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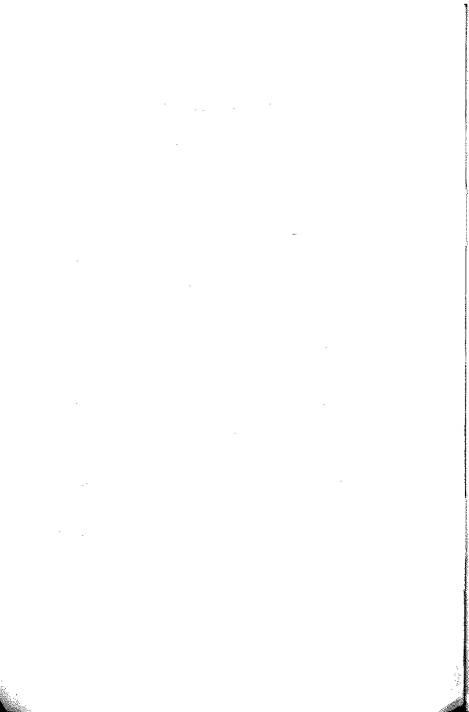
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## THE POSITION OF SINGAPORE IN MALAYSIA

On the 23rd August, 1961, agreement in principle was reached between the Prime Ministers of the Federation of Malaya and of Singapore for a merger of the two territories and a working party was set up to work out the detailed arrangements for the merger. The working party produced a memorandum setting out the heads of agreement for the merger and these were agreed to by the two Prime Ministers in an exchange of correspondence on the 11th November, 1961.<sup>(1)</sup> The proposals for merger were accepted by the Legislative Assembly as a working basis for a reunification of the two territories on the 6th December, 1961 and were endorsed in a referendum held in Singapore on 1st September, 1962. Subsequently an Inter-Governmental Committee on Merger was formed to work out the details of the constitutional arrangements. Although this Committee covered a lot of ground it did not complete its work and further negotiations were continued in London before the final agreement was reached and embodied in the Malaysia Agreement. A number of matters which were discussed were not included in the Malaysia Agreement but were dealt with in an exchange of letters and in an "envelope" agreement signed by the Prime Minister of the Federation on the 8th July, 1963.<sup>(2)</sup> Some of these matters were included in a Supplementary Agreement made on the 11th September, 1963.<sup>(3)</sup> I propose in this article to consider how far the

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1. Memorandum setting out Heads of Agreement for a merger between the Federation of Malaya and Singapore (Singapore Cmd. 33 of 1961).
  2. Malaysia Agreement — Exchange of Letters (Singapore Misc. No. 5 of 1963).
  3. Supplementary Agreement relating to Malaysia (U.K. Cmd. 2450 of 1963).

heads of agreement have been embodied in the Malaysia Agreement and in the constitutional documents which constitute the Federation.

### *Legislative Lists*

It was agreed that Singapore will be a State within the Federation but on special conditions and with a larger measure of local autonomy than the other States forming the Federation. Defence, external affairs and security will be the responsibility of the Federal Government, education and labour that of the Singapore Government.<sup>(4)</sup> The Malaysia Act has embodied this agreement in its modification of the Ninth Schedule to the Federal Constitution. The State List for Singapore is supplemented by the addition of the following items:—

13. Education, including the matters specified in items 13(a) and (b) of the Federal List.

14. Medicine and health, including the matters specified in items 14(a) to (d) of the Federal List.

15. Labour and social security, including the matters specified in items 15(a) and (b), but not those specified in item 15(c) of the Federal List.

16. Pensions, gratuities and other like allowances, and compensation for loss of office, in respect of service under the State (including any government service in the State before Malaysia Day).

17. Factories; boilers and machinery; dangerous trades; dangerous and inflammable substances.

18. Electricity; gas and gas work.

19. Itinerant hawkers."<sup>(5)</sup>

The Concurrent List for Singapore is supplemented by the addition of the following items:—

10. Personal law relating to marriage, divorce guardianship, maintenance, adoption, family law, gifts or succession testate or intestate.

11. Loans to, or borrowing by, the State or statutory

4. Memorandum of Heads of Agreement (Cmd. 33 of 1961), paragraph 5.

5. Malaysia Act, 4th Schedule Part II List II.

authorities exercising powers vested in them by the State law in Singapore.

12. (a) Production, supply and distribution of goods, but not bounties on production; price control and food control; adulteration of foodstuffs and other goods;

(b) Imports into, and exports from, the Federation, but not bounties on export;

(c) Insurance, including compulsory insurance;

(d) Auctions and auctioneers;

(e) Industries; regulation of industrial undertakings;

(f) Banking; money-lending; pawnbrokers.

13. Shipping and navigation, including the matters specified in Items 9(a), (b), (c), (e) and (f) of the Federal List.

14. Professional occupations other than those specifically enumerated in the Federal List.

15. Unincorporated societies.

16. Charities and charitable trusts and institutions in the State (that is to say, operating wholly within, or created and operating in, the State) and their trustees, including the incorporation thereof and the regulation and winding-up of incorporated charities and charitable institutions in the State.

