1956, should be followed (paragraph 153).

67. The Public Services Commission, the Judicial and Legal Service Commission and the Police Service Commission should be independent of Government control and be responsible for appointments, promotions and discipline in these services subject to the Government having the right to require reconsideration of any recommendations for appointment to the higher positions in the Public Services (paragraphs 154 and 155).

68. The Public Services Commission should have similar powers with regard to State Services (paragraph 156).

69. The States should have power to determine their establishments of pensionable officers and should pay each year appropriate contributions towards the cost of pensions. There should be a National Pension Fund into which annual contributions are paid by the Federation and the States. The Federation should be responsible for payment of all pensions (paragraph 160).

Fundamental Rights

70. Fundamental rights should be guaranteed in the Constitution and the courts should have the power and duty of enforcing these rights. The rights guaranteed should be freedom from arrest and detention without legal authority, freedom from slavery or enforced labour and should include provisions against banishment and restriction of freedom of movement of citizens. Freedom of speech should be guaranteed to all citizens subject to the interests of security, public order or morality and freedom to profess, practise and propagate religion should also be guaranteed (paragraph 162).

71. There should be guarantees against discrimination on the grounds of religion, race, descent or place of birth in making Government appointments or granting entry to educational institutions or granting financial aid to pupils or students. There should be no discrimination with regard to the right to carry on any trade, business, profession or occupation and no person should be deprived of his property except under a law providing for adequate compensation (paragraph 162).

72. The special position of the Malays should be recognised with regard to Malay reservations, quotas for admission to the public services, quotas in respect of the issuing of permits or licences and in connection with scholarships, bursaries and other aids for educational purposes (paragraph 165).

73. The present preferences should remain but should not be increased (paragraph 165).

74. There should be no additional Malay reservations of land except that if any land presently reserved ceases to be so then an equivalent area may be reserved, and if undeveloped land is opened up part may be reserved provided that an equivalent area is made available to non-Malays (paragraph 166).

75. Quotas should be continued for a period of fifteen years provided that if in any year there are not enough Malay applicants, the number of appointments should not be reduced but other qualified applicants should be appointed (paragraph 167).

76. After fifteen years there should be a review of the quotas and preferences and the appropriate legislature should then determine whether to retain, reduce or discontinue them (paragraph 167).

77. Malay should be the national language and English should be retained as an official language for ten years. Parliament should then be free to decide whether the use of English should be discontinued (paragraph 170).

78. The language qualifications for candidates should be abolished and for ten years a member of the legislature who cannot speak fluently in either Malay or English should be entitled to speak in his own language provided that there is a Chairman who understands that language and a record of the speech can be taken (paragraph 171).

79. Existing emergency legislation should continue until the end of the emergency provided that it is approved by Parliament if the emergency does not end within one year (paragraph 173).

80. Parliament should have special powers to deal with any attempt by any substantial body of persons to organise violence against persons or property (paragraph 174).

81. There should be power to make a proclamation of Emergency in the event of war or internal disturbance constituting an immediate threat to the security or economic life of the country. In that event Parliament should have the most ample powers and the Federal Government should be entitled to give directions to State Governments and officers and to pass the necessary ordinances if Parliament is not sitting when the emergency is declared (paragraph 175).

82. Preventive detention should be illegal except in so far as it may be allowed by emergency legislation. In no case should a citizen be detained for more than three months unless a committee of inquiry appointed by the Chief Justice has reported that there is sufficient cause far such detention (paragraph 176).

The States

83. All State Constitutions should be amended so that

(i) the Ruler becomes bound to accept the advice of the Mentri Besar or Executive Council in the same way as the Yang di-Pertuan Besar is bound to accept the advice of the Prime Minister or Cabinet, and

(ii) the Mentri Besar becomes responsible to the Council of State (to be called in future 'The State Legislative Assembly') and must cease to hold office on ceasing to have the confidence of that Assembly (paragraphs 179 to 181).

84. The necessary amendments of the State Constitutions should be made by the Rulers themselves with the consent of the existing Councils of State (paragraph 178).

85. There should be in each State an Executive Council presided over by the Mentri Besar and collectively responsible to the Legislative Assembly (paragraph 181).