17. Newspapers; publications; publishers; printing and printing presses.

18. Censorship.

19. Theatres; cinemas; cinematograph films; places of public amusement.

20. Until the end of August, 1968, and thereafter until Parliament with the concurrence of the State government otherwise provides, elections to the Legislative Assembly." (6)

The Federal power to unify land law does not apply to Singapore and the State Government is not required to follow any policy laid down by the National Land Council or the National Council for Local Government.<sup>(6A)</sup>

### *Common Market*

It was further agreed that the special position of Singapore in regard to entrepot trade will

6. Malaysia Act, 4th Schedule Part II List IIIb.

6A. Federal Constitution, Articles 95b and 95g.

be safeguarded. Measures to protect the trade of Singapore overseas will include the establishment of a section within any of the Federal missions as may be necessary to deal with trade matters of Singapore. In any trade negotiation or arrangements undertaken or entered into by the Federal Government with another country due consideration will be given to the commercial needs of Singapore. The free port status of Singapore will not be changed without the concurrence of both the Federal and the Singapore Governments.<sup>17)</sup> It is in this respect that the most significant change (apart from the question of citizenship) has been made from the agreement. This has resulted from the agreement to set up a common market in Malaysia. It is now agreed that the Federal Government in order to facilitate the maximum practical degree of economic integration of the territories of Malaysia while taking account the interests of the entrepot trade of Singapore, Penang and Labuan and those of existing industries in Malaysia, and the need to ensure a balanced development of these territories, shall progressively establish a common market in Malaysia for all goods or products manufactured or assembled in significant quantities in Malaysia, with the exception of goods and products of which the principal terminal markets lie outside Malaysia. It was agreed that a Tariff Advisory Board will be constituted to give the Federal Government advice in connection with the creation of a common market in Malaysia and the imposition and alteration of protective and other customs duties. Apart from certain delaying powers retained by the Singapore Government the agreement provides for the gradual harmonization of all protective and revenue duties

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7. Memorandum of Heads of Agreement (Cmd. 33 of 1961), paragraph 5.

throughout Malaysia till September 1969 in the case of protective duties and the 31st December, 1976, in the case of revenue duties, at which dates the power of the Federal Government in respect of such duties will be constitutionally unfettered. The agreement provides that for a period of five years from Malaysia Day the Singapore Government shall have the right to require a delay not exceeding twelve months in the imposition in Singapore of any protective duty on the grounds that the duty would significantly prejudice the entrepot trade. It also provides that as regards revenue duties, no revenue duty shall until the 31st December, 1968, be imposed in Singapore, except with the consent of the Singapore Government, in respect of any class of goods or products not chargeable with such a duty on 1st July, 1963. Such consent shall not be withheld except on the grounds that the duty would significantly prejudice the entrepot trade of Singapore. As from 1st January, 1969, the Singapore Government shall be entitled to withhold its consent to the imposition in Singapore of any revenue duty in respect of any class of goods or products, not chargeable with such duty on 1st July, 1963, for any period up to 31st December, 1975 on the grounds that it would significantly prejudice the entrepot trade and, in the absence of such consent, no such duty shall be imposed provided that the Singapore Government shall pay to the Federal Government annually compensation equal to the loss of revenue suffered by the Federal Government as a result of the withholding of such consent. Singapore has in effect agreed to give up its free port status in order to join the common market. Where the same protective duties or revenue duties are applicable throughout Malaysia in the case of class of goods or products, then no tariff or trade barrier or trade restriction or discrimination shall be applied to



such goods or products in regard to their circulation throughout Malaysia.<sup>(8)</sup>

The Tariff Advisory Board Act, 1963, constitutes the Tariff Advisory Board. The function of the Board is to take into consideration, and to make recommendations to the Federal Government on, the customs import duties chargeable in Malaysia and the alteration of those duties or the imposition of new ones and matters connected with the operation of those duties or any proposal for new duties. On the application of persons engaging or about to engage in the production or manufacture in Malaysia of goods or products which are or are to be produced or manufactured and used or consumed there in significant quantities, the Board may and, unless they see sufficient reason to the contrary, shall consider the alteration of any protective duty or the imposition of new protective duties or the giving of other advantages or facilities in relation to any protective duty, with a view to promoting or expanding the production or manufacture of the goods or products in Malaysia. The Board is required in considering any matter to take into account and report to the Federal Government on the effect of their recommendations on the following:—

(a) the need for a balanced industrial development throughout Malaysia;

(b) the interests of the entrepot trade of Singapore, Penang and Labuan;

(c) the interests of existing industries and of consumers in Malaysia, including cost of living, cost of production of industries and in particular of export industries and the cost of development works in the public sector of the national economy;

(d) employment and national income in Malaysia;

(e) Federal and State revenues.<sup>(9)</sup>

8. Malaysia Agreement, Annex J, paragraphs 2, 3 and 4.

9. Tariff Advisory Board Act, 1963 (No. 20 of 1963) sections 2 and 5.

The Board shall advise the Federal Government on the establishment of a Common Market in Malaysia for all goods and products produced or manufactured in significant quantities in Malaysia, with the exception of goods and products of which the principal terminal markets lie outside Malaysia, and on the establishment and maintenance of a common tariff of protective duties for the protection (where required) of goods or products for which there is to be a common market. With a view to the progressive establishment of a common market the Board shall as soon as may be after Malaysia Day and from time to time thereafter review the protective duties on such group or groups of goods as it thinks fit. In determining the goods or products to be dealt with on the first or any subsequent review the Board shall have regard to any proposals made to them by the Federal or a State Government and the recommendations of the Board may include provisions for protective duties on such group or groups of goods as interval or progressively. Where the Board make recommendations for the establishment of a common market in relation to any goods or products, and producers or manufacturers of these goods or products in one part of Malaysia obtain any direct or indirect advantage in comparison with those in another part by reason of differences in the customs import duties chargeable in the two parts, then unless the Board recommend the removal of those differences, their recommendations shall include provision for offsetting that advantage by means of a production tax or otherwise and the recommendations may include such a provision as an alternative to removing the differences or alternative provisions for offsetting the advantage. The Board may as they think fit or as the Federal Government may require, review the protective duties

for the time being in force in Malaysia with a view to making recommendations (if required) for the imposition or alteration of such duties. Where within five years from Malaysia Day the Board propose to recommend the imposition of a protective duty in Singapore on any goods and the Government of Singapore has notified the Board that it may wish in the interests of the entrepot trade to have the imposition of the duty postponed, the Board shall consider and if they see fit make recommendations as to the steps that should be taken to prevent the importation into Singapore of abnormal quantities of the goods or products before the duty is imposed.<sup>(10)</sup>