86. The necessary amendments of the State Constitutions should be those set out in Schedule V to the Federal Constitution and there should be alternative provisions for those States which do not immediately adopt the permanent essential provisions (paragraph 180).

87. Under the permanent essential provisions the Mentri Besar must be an elected member of the Legislative Assembly (paragraph 180).

88. Members of the Executive Council should hold office at the pleasure of the Ruler but in appointing members or determining their appointments the Ruler must act on the advice of the Mentri Besar (paragraph 181).

89. Under the permanent essential provisions all the members of the Executive Council should be members of the Legislative Assembly (paragraph 181).

90. Under the permanent essential provisions the Legislative Assemblies should consist entirely of elected members but under the alternative provisions it should be permissible to have a number of nominated members not exceeding one-quarter of the number of elected members (paragraph 182).

91. The duration of each Legislative Assembly should be four years subject to power of earlier dissolution similar to that contained in the Federal Constitution. Electoral rolls should be the same as for Federal elections and the Election Commission should be responsible for delimiting State constituencies and conducting State elections (paragraph 182).

92. The changes in the State Constitutions should be made before 1st January, 1959, and all State Legislatures should be dissolved on that date so that the new Legislative Assemblies will be elected under the amended Constitutions and on the new electoral rolls which come into operation on that date (paragraph 184).

93. Existing Councils of State should continue from Merdeka Day until 1st January, 1959 (paragraph 184).

94. For the State elections in 1959 constituencies should be delimited by sub-division of existing Federal constituencies and the number of members in each State should be as set out in paragraph 185.

95. Any State which adopts the alternative proposals should change to the permanent proposals within a period of eight years but further time should be allowed in the case of Perlis (paragraph 186).

96. There should be provision to deal with any State in which the State Constitution is habitually disregarded or which fails to amend its Constitution before 1st January, 1959 (paragraphs 187 and 188).

The Settlements

97. Constitutions for Penang and Malacca have been drafted on the footing that these Settlements will cease to be parts of Her Majesty's dominions and become autonomous States within the Federation on Merdeka Day (paragraph 191).

98. The States of Penang and Malacca should have the same status and powers as the other States in the Federation. The amendments which we recommend for the State Constitutions have been incorporated in the Constitutions for Penang and Malacca (paragraph 191).

99. The Governors should be appointed by the Yang di-Pertuan Besar after consultation with the respective State Governments and should hold office for four years subject to power of removal only on a resolution carried by a two-thirds majority in the State Legislative Assembly (paragraph 193).

100. The system of government in Penang and Malacca should be the same as that in the States which have adopted the permanent essential provisions referred to above and the present Settlement Councils should continue in existence from Merdeka Day until 1st January, 1959 (paragraphs 194 and 195).

We have unanimously agreed to the terms of the draft Constitution except on those points which have been noted at the appropriate places in this Report and on the points which Mr Justice Abdul Hamid deals with in his note which is appended to this Report.

We wish to express our indebtedness to our Secretary, Mr EO Laird, and our Assistant Secretary, Mr KJ Henderson, both of the Malayan Civil Service for the able manner in which they have carried out their duties and for the assistance which they have constantly afforded to us.

ALL OF WHICH WE HAVE THE HONOUR TO SUBMIT FOR THE CONSIDERATION OF YOUR MAJESTY AND YOUR HIGHNESSES.

Reid (Chairman)
WJ McKell
B Malik
Abdul Hamid
Ivor Jennings
EO Laird (Secretary)
KJ Henderson (Assistant Secretary) Rome, 11th February, 1957

Note of Dissent by Mr Justice Abdul Hamid

The recommendations of the Commission have been incorporated in the draft Constitution in the shape of legal provisions. There are some provisions in that draft in respect of which the opinion of the Commission is not unanimous. This note deals with matters over which there is disagreement. It is with great regret that I am recording this note, but the matters in controversy are extremely important and I feel that, I am under a duty to place them on record so that they may be available for the consideration of those to whom it may fall to examine the Report and the draft Constitution. The points in dispute have been divided into two main categories, namely,