As regards revenue duties, it is provided that it shall be the duty of the Board before the end of the year 1968, to review the revenue duties in force at that time in Singapore and the remainder of Malaysia and to make recommendations regarding the amendment of such duties or the imposition of additional duties.<sup>(11)</sup>

### *Fundamental Rights*

The fundamental liberties of the people of Singapore are, as agreed, safeguarded in the same way as those of the people of the rest of the Federation.<sup>(12)</sup> In view of the special position of Singapore in relation to labour and education power is given to impose restrictions on the right to form associations by any law relating to labour or education. Power is also given to Parliament to impose by law restrictions on the rights in respect of movement and residence as between the State of Singapore and

10. Tariff Advisory Board Act, 1963 (No. 29 of 1963), section 6.

11. Tariff Advisory Board Act, 1963 [as amended by the Tariff Advisory Board (Amendment) Act, 1964 (No. 11 of 1964)], section 7. This gives statutory effect to Article 1 of the Supplementary Agreement of the 11th September, 1963.

12. Memorandum of Heads of Agreement (Cmd. 33 of 1961), paragraph 6.

other States but no such restriction shall be imposed between Singapore and the States of Malaya except by a law relating to labour or education or to any matter in respect of which because of the special position of Singapore, it appears to be desirable to prevent the enjoyment of rights both in the State of Singapore and in the States of Malaya; <sup>(13)</sup> and any such restriction shall apply reciprocally to the States of Malaya and to Singapore. <sup>(14)</sup>

### *Special Position of Malays*

It was agreed that the special position of Malays who are Singapore citizens will be safeguarded in the Federal Constitution <sup>(15)</sup> but this agreement has only been partly implemented by the constitutional documents. It is true that the definition of "Malay" in the Federal Constitution has been amended to include a person born or domiciled in Singapore <sup>(16)</sup> and that therefore a Malay from Singapore will have the right to participate in the reservation of quotas in respect of the public service, permits or licences for Malays in the Federation; but on the other hand it is provided that there shall be no reservation for Malays in accordance with Article 153 of positions in the public service to be filled by recruitment in Singapore or of permits or licences for the operation of any trade or business in Singapore. <sup>(17)</sup> The Singapore Con-

13. Federal Constitution, Article 9(3) [as amended by the Malaysia Act, section 60(1)].

14. Federal Constitution, Article 9(3) (as amended by the Constitution (Amendment) Act, 1964, section 23). This enacts the agreement contained in the "envelope" agreement signed on the 8th July, 1963, and Article II of the Supplementary Agreement relating to Malaysia of 11th September, 1963.

15. Memorandum of Heads of Agreement (Cmd. 35 of 1963), paragraph 7.

16. Federal Constitution, Article 160 (as amended by the Malaysia Act, Sixth Schedule).

17. Federal Constitution, Article 161a (added by the Malaysia Act, section 68).

stitution however provides that the Yang di-Pertuan Agong shall be the head of the Muslim religion in Singapore; and that the Legislature shall by law make provision for regulating Muslim religious affairs and for constituting a Council to advise the Yang di-Pertuan Agong in matters relating to the Muslim religion.<sup>(18)</sup> The Government of Singapore is required to exercise its functions in such manner as to recognise the special position of the Malays, who are the indigenous people of the State, and accordingly it shall be the responsibility of the Government to protect, safeguard, support, foster and promote their political, educational, religious, economic, social and cultural interests and the Malay language.<sup>(19)</sup> It should be noted that in its efforts to advance the position of Malays the Singapore Government can go further than the Government of the Federation for it can discriminate in their favour in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment; and it can also discriminate in favour of the Malays in the administration of any educational institution, in particular in regard to the admission of pupils or students or the payment of fees or in providing financial aid for the maintenance or education of pupils or students.<sup>(20)</sup> Under the Constitution of Singapore Malays can be given more special privileges than can be given to the Malays under the Federal Constitution. In education at least they are given more privileges in Singapore than

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18. Constitution of the State of Singapore, Article 6.

19. Constitution of the State of Singapore, Article 89(2).

20. See the effect of Article 161c on Articles 8 and 12 of the Federal Constitution.

the Malays in the States of Malaya.

*Executive — State Advocate-General*

The provisions relating to the Head of State, the Executive and the Legislature are similar to those already existing in Singapore prior to Malaysia Day. The Head of State is the Yang di-Pertuan Negara who normally acts on the advice of the Cabinet. He exercises the prerogative of pardon on the advice of a Pardons Board under the provisions of Article 42 of the Federal Constitution.<sup>(21)</sup> Singapore retains its Cabinet system of government with a Prime Minister, Ministers and Permanent Secretaries.

The State Advocate-General is in practical control of all prosecutions in Singapore. He is the Director of Public Prosecutions in Singapore and acts as Public Prosecutor with all the powers of the Public Prosecutor under the general direction and control of the Attorney-General of the Federation.<sup>(22)</sup> It was agreed as stated in the letter of the Prime Minister of Singapore dated the 8th July 1963 to the Deputy Prime Minister of the Federation that because of the interest of the Singapore Government in the prevention of corruption, the organization of the Corrupt Practices Investigation Bureau and the powers of the State Advocate-General in relation to the prevention of corruption will not be altered without the consent of the Singapore Government.<sup>(23)</sup>

*Legislative Assembly*

The Legislative Assembly of Singapore will

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21. Federal Constitution, Article 42. The powers of the Attorney-General have been delegated to the State Advocate-General. See G.N. No. 195 of 1961.
  22. See Criminal Procedure Code (Cap. 132), section 391(2), as amended by the Modification of Laws (Public Prosecutor) Order, 1961, (L.N. 234 of 1961).
  23. Malaysia Agreement — Exchange of Letters (Singapore Misc. 5 of 1963).

continue but its powers are limited to State and Concurrent matters. Article 79 of the Federal Constitution provides in effect that the Speaker may certify a Bill or amendment under the Article if it appears to him that the Bill or amendment proposes a change in the law relating to any of the matters enumerated in the Concurrent List or to any of the matters enumerated in the State List with respect to which the Federation is exercising functions in accordance with Article 94 of the Constitution (in relation to the conduct of research, the provision and maintenance of experiment and demonstration stations, the giving of advice and technical assistance to the Government of the State and the provision of education, publicity and demonstration in respect of the State matters); a Bill or amendment so certified may not be proceeded with until four weeks have elapsed since its publication, unless the Speaker being satisfied that the Federal Government has been consulted, allows it to be proceeded with on the ground of urgency.<sup>(24)</sup>

It was agreed in the "envelope" agreement signed by Prime Minister of the Federation that the Federation will not object to the amendment of the Singapore Constitution so that where a member of the Legislative Assembly resigns or is expelled from the political party for which he stood as a member, he shall vacate his seat so long as this does not conflict with Parliamentary practice.<sup>(25)</sup> This provision is now enacted in Article 30(2)(b) of the Constitution of the State of Singapore.

It is provided that Part VIII of the Federal Constitution (which deals with elections) shall have no effect for the purpose of elections to the Legislative Assembly of Singapore until the first

24. Federal Constitution, Articles 74 and 79.

25. Malaysia Agreement — Exchange of Letters (Singapore Misc. 5 of 1963).

general election to the Assembly held after such date, not being earlier than five years from Malaysia Day, as may be provided by Act of Parliament passed with the concurrence of the Yang di-Pertuan Negara of Singapore. Until then the members of the Legislative Assembly shall be elected as may be provided by federal or state law. The provisions of Article 119 of the Federal Constitution (relating to qualification of electors) shall however apply to such elections but so as not to prevent use being made for the purpose of these elections of electoral rolls in force immediately before Malaysia Day pending the revision of these rolls or the preparation of new ones according to law; and Article 119 shall not invalidate or prohibit any restrictions on a person's right to vote at those elections which may be imposed by State law by reason of his failure to vote at such election or by reason of any act or conduct showing adherence to a country or territory outside Malaysia.<sup>(26)</sup> The present law dealing with elections to the Legislative Assembly is the Singapore Legislative Assembly Elections Ordinance.<sup>(27)</sup>

For elections to the Legislative Assembly after the interim period the provisions of the the Federal Constitution will be applied but the constituencies for the elections shall continue until altered on a review under Article 113 of the Federal Constitution and they shall be reviewed when the federal constituencies are reviewed in accordance with that Article.<sup>(28)</sup>

Notwithstanding Article 152 of the Federal Constitution (which provides for the use of the national language until otherwise provided by enactment of the Legislature of Singapore the

26. Malaysia Act, section 95(3)-(5).

27. CAP. 53 of the Revised Edition.

28. Malaysia Act, section 95(4).



English, Mandarin and Tamil languages may be used in the Singapore Legislative Assembly (in addition to the national language) and the English language may be used for the authoritative texts of all Bills to be introduced or amendments thereto to be moved in the Singapore Legislative Assembly and of all enactments of that Assembly and of all subsidiary legislation issued by the Government of Singapore.<sup>(28A)</sup>

### *Public Services*

The arrangements in regard to the Public Service have been settled as agreed. The public officers are divided into six groups:—

(a) State officers serving in State departments after Malaysia Day — these retain their identity as part of the State Civil Service and are subject to the jurisdiction of the State Public Service Commission.

(b) Police officers serving in Singapore — these are deemed to be transferred to the Federal Service, but without liability except with the consent of the officer to be transferred to a post outside Singapore.<sup>(29)</sup> They will be subject to the Police Force Commission.

(c) Officers in Divisions I and II of the State Civil Service serving in Federal departments after Malaysia Day — these are deemed to be seconded to the Federal Service and are subject to the jurisdiction of the branch of the Federal Public Service Commission in Singapore.<sup>(30)</sup>

(d) Officers in Divisions III and IV of the State Civil Service remain State Officers even though they are serving in Federal departments after Malaysia Day; they remain subject to the jurisdiction of the State Public Service Commission.<sup>(31)</sup>

(e) Judges — they are deemed to continue in office as Judges of the High Court.<sup>(32)</sup>

28A. Federal Constitution, Article 161F.

29. Malaysia Act, section 85.

30. Constitution of the State of Singapore, Article 102(1) and Federal Constitution, Article 146B (added by the Malaysia Act, section 55).

31. Federal Constitution, Article 146A(7); Constitution of State of Singapore, Article 102(2); G.N. Sp. No. S 42 of 1964.

32. Malaysia Act, section 89.

(f) Officers in the Judicial and Legal Service — these are deemed to be seconded to the Federal Judicial and Legal Service and to be subject to the jurisdiction of the branch of the Federal Judicial and Legal Service Commission in Singapore.<sup>(33)</sup>

The Public Service Commission which was an advisory body before Malaysia Day has now been given executive powers in line with the Public Service Commission in the Federation.<sup>(34)</sup>

### *Citizenship*

On the question of citizenship and nationality it was originally agreed that all Singapore citizens will keep their citizenship and automatically become nationals of the Federation. This has been considerably modified so that now citizens of Singapore are by operation of law also citizens of the Federation. The provisions relating to the acquisition and deprivation of citizenship in Singapore have been revised to conform with the provisions in the Federation<sup>(35)</sup> and certain powers in relation to naturalization and deprivation of citizenship, for example, have been taken over by the Federal Government.<sup>(36)</sup> It is provided that a person who has acquired the status of a citizen of Singapore by registration shall be treated as a citizen by registration for the purposes of Articles 24, 25, 26 and 26A of the Federal Constitution which deals with deprivation of citizenship and Article 25 of the Federal Constitution applies to such a person as if he were a citizen by registration under Article 16A or 17 of the Federal Constitution. Where a Singapore citizen who becomes a citizen of the Federation on Malaysia Day, was liable in respect of things