1. Points of a political nature, and

2. Points relating to constitutional and legal complications.

No. 1

2. The Alliance Party, which is a combination of the political parties of the three main communities in Malaya, namely the United Malays National Organisation, the Malayan Chinese Association and the Malayan Indian Congress, submitted a memorandum to the Commission which contained recommendations on matters of constitutional importance including matters which were in political controversy in the country. We are all aware how solutions of those controversial problems were found by that Party after long and protracted deliberations and discussions. Those recommendations should have been adopted without any variation. It was in the light of these considerations that I found it difficult to accept such decisions of the Commission on those controversial matters as are not in accord with the solutions produced by the Alliance. The particular matters referred to in the Alliance memorandum to which I propose to refer are as follows.

Citizenship

3. Relating to citizenship there are two provisions in the draft Constitution which go beyond the recommendations of the Alliance and there is in my view no justification for this deviation. They are as follows:

(i) Article 15. Clause (1) of this article says that persons who are entitled to be registered as citizens of the Federation under clause 126 of the Federation Agreement, 1948, shall be entitled to be registered as citizens in accordance with the provisions of that clause. In other words Article 15(1) continues in force the provisions of clause 126 of the Federation Agreement. Under clause 126 of the Federation Agreement citizens of the United Kingdom and Colonies born in the Federation are as of right entitled to be registered as citizens of the Federation if they have resided in the Federation for five years, or if they have not so resided, they are certified to have maintained substantial connection with the Federation.

The provision of clause 126 of the Federation Agreement places citizens of the United Kingdom and Colonies in a position of preference over others. Other persons born in the Federation cannot become citizens unless they satisfy some other tests as well. By continuing in force the provisions of clause 26 of the Federation Agreement Article 15(1) of the draft Constitution continues in existence those privileges which are available to the citizens of the United Kingdom and Colonies and not to others. A provision of this kind was not recommended by the Alliance. In fact no request for inserting this provision came from any quarter. In its memorandum the Alliance gave a list of the provisions relating to citizenship which they wanted to be inserted in the new draft Constitution. That list contains a provision relating to persons born in the Federation, irrespective of the fact whether they are citizens of the United Kingdom and Colonies or not. That recommendation has been inserted in Article 16. In the presence of that article which covers citizens of United Kingdom and Colonies there appears to be no justification to continue in force the provision of cl 126 of the Federation Agreement. If this is done citizens of the United Kingdom and Colonies born in the Federation will claim as of right citizenship of the Federation by reason of their birth and connection with the Federation while other persons born in the Federation will have to satisfy other tests of character, residence and language, which are laid down in Article 16. The Federation Agreement of 1948 will stand repealed as from the day on which the new Constitution will come into operation and provisions relating to citizenship in Part XII of the Agreement will disappear. For that Part only such new provisions relating to citizenship should be substituted as have been recommended by the Alliance and this has been done in Part III of the new draft.

4. In this connection it is relevant to draw attention to paragraphs 51 to 53 of the Report which deal with the status of citizens of the United Kingdom and Colonies. In the light of the discussion of this subject in those paragraphs it requires to be seen with care whether such a large class of people whose status is not easy to determine should be allowed to acquire citizenship as of right. The status of the citizens of the United Kingdom and Colonies is determinable by reference to Nationality law of that country. The scope of the citizens of the Federation will be widened if by the amendment of the British Nationality Act by the United Kingdom Parliament the scope of the citizens of United Kingdom and Colonies is enlarged.

(ii) Article 17. According to the language of this article citizenship by registration can be claimed as of right by persons who have been in residence in the Federation for eight years. Registration under this article should be in the discretion of the Federal Government and should not be claimable as of right. The words 'may on application being made therefor to the prescribed authority be registered' should be substituted for the words 'shall on application being made therefor to the prescribed authority be entitled to be registered'. Articles 16 and 17 are based on the recommendations of the Alliance. Persons falling within the ambit of Article 16 are those who are born in the Federation and by reason of birth have been allowed to claim citizenship as of right. Article 16 in

> fact confers right of jus soli retrospectively if birth is accompanied by at least five years residence. But under Article 17 eight years residence alone has been made the foundation for the claim. If the claim is founded on residence alone citizenship should not ensue as of right but should be at the discretion of the Federal Government. The Alliance memorandum clearly distinguished between registration based on birth and registration based on residence. It said with respect to persons born in the Federation that they shall be entitled on application to become nationals. But in respect of persons born outside the Federation and depending on residence alone, the recommendation was 'Those aliens who have not been born in this country but have been residents here before and up to the date of the Independence, should also be eligible to become nationals'. The distinction is clear. In the case of the former the language demands that they are entitled as of right to become nationals while in case of the latter it says that they should also be eligible to become nationals. The language used in the memorandum in my view clearly means that registration in the case of persons born outside the Federation should be in the discretion of the Federal Government. Persons falling under this category will be immensely large in number.

5. The provisions of Article 17 are akin to the provisions relating to citizenship by naturalisation, in as much as in both foundation for the right is in residence in the country and not in birth. If a certificate of naturalisation is in the discretion of the Federation Government, citizenship by registration should also be in the discretion of the Federal Government.

Special Position of the Malays

6. It is one of the terms of reference of the Commission that the new Constitution should include provision for 'the safeguarding of the special position of the Malays and the legitimate interests of other communities.' A safeguard in the same language exists in clause 19(1)(d) of the Federation Agreement of 1948. Recommendations for a safeguard of this kind were made by the Alliance Party and the Rulers in their memoranda submitted to the Commission.

7. The Commission has agreed to insert certain safeguards relating to the special position of the Malays in Articles 82 and 157 of the draft Constitution and all that is required to be seen is whether the safeguards embodied in these articles are in accordance with the recommendations of the Alliance.

8. The two provisions stand on a different footing in their effect. As regards the special quotas for the Malays the quotas in existence on 1st January, 1957, are to continue for a period of fifteen years. After the expiry of that period a Committee shall be appointed to review the position and after such review Parliament can by law reduce or discontinue the quotas then in existence if it so chooses. In the case of Malay reservations no law adversely affecting Malay reservation can be enacted unless the law is passed by the majority of the total number of members of the State Legislature and also by majority of not less than two-thirds of the members present

and voting. [Mr Justice Abdul Hamid has drawn our attention to the fact that [article] 82 does not include any reference to a majority of the total number of members. We see no objection to such a provision being inserted in the article but it was too late for us to amend the draft Constitution when the matter was raised.]

9. In my opinion special quotas of the Malays under Article 157 should either be made the special responsibility of the Yang di-Pertuan Besar in respect of matters which are within the legislative competence of the Parliament, and of the Rulers of the States in respect of matters which are within the exclusive legislative competence of the State Legislature, as the Alliance unanimously recommended, or a provision on the lines of the proviso to Article 82 should be inserted in Article 157 as well, so that the special quotas of the Malays may also be alterable by Parliament only if Parliament takes a decision by a majority of the total number of members of each House and by a majority of not less than two-thirds of the members present and voting. The safeguard in this case should be in line with that provided in Article 82. If at any time the Malays or those who think that it would be unjust to abolish the quotas are in a minority in Parliament then the special quotas mentioned in Article 157 will be subject to abolition by a bare majority of the members. These quotas can only be effectively safeguarded if one of the two devices suggested in this note is adopted.

10. My suggestions in this connection are as follows:

(1) If the special quotas mentioned in Article 157 are to be the special responsibility of the Yang di-Pertuan Besar and the Rulers, then the following changes should be made -

(a) A provision to the following effect should be inserted in the Constitution as Article 157 A:

157 A (1) The safeguarding of the special position of the Malays and the legitimate interests of other communities in relation to matters specified in Article 157 shall, in respect of matters which are within the legislative authority of Parliament be the special responsibility of the Yang di-Pertuan Besar and in respect of matters which are within the exclusive legislative authority of the Legislature of the State by the special responsibility of the Ruler or Governor of the State as the case may be.

(2) In the discharge of the aforesaid special responsibility the Yang di-Pertuan Besar or, as the case may be, the Ruler or the Governor may take such action and make such provision as he may deem fit, and no such action or provision shall be invalid by reason of the fact that it is contrary to the provisions of any Federal or State law.