33. Federal Constitution, Article 146A (added by the Malaysia Act, section 54).

34. Constitution of the State of Singapore, Article 75.

35. Constitution of the State of Singapore, Part III.

36. Federal Constitution, Article 19 (added by the Malaysia Act, section 27) and Article 28A (added by the Malaysia Act, section 30).

done before that day to be deprived of that status under the law relating thereto, he may be deprived by the Federal Government of such citizenship if proceedings for the purpose are begun before September 1965; and the Federal Government may delegate such power to an authority of the State. Where proceedings against such person have been commenced before Malaysia Day, the proceedings shall be continued in accordance with the law relating to that status immediately before Malaysia Day and the functions of the Federal Government shall be delegated to such authority of the State as the Federal Government may determine.<sup>(37)</sup> Singapore citizens may only vote and stand for election to the Federal Parliament in Singapore; while conversely Federal citizens who are not Singapore citizens can only vote and stand for election to the Federal Parliament outside Singapore.<sup>(38)</sup> Singapore citizens will continue to enjoy their State rights and privileges within Singapore. Provision is made for the enrolment of a Singapore citizen as a Federal citizen who is not a Singapore citizen and of a Federal citizen who is not a Singapore citizen as a Singapore citizen.<sup>(39)</sup> It is provided that citizenship of Singapore shall not be severable from citizenship of the Federation, but a Singapore citizen by the loss of either shall lose the other also, subject to the provision for enrolment of a Singapore citizen as a citizen who is not a Singapore citizen.<sup>(40)</sup>

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37. Federal Constitution, Article 28A(6) and (7) (added by Malaysia Act, section 30); Constitution of the State of Singapore, Article 40(4) and (5); see Federal L.N. 253 of 1963 and L.N. 39 of 1964.

38. Federal Constitution, Article 31 (added by Malaysia Act, section 31).

39. Federal Constitution, Article 19A (added by Malaysia Act, section 28); Constitution of the State of Singapore, Article 56.

40. Federal Constitution, Article 14 (added by Malaysia Act, section 23).

*Federal Parliament*

It was agreed and has been enacted that Singapore will be represented in the Federal Legislature by fifteen members in the House of Representatives and two members in the Senate.<sup>(41)</sup>

It is provided that Part VIII of the Federal Constitution (which deals with elections) shall not have effect for the purpose of elections of members of the House of Representatives from Singapore until the second general election to that House held after Malaysia Day and until then those members shall be elected as may be provided by a law passed by the Legislature of Singapore with the concurrence of the Yang di-Pertuan Agong and the period for which they are elected shall be the period until the second dissolution of Parliament after Malaysia Day.<sup>(42)</sup> Provision for the first election of members of the House of Representatives from Singapore has been made by the Singapore (Election to the House of Representatives) Ordinance, 1963,<sup>(43)</sup> which provides for election of such members from the members of the Legislative Assembly.

The provisions of the Federal Constitution will apply to elections of members to the House of Representatives from Singapore after the interim period and provision is made for the constituencies for the first elections after the end of such period to be delimited by order of the Yang di-Pertuan Agong on the recommendation of the Election Commission of the Federation.<sup>(44)</sup>

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41. Memorandum of Heads of Agreement (Cmd. 33 of 1963) paragraph 15; Malaysia Act, sections 8 and 9 and Federal Constitution Article 46 (added by Malaysia Act).

42. Malaysia Act, section 95(1)-(2).

43. No. 19 of 1963.

44. Malaysia Act, section 96.

*Financial Arrangements*

It was agreed that

"in view of the larger measure of local autonomy and the consequent larger expenditure on Singapore services and development, the financial relations between the Federal Government and the States set out in the Federal Constitution will not be applicable in Singapore. The Federal Government will retain legislative authority over taxes of a national character, that is taxes other than those specified in Part III of the Tenth Schedule to the Constitution. The present machinery for the collection of taxes in Singapore will be retained . . . The proceeds of national taxes will be used to pay the cost of Government and public services in Singapore and the contribution to Federal Services. The details of apportionment will be worked out by the Joint Working Party. For budgeting purposes all housekeeping matters will be left to the State Government. In framing the State budget due consideration will be given to the prevailing financial policy of the Federal Government." (45)

It has not been easy to write this agreement into the constitutional documents, mainly for the reason that different interpretations were given as to what was agreed. Eventually a working arrangement was arrived at between the Governments and embodied in Annex J to the Malaysia Agreement. The Income Tax and Customs Departments were to be run as State Departments, subject to the right of inspection by the Federal Department and to the giving of directions to the State Government by the Federal Minister. The Federal revenues collected in Singapore were to be divided in the first instance in the proportion of 60% to the Singapore Government and 40% to the Federal Government. The Singapore Government will be responsible for the cost of capital development of Federal projects in Singapore. The arrangements for the division of revenue are subject to review at the end of 1964 and after each subsequent period

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45. Memorandum of Heads of Agreement (Cmd. 33 of 1961), paragraph 17.

of two years. The Singapore Government also undertook to assist development in the Borneo States by lending the sum of \$150 millions to Federal Government for such development.<sup>(46)</sup> As regards this loan, the Singapore Government stipulated that the labour to be used for such development projects should not be engaged from outside Malaysia and that 50% of such labourers should come from Singapore. This stipulation was embodied in the "envelope" agreement signed by the Prime Minister of the Federation on the 8th July, 1963, and referred to in a letter of the Prime Minister of Singapore to the Prime Minister of the Federation on the 10th July, 1963.<sup>(47)</sup> The Federal Government has however given an assurance that labour for federal projects in the Borneo States will not be recruited from outside the State if adequate local labour is available and that it is not the intention of the Federal Government in its control of immigration to hinder the recruitment of persons from outside Malaysia as experts or technical advisers or for the purpose of employment by the Government of the Borneo States.<sup>(48)</sup> How this conflict (if there is a conflict) will be resolved, remains to be seen.