A provision like this will be in conformity with the position obtainable under the Federation Agreement, 1948. It will also be in accordance with the recommendations of the Alliance.

(b) Apart from inserting an article to the above effect, Article 157 should be amended and in clause (3) of that article for the words 'appropriate legislature', the words 'Yang di-Pertuan Besar or as the case may be the Ruler or Governor' should be substituted and clause (4) should read as follows -

(4) for the purposes of this article 'quota' means a proportion of the total number of persons to be appointed or places to be filled in respect of matters specified in clause (1).

(c) In Article 35 another sub-clause (d) should be added after clause (c) as follows -

(d) The safeguarding of the special position of the Malays and the legitimate interests of the other communities.

(d) Similar amendments will have to be made in the Essential Provisions in Schedule V and in the Constitutions of Malacca and Penang.

(2) If the special quotas are not to be the special responsibility of the Yang di-Pertuan Besar then these quotas should not be alterable to the disadvantage of the Malays unless the Parliament takes a decision by a majority of the total number of members of each House and by the votes of not less than two-thirds of the members present and voting in respect of Federal matters, and the State Legislatures take decisions by a similar majority in relation to State matters. That would bring the safeguard relating to special quotas under the same protection under which Malay reservation rests under Article 82. In that case a proviso of the type added to Article 82 will have to be added to Article 157 as well.

Islam as a State Religion

11. It has been recommended by the Alliance that the Constitution should contain a provision declaring Islam to be the religion of the State. It was also recommended that it should be made clear in that provision that a declaration to the above effect will not impose any disability on non-Muslim citizens in professing, propagating and practising their religions, and win not prevent the State from being a secular State. As on this matter the recommendation of the Alliance was unanimous their recommendation should be accepted and a provision to the following effect should be inserted in the Constitution either after Article 2 in Part I or at the beginning of Part XIII.

> Islam shall be the religion of the State of Malaya, but nothing in this article shall prevent any citizen professing any religion other than Islam to profess, practise and propagate that religion, nor shall any citizen be under any disability by reason of his being not a Muslim.

12. A provision like one suggested above is innocuous. Not less than fifteen countries of the world have a provision of this type entrenched in their Constitutions, Among the Christian countries, which have such a provision in their Constitutions, are Ireland (Article 6), Norway (Article 1), Denmark (Article 3), Spain (Article 6), Argentina (Article 2), Bolivia (Article 3), Panama (Article 36) and Paraguay (Article 3). Among the Muslim countries are Afghanistan (Article 1), Iran, (Article 1), Iraq (Article 13) Jordan (Article 2), Saudi Arabia (Article 7), and Syria (Article 3). Thailand is an instance in which Buddhism has been enjoined to be the religion of the King who is required by the Constitution to uphold that religion (Constitution of Thailand, Article 7). If in these countries a religion has been declared to be the religion of the State and that declaration has not been found to have caused hardships to anybody, no harm will ensue if such a declaration is included in the Constitution of Malaya. In fact in all the Constitutions of Malayan States a provision of this type already exists. All that is required to be done is to transplant it from the State Constitutions and to embed it in the Federal.

No. 2

13. There are some provisions in the draft Constitution, the adoption of which will, in my opinion, lead to legal and constitutional complications.

They are as follows:

(i) Paragraph (b)(iii) of sub-clause (1) of Article 4. Every constitution needs and generally has a provision which protects it from violation by the executive and the legislature. Provision for this purpose has been made in Article 4(1) part (a) and part (b)(i) and (ii). But paragraph (iii) of sub-clause (b) seeks to protect not the Constitution but 'the principles of natural justice'. 'The principles of natural justice' are not a part of the Constitution, nor are they a part of any written law. They have not been defined either in the Constitution or in any other law. If a constitution has a provision which seeks to protect the principles of natural justice without having defined those principles anywhere, the result would be chaos. 'Principles of natural justice' are capable of innumerable interpretations. No two jurists are agreed upon the extent of those principles. Some rules of natural justice have been laid down in judgements but as views in judgements are liable to alterations, rules of law based on judgements do not provide safe and definite standards. If a provision like this is allowed to stand in the Constitution many acts of the judicial and quasi-judicial authorities will be challenged in the Supreme Court almost every day on the ground that they are contrary to the principles of natural justice. With principles of natural justice defined nowhere there will be no standard by which judicial and quasi-judicial authorities will be guided in their actions, and no standard by which the Supreme Court will be able to measure the challenge when the matter is brought before it. A provision like that has no place in any known constitution. My

suggestion is that the words 'or that the procedure by which act or decision was done or taken was contrary to the principles of natural justice' should be deleted.

(ii) Article 10. The word 'reasonable' wherever it occurs before the word 'restrictions' in the three sub-clauses of this article should be omitted. Right to freedom of speech, assembly and association has been guaranteed subject to restrictions which may be imposed in the interest of security of the country, public order and morality. If the Legislature imposes any restrictions in the interests of the aforesaid matters, considering those restrictions to be reasonable, that legislation should not be challengeable in a court of law on the ground that the restrictions are not reasonable. The Legislature alone should be the judge of what is reasonable under the circumstances. If the word 'reasonable' is allowed to stand every legislation on this subject will be challengeable in court on the ground that the restrictions imposed by the Legislature are not reasonable. This will in many cases give rise to conflict between the views of the Legislature and the views of the court on the reasonableness of the restrictions. To avoid a situation like this it is better to make the Legislature the judge of the reasonableness of the restrictions. If this is not done, the Legislatures of the country will not be sure of the fate of the law which they will enact. There will always be a fear that the court may hold the restrictions imposed by it to be unreasonable. The laws would be lacking in certainty.

(iii) Articles 39 and 47. According to the scheme of the Constitution the Senate is a permanent body and is not subject to dissolution. One-third of its members have to retire after every six years. It is the House of Representatives which can be dissolved. If that is the scheme the correct way of expressing this idea is to say in Article 39 that the Senate shall not be subject to dissolution, as has been said in all other bicameral constitutions where the intention is to make the Senate an indissoluble body and to say in Article 47 that the Yang di-Pertuan Besar shall have power to dissolve the House of Representatives. It is illogical and creates confusion to say that Parliament shall be subject to dissolution when Parliament, as constituted under Article 38, is to consist of two factors which are indissoluble, namely the Yang di-Pertuan Besar and the Senate. No constitution which has a bicameral Legislature has expressed this idea in this odd manner. The practice in England has an historical background and that instance cannot be imported here. The practice relating to the Parliament of England was rejected when the Constitutions of Canada and Australia and the Government of India Act 1935 were enacted by the Parliament of England. In my view these two articles should read as follows:

39. The Senate shall not be subject to dissolution, but one-third of its members shall retire on the expiration of every third year in accordance with the provisions contained in Part I of the Fourth Schedule:

Provided that in the case of the Senate meeting first after the appointed day one-third of the members shall retire in accordance with the provisions contained in Part II of the Fourth Schedule.

47. (1) The House of Representatives, unless sooner dissolved, shall continue for five years from the date of its first meeting and no

longer, and shall stand dissolved on the expiration of the said period of five years.

(2) The Yang di-Pertuan Besar shall from time to time summon both the Houses of Parliament to meet on the same day at such time and place as he thinks fit, and six months shall not intervene between their last meeting in one session and the date appointed for their first meeting in the next session.

(3) The Yang di-Pertuan Besar may prorogue both the Houses of Parliament and dissolve the House of Representatives.

(4) When the House of Representatives is dissolved a general election shall be held within sixty days from the date of the dissolution and the two Houses of Parliament shall be summoned to meet within ninety days of that day.

If the provision for summoning the two Houses is couched in the language of clause (2) of the above draft the question of summoning the Senate alone during the period of dissolution will not arise as the two Houses will have to be summoned for the same day.

(iv) Article 63. If this article is allowed to remain in the draft as it stands the Yang di-Pertuan Besar will have no choice in the matter of assent. He shall be bound to assent to the Bill passed by the two Houses. In other words a Bill passed by the two Houses shall become law. If this is the intention, it is far better to approach this subject direct by saying in Article 59 that a Bill passed by the two Houses shall become law. No mention of assent is necessary at all. But if assent is to be mentioned the Constitution should give power to the Yang di-Pertuan Besar to accord assent or to withhold assent. In all constitutions the power to accord assent goes with the power to withhold assent. As the Yang di-Pertuan Besar will act on advice, the Cabinet or the Prime Minister will be answerable to the Legislature if assent is withheld. In my opinion the provision in Article 63 should be as follows:

63. When a Bill is passed in accordance with the provisions of this Chapter it shall be presented to the Yang di-Pertuan Besar and he may assent thereto or declare that he withholds his assent therefrom.