The provisions of Annex J to the Malaysia Agreement relating to Federal revenues has been given effect to by the Federal Revenues (Singapore) Order, 1963.<sup>(49)</sup> It is provided that the Central Bank of the Federation shall act as banker to the Governments of the Federation and of Singapore and shall maintain a branch in Singapore, at which shall be opened a Joint

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46. Malaysia Agreement, Annex J, paragraphs 5 - 9.

47. Malaysia Agreement -- Exchange of Letters (Singapore Misc. 5 of 1963).

48. Malaysia -- Report of the Inter-Governmental Committee, 1962, paragraph 16(g).

49. L.N. No. 226 of 1963.

Account in the names of the Federation and of the State of Singapore. All Federal revenues collected in Singapore, except the proceeds not derived from Singapore of any customs duty or other customs charge or of any excise or other tax on production, shall be paid into the Joint Account; for the purposes of the Order the proceeds of any customs duty or other customs duty or other customs charge or of any excise or other tax on production shall be deemed to be derived from Singapore if, and only if, they are collected in Singapore in respect of goods or products used or consumed in Singapore. 40% of the Joint Account is to be transferred to the Federation account with the Central Bank and 60% to the Singapore account with the Central Bank at fortnightly or at such shorter intervals as the Accountant-Generals may from time to time direct. Provision is made for accounting and audit and special provisions are made for the allocation of income tax collections. The provisions shall have effect for the year 1964 and for such further period as they may from time to time be extended, with or without modification by order of the Yang di-Pertuan Agong.

The State of Singapore has power to borrow under the authority of State law within the State, if the borrowing has the approval of the Central Bank, and the State may also borrow outside the State under the authority of State law, if the borrowing has the approval of the Federal Government.<sup>(49A)</sup>

Provision is made for the audit of the accounts of the State or of any public authority exercising powers vested in it by State law, by the Federal Auditor-General.<sup>(49B)</sup>

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49A. Federal Constitution, Article 112n.

49B. Federal Constitution, Article 112A.

*Broadcasting and Television*

One matter which gave some difficulty was the question of broadcasting and television. The agreement embodied in the Memorandum of Agreement was "Overall policy, Federal. Singapore will be responsible for administration and day to day programme."<sup>(50)</sup> This agreement was arrived at by the Ministers but its interpretation caused a great deal of difficulty. The agreement arrived at in London was embodied in Annex K which reads:—

"The legislative power in respect of broadcasting and television shall be Federal. However, the Singapore Government shall be responsible for administration and day to day programmes within Singapore. The Federation shall delegate to Singapore such powers, legislative or executive, as are needed to enable the Singapore Government to carry out its responsibilities for administration and day to day programmes and shall make available to Singapore radio frequencies and channels for the transmission of radio and television programmes.

The Federal Government shall have the right to issue to the Singapore Government any directions necessary to ensure the implementation of the overall policy of the Federal Government. Any overall policy of the Federal Government shall be applied throughout the Federation unless in the opinion of the Federal Government it would be contrary to the national interest.

In accordance with items 3 and 6 of Part III of the Tenth Schedule to the Federal Constitution all licence and advertising fees from broadcasting and television in Singapore shall be State revenue."<sup>(51)</sup>

The effect of this agreement seems to be that Broadcasting and Television are run as State matters in Singapore, subject to the overall policy laid down by the Federal Government.

*U. K. Service Lands*

The question of the future of the United Kingdom Service lands in Singapore was discussed both in Kuala Lumpur and in London in

50. Memorandum of Heads of Agreement (Cmd. 38 of 1961), Annex.

51. Annex K to the Malaysia Agreement.



the context of the Agreement of External Defence and Mutual Assistance between the Government of the United Kingdom and the Government of the Federation of Malaya which was subsequently applied to the whole of Malaysia by Article VI of the Malaysia Agreement. It was agreed that Annex 4 of the Defence Agreement shall have effect in relation to the United Kingdom Service lands in Singapore subject to the amendments set out in Annex F to the Malaysia Agreement. The Service lands in Singapore were divided into three categories:—

(a) land which is leased or was to be leased by the Government of Singapore to the Services Lands Board for a term of 999 years;

(b) land which is leased or was to be leased by the Government of Singapore or by public authorities to the Services Lands Board or other authorities of the United Kingdom for terms shorter than 999 years;

(c) lands made available by the Government of Singapore to the Armed Services of the United Kingdom.<sup>(52)</sup>

In the negotiations the Singapore Government took the view that the lands which fall into category (c) should be returned to the Singapore Government. Eventually it was agreed that the lands in that category which were not in active use for defence purposes were to be released to the Singapore Government and a list of such lands is included in the Schedule attached to a letter dated the 8th July, 1963, from the Secretary of State for Commonwealth Relations to the Prime Minister of Singapore.<sup>(53)</sup> The Federation Government also agreed in a letter dated July 1963, from the Deputy Prime Minister of the Federation to the Prime Minister of Singapore that certain lands at Pasir Laba, the land at Fort Canning and the area occupied by