Similar provision should be made in the relevant sections in the Fifth Schedule and in the Penang and Malacca Constitutions.

(v) Article 106. Clause 3 of this article is unnecessary and should be deleted. If it is allowed to remain in the Constitution it is capable of giving rise to many legal and political difficulties. Clause (1) of Article 106 empowers the Yang di-Pertuan Besar, who will be acting on the advice of his Prime Minister in this matter as in others, to appoint a Commission of three members. But according to the language of clause (3) the three members should be able to enjoy the confidence of -

(a) 'all the democratic political parties', and

(b) 'persons of all communities'.

There are at present in the Federation more than three major political parties and perhaps more than three communities. There is also overlapping between the two as the members of the different communities are members of the three political parties. Since a direction has been laid down in the Constitution that the members of the Commission should be able to enjoy the confidence of all the democratic political parties and of persons of all communities, it becomes necessary for the Yang di-Pertuan Besar to appoint a Commission which should be able to satisfy these tests. If the intention is that the direction should be effective, it becomes necessary for the Constitution to define the terms 'democratic political party' and 'community'. In the absence of those definitions the provisions would remain defective. But even that would not be enough, because if at any time there are found to be in existence more than three democratic political parties and more than three communities, as is the case today, it will be impossible for the Yang di-Pertuan Besar to constitute a Commission at all, as no Commission of three members will be able to enjoy the confidence of ten or more groups of people unless the three members are elected by the direct vote of the people. If it is intended that this provision should possess legal force then the provision as it stands will remain unworkable because no Commission of three members will be able to satisfy the test laid down in this clause.

But if the direction is not to be enforceable in law but is to remain in the Constitution as a pious wish, or empty profession then the proper place for it is the Report of the Commission and not the Constitution.

It is true that the Election Commission has been entrusted with most important functions and this trust should be in the keeping of men of outstanding character and ability. In appointing members to this Commission the Yang di-Pertuan Besar will no doubt be guided by considerations of merit and character as he will be guided by similar considerations in appointing members of the Public Services Commission and judges of the Supreme court. There is no such direction for these appointments and there should be none in the case of the Election Commission. The provision in this case should be in line with the provision relating to the appointment of members of the Public Services Commission and of judges of the Supreme Court. We have in our Report invited the attention of the Yang di-Pertuan Besar to those considerations and they will no doubt weigh with him at the time of appointment of members of this Commission. That is all that is needed.

(vi) Article 115. It should be one of the qualifications of the judges of the Supreme Court that they should be citizens of the country. The Alliance asked for the insertion of this qualification. In Article 115 this requirement has been omitted. My suggestion is that in clause (1) of that article after the words 'unless he' the following words be inserted: 'is a citizen'.

If there are at present some judges in the Supreme Court who are not citizens they can be continued if a provision for their continuance is made in the Transitional Provisions or a proviso is inserted under Article 115(1) to the following effect:

Provided that nothing in this article shall prevent a person who was a judge of the Supreme Court immediately before Merdeka Day to continue as judge of that Court thereafter notwithstanding that he is not a citizen.

In answer to a question put by the Commission the representatives of the Alliance stated that the judges of the Supreme Court should be citizens of Malaya.

(vii) Article 137. This part of the Constitution deals with Emergency provisions which can be invoked only when a grave situation arises which is beyond the power of ordinary law to combat. In fact no request has been made from any quarter for inserting a part relating to Emergency provisions of this nature in the Constitution and no constitution of the Commonwealth countries excepting India and Pakistan has a chapter of this kind. In other countries where the constitution is bare of fundamental guarantees of the type mentioned in Part 11 if a serious situation arises for which ordinary law of the land is found to be inadequate special legislation for the suppression of those extraordinary conditions is enacted by the Parliament. As this Constitution contains constitutional guarantees ordinary legislation in contravention of those guarantees would no doubt be ultra vires. But the object can be achieved if power is conferred on Parliament by engrafting exceptions to the relevant guarantees. Under such exceptions it would be legal for Parliament to make laws during emergencies in complete disregard of the fundamental guarantees. Under that device it would not be necessary to have an Emergency Part in the Constitution at all.