52. Annex F to the Malaysia Agreement, paragraph 2.

53. Malaysia Agreement — Exchange of Letters (Singapore Misc. 5 of 1963).

the Army H.Q. at Tanglin will eventually be handed back to the Singapore Government.<sup>(54)</sup> It was also agreed that the lands so released shall be deemed to be deleted from the Schedule of lands occupied by the United Kingdom Services set out in Annex F to the Malaysia Agreement. The Federal Government undertook to enact legislation to incorporate the representative of the Service authorities and to enable him to hold registrable interests in land and property. The Federal Government agreed to grant the Service authorities leases initially for a period of thirty years, renewable for further periods as may be necessary to implement the terms of the Defence Agreement and the proviso to Article VI of the Malaysia Agreement, under which the Government of Malaysia undertook to afford to the Government of the United Kingdom the right to continue to maintain the bases and other facilities occupied by their Service authorities in Singapore and to permit the Government of the United Kingdom to make use of such bases and facilities as the United Kingdom Government may consider necessary for the purpose of assisting in the defence of Malaysia and for Commonwealth defence and for the preservation of peace in South-East Asia. Paragraph (14) of section 6 of Annex 3 of the Defence Agreement (which relates to the payment of a contribution in lieu of rating assessment) shall have effect in relation to land or buildings held by the Service authorities in Singapore and in relation to the liability for property tax to the Singapore Government.<sup>(55)</sup>

The constitutional provisions relating to the Service lands in Singapore are contained in

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54. *Ibid.*

55. Annex 7 to Malaysia Agreement; and Article VI of Malaysia Agreement.

sections 75 and 79 of the Malaysia Act. It is provided that any land which on Malaysia Day is vested in the State of Singapore<sup>(56)</sup> and was on the preceding day occupied or used by the Government of the United Kingdom or of the State or by any public authority other than the Government of the State, for purposes which on Malaysia Day became federal purposes, shall on and after that day be occupied, controlled or managed by the Federal Government or the public authority so long as it is required for federal purposes; but that such land shall not be disposed of or used for any purposes other than federal purposes without the consent of the Federal Government and shall not be used for federal purposes different from the purposes for which it was used immediately before Malaysia Day without the consent of the Government of the State and where it ceases to be used for those purposes and such consent is not given, it shall be offered to the State accordingly.<sup>(57)</sup> Lands occupied for defence purposes under a temporary occupation licence are excluded.<sup>(58)</sup> All land which on Malaysia Day is leased or agreed to be leased by or on behalf of the State of Singapore to the Services Lands Board shall on Malaysia Day vest without payment in the Federal Lands Commissioner, for the term for which it was leased or agreed to be leased and on the terms and conditions on which it was so leased or agreed to be leased, except that the Federal Lands Commissioner shall take the place of the Services Lands Board and the land shall be used for defence purposes, including the purpose of implementing any agreement with the Government of the United Kingdom. The

56. By virtue of Article 103 of the Constitution of the State of Singapore.

57. Malaysia Act, section 75.  
Malaysia Act, section 79(4).

Federal Government is empowered to permit any authority of the Government of the United Kingdom to occupy, use, control or manage such lands for defence purposes; and where land is vested in the Federal Lands Commissioner he may from time to time grant leases of the land for defence purposes for any term not exceeding at any time thirty years to any person for and on behalf of the Government of the United Kingdom.<sup>(59)</sup> The Services Lands Act, 1963<sup>(60)</sup> incorporates the United Kingdom Services' Lands Board for the purpose of holding land in the Federation.

*Criminal Law (Temporary Provisions) Ordinance*

In his letter to the Deputy Prime Minister of the Federation dated the 8th July, 1963, the Prime Minister of Singapore stated that it was agreed that because of the vital interest of the Singapore Government in the suppression of unlawful societies, the Singapore Government will be given the executive powers, including the power to make orders under the Criminal Law (Temporary Provisions) Ordinance, 1955 and the Federal Government will not repeal or amend the Ordinance without the consent of the Singapore Government.<sup>(61)</sup> This agreement was confirmed by the Prime Minister of the Federation in the "envelope" agreement signed on the 8th July, 1963, and referred to by the Prime Minister of Singapore in his letter of the 10th July, 1963, to the Prime Minister of the Federation.<sup>(62)</sup> It was eventually embodied in the Supplementary Agreement of the 11th September, 1963, which provided that the power to make and

59. Malaysia Act, section 79.

60. Act No. 25 of 1963.

61. Malaysia Agreement - Exchange of Letters, (Singapore Misc. 5 of 1963).

62. *Ibid.*

confirm orders under the Criminal Law (Temporary Provisions) Ordinance, 1955, will as from Malaysia Day be delegated to the present Government of Singapore and the Government of the Federation undertook that this delegation will not be revoked without the agreement of that Government unless the Government of the Federation considers that exceptional circumstances make it essential in the interest of internal security and for as long as in its opinion such exceptional circumstances continue. So long as such delegation continues if the Advisory Board recommends the cancellation of such an order and if the Government of the Federation or the Government of Singapore so decide the said order shall be cancelled; and if the Advisory Board recommends confirmation of such an order, such order may only be cancelled if both Governments concur.<sup>(63)</sup> The Government of the Federation agreed to take such steps as may be appropriate and available to them to secure the enactment by the Federal Parliament of an Act to extend the operation of the Criminal Law (Temporary Provisions) Ordinance so long as such delegation continues. The Federal Minister of Internal Security has delegated the following powers under the Criminal Law (Temporary Provisions) Ordinance, 1955:—

(a) the power under paragraph (a) of section 47 of the Ordinance to make orders of detention;

(b) the power under paragraph (b) of section 47 of the Ordinance to make orders directing that persons be subject to the supervision of the police;

(c) the power under subsection (1) of section 49 to substitute for an order of detention an order that a person be subject to the supervision of the police and to make an order directing that a person be subject to the supervision of the police after the expiry of the validity of an order of detention made or confirmed in respect of that person; and

63. Supplementary Agreement relating to Malaysia, Article III.

(d) the powers under subsection (2) of section 49A of the Ordinance to vary, cancel or add to any restrictions imposed under the Ordinance.<sup>(64)</sup>