But if for meeting emergency conditions a separate part is necessary because apart from suspending constitutional guarantees it may also become necessary for the Federal Government to take over legislative and executive authority from the States then it is necessary that such extraordinary powers should be available only on the occurrence of an emergency of an extremely dangerous character and not when the Parliament without the existence of an emergency of any serious kind makes use of these extraordinary powers by making a statement that a situation has arisen which, calls for, the exercise of those powers. If there arises any real emergency, and that should only be emergency of the type mentioned in Article 138, then and only then should such extraordinary powers be exercised. It is in my opinion unsafe to leave in the hands of the Parliament power to suspend constitutional guarantees only by making a recital in the Preamble that conditions in the country are beyond the reach of the ordinary law. Ordinary legislative and executive measures are enough to cope with a situation of the type described in Article 137. That article should in my view be omitted. There should be no half-way house between government by ordinary legislation and government by extraordinary legislation under the conditions mentioned in Article 138. The Constitutions of India and

Pakistan which contain provisions relating to emergency have no such half-way house. Their provisions correspond to the provisions embodied in Article 138.

(viii) Article 142. A provision of this type has no parallel in the Constitution of any Commonwealth country. In fact nobody has asked for a provision of this kind. What was recommended by the Alliance, and that recommendation is in keeping with the scheme of Commonwealth citizenship, was that as Malaya after independence will be a member of the Commonwealth, if any Commonwealth country by its law provides for conferring citizenship on the citizens of another Commonwealth country, including citizens of the Federation, provision should be made by Parliament by law to confer citizenship of the Federation on the citizens of that Commonwealth country.

A provision to the above effect was no doubt necessary in Part III of the draft Constitution and should have been inserted there. But in the language in which this article stands and placed as it is in the General and Miscellaneous Part of the Constitution it suggests that rights other than citizenship rights can be conferred upon citizens of other Commonwealth countries on reciprocal basis. It is difficult to understand what rights other than citizenship rights are in contemplation. Almost all valuable rights like right to hold property, right to move freely inside the Federation, right of employment in public services, and right to vote at elections flow from citizenship and it is enough if this article is confined to the conferment of citizenship rights. But if the scope is left so wide as the language of this clause would have it, a Commonwealth country which has not enough citizens of the Federation on its soil may confer some rights on those citizens with full knowledge that the law will remain unimplemented there as there will be no citizens of the Federation to avail of it, and on the basis of that provision in its law it may demand similar rights for a very large section of its own citizens in the Federation. This provision will in that case be for the benefit of that country and not for the benefit of the people of Malaya.

In my view this article should be deleted from here and an article in the following language should be inserted in Part III of the Constitution:

Where the law of a Commonwealth country provides for the conferment of citizenship of that country upon the citizens of any other Commonwealth country including the Federation, Parliament may by law provide for the conferment of citizenship of the Federation upon the citizen of that Commonwealth country.

The Indian provision stands in The Indian Citizenship Act and obviously, relates to citizenship rights.

14. Some of the financial provisions do not provide for such financial autonomy as is necessary in a federal form of constitution. They are also not in conformity with the recommendations of the Alliance and the Rulers.

15. There are many other provisions in the draft to which exception could be taken. If I had had time at my disposal my version of those provisions would have been in different form and language.

16. I owe an apology to my learned colleagues for having entered into these dissentions. But it will be seen that on the first point I have differed only when I found that the recommendations of the Commission are out of accord with the recommendations of the Alliance. As regards the second point it was difficult for me to overlook those provisions which are likely to lead to constitutional difficulties. I have taken exception to such of these provisions only as in my view are either unworkable or contain seeds of legal conflicts. From such defects a good constitution should be immune.

Abdul Hamid
11th February, 1957