The Yang di-Pertuan Agong has also delegated the following powers under the Criminal Law (Temporary Provisions) Ordinance, 1955, to the Yang di-Pertuan Negara:—

(a) the powers under subsection (2) of section 48 to cancel or confirm and in confirming to vary, any order made under section 47 of the Ordinance subject to the following conditions:—

(i) if the Advisory Committee recommends the cancellation of an order, the order shall be cancelled if the Government of the Federation so decides; and

(ii) if the Advisory Committee recommends the confirmation of an order, the order shall not be cancelled except with the concurrence of the Government of the Federation;

(b) the powers under subsection (1) of section 50 of the Ordinance to extend the validity of any order of detention confirmed under the provisions of subsection (2) of section 48 for periods not exceeding one year at any one time and to refer at any time any such order for further consideration by an Advisory Committee;

(c) the powers under subsection (2) of section 50 of the Ordinance to extend from time to time the period for which a person is directed to be under the supervision of the police by an order confirmed under the provisions of subsection (2) of section 48 and to refer any such order for further consideration by an Advisory Committee.<sup>(65)</sup>

The Criminal Law (Temporary Provisions) Ordinance, 1955, which was due to expire on the 20th October, 1964, has been extended for a further period of five years by the Criminal Law (Temporary Provisions) (Amendment) Act, 1964.<sup>(66)</sup>

#### *Continuing of Existing Laws*

It is provided by the Malaysia Act that all

64. L.N. 286 of 1963.

65. L.N. 285 of 1963.

66. Act No. 22 of 1964.

laws of Singapore passed or made before Malaysia Day shall on and after Malaysia Day have effect according to their tenor and be construed as if the Malaysia Act had not been passed.<sup>(67)</sup> The Constitution of the State of Singapore however provides that all existing laws shall continue in force on and after the coming into operation of the Constitution (that is immediately before Malaysia Day) but such laws shall be construed as from the coming into operation of the Constitution with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution and the Malaysia Act.<sup>(68)</sup> Power is given to the Yang di-Pertuan Agong to modify the present laws including concurrent and State laws (with the concurrence or at the request of the Yang di-Pertuan Negara (as the case may be)) as may be necessary or expedient in consequence of the passing of the Malaysia Act; and to the Yang di-Pertuan Negara to modify State law as appears to him to be necessary or expedient in consequence of the promulgation of the Constitution of Singapore or the passing of the Malaysia Act.<sup>(69)</sup> There would appear to be a conflict between the provisions of section 93 of the Malaysia Act and Article 105 of the Constitution of the State of Singapore but it is submitted that as the Constitution of Singapore came into operation immediately before Malaysia Day,<sup>(70)</sup> the effect is that the laws in Singapore must be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution and the Malaysia Act.

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67. Malaysia Act, section 73.

68. Constitution of the State of Singapore, article 105.

69. Malaysia Act, section 74 and Constitution of the State of Singapore, article 105.

70. Constitution of the State of Singapore, article 94.

In respect of any enactment of the Parliament of the United Kingdom or any Order in Council made by virtue of such enactment which is in force in the Federation or any part thereof before Malaysia Day, the United Kingdom Malaysia Act, 1963, provides that such law shall have the same operation in relation to the Federation, to any of the States of the Federation and to persons and things belonging to or connected with the Federation or any of the States thereof, as it would have if the new States had not been included in the Federation and section 1 of the Malaysia Act, 1963 (which relinquished Her Majesty's sovereignty and jurisdiction in respect of such States) had not been passed.<sup>(71)</sup>

In the recent case of *Public Prosecutor v. Anthony Wee Boon Chye* <sup>(72)</sup> the Federal Court on a special case stated for its opinion held that sections 13-19 of the Fugitive Offenders Act, 1881 and the Order-in-Council of 2nd January, 1918 are still part of the law of Singapore in relation to Hongkong (so as to allow of the extradition of a person from Singapore at the request of a court in Hongkong).

Despite the fact that Article 21 of the Constitution of the State of Singapore provides that the State may sue and be sued, it has been held that the Crown Suits Ordinance is still in force in Singapore and that any action against the State or servant of the State must be started under that Ordinance.<sup>(73)</sup> It is however proposed to extend the Government Proceedings Ordinance, 1956 of the Federation to Singapore.

### *Conclusion*

#### The Memorandum of the Heads of Agreement

71. Malaysia Act, 1963 (Cap. 35 of 1963), sections 1 and 3.

72. To be reported in [1965] M.L.J. An appeal is pending in this case.

73. *David Marshall v. M. Ponnudurai* noted in [1963] M.L.J. lxxxv.



concludes :—

“No terms and conditions can be liberal and generous to both sides, Singapore and the Federation; nor can they satisfy all parties on both sides of the causeway. There are diverse local interests to be looked after. Singapore wishes to safeguard her local legitimate interests in many spheres; the Federation wants to secure her paramount interests in security and in the stability of the new Federation. As part of the democratic process both governments have welcomed and continue to welcome all proposals which are constructive and will improve the smooth working of the constitutional arrangements of the new Federation”.

So too in the working of the Constitution there must be understanding and mutual give and take. Constitutions cannot be worked smoothly if everyone insist on their absolute rights and there must needs be conventions to help remove conflicts and to ensure amicable relations between the various States and the Central Government in a Federation. The Federation is still young and already it has had to bear the strain of foreign aggression and foreign-inspired subversion. It has come about however by the free choice of its peoples and given goodwill and co-operation it has a good chance of success. The constitutional arrangements between Singapore and the Federation are not final and will clearly need to be amended as the peoples of Malaysia grow up to identify themselves more and more with the Federation. There will come a time when State interests may have to give way to the interests of a strong Central Government, which will truly reflect the views and aspirations of the Federation as a whole and the Federal Constitution will then need to be amended; but this can only be done with the consent of the State Governments concerned.

