“A Malay State with a living constitution bound upon a strong sense of history” – this is how the constitutional expert, R. H. Hickling, described Brunei’s pre-colonial political legacy when he was asked to report on Brunei’s constitutional practices in 1954. The Hickling Memorandum, which is published here for the first time in an annotated edition, is a compendium of political culture, institutions of governance, monarchic power and a brief history of Brunei Darussalam. Following his warning about using imperial power to impose a Constitution à la British, the Memorandum provides clues about how the modern Bruneian government evolved towards a neo-traditional polity based on the principles of Malay, Islam, Monarchy (MIB). The introductory essay sets out the historical context, offers a brief biographical sketch of Hickling and his mindset, and analyses the political significance of the Memorandum. This fascinating document will interest all those interested in Brunei’s history and the legality of its mode of governance, as well as students of comparative political systems.

The Editors

B. A. Hussainmiya, PhD, teaches history at Universiti Brunei Darussalam. He is the author of Sultan Omar Ali Saifuddin III and Britain: The Making of Brunei Darussalam (OUP: 1985). He has published widely on modern Brunei history, the Malay community of Sri Lanka, and the diaspora’s history and literature.

Nicholas Tarling, LittD, is Emeritus Professor of history at the University of Auckland and a Fellow of the New Zealand Asia Institute. He is the editor of The Cambridge History of Southeast Asia (1999). Among his other books are Britain, the Brookes and Brunei (1971) and The Burihmen, the Risk and the Glory: A Biography of Sir James Brooke (1982).
Brunei: Traditions of Monarchic Culture and History

Memorandum upon Brunei Constitutional History and Practice

Brunei Historical Documents Series 1

“[Brunei is] a Malay State with a living constitution bound upon a strong sense of history...” R.H. Hickling
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Brunei: Traditions of Monarchic Culture and History

R. H. Hickling’s
Memorandum upon Brunei Constitutional History and Practice

Introduced and Annotated
by
B. A. Hussainmiya & Nicholas Tarling

Yayasan Sultan Haji Hassanal Bolkiah
Bandar Seri Begawan
2011
Foreword

Yayasan Sultan Haji Hassanal Bolkiah

It is a pleasure to write the foreword to this erudite work, which presents us with the double benefit of making available to both scholars and the public an important primary source that is of considerable significance to modern Brunei Darussalam history, as well as providing us with a discerning introduction to the historical context within which this document has to be understood. This annotated edition of the memorandum upon the Brunei Constitution, originally compiled by the late professor R. H Hickling in 1955, helps us understand the intricacies of constitution-making and gives us insights into the way in which the British tried to transform the traditional form of government in Brunei. Much of what the author described in the mid–1950s regarding the historical traditions of Brunei may have been expanded subsequently in the publications of other scholars who wrote after Hickling. But the real significance of the Memorandum lies in its perceptive remarks on the desirability to maintain the status quo of Brunei’s age-old political framework. This was particularly significant since he wrote at a time of changing political landscapes in the aftermath of nationalist movements and the decolonisation process in Southeast Asia.

It is refreshing to see two eminent historians teaming up to bring out this volume. Both names are well known in the arena of historical writings on Brunei Darussalam. The first author Associate Professor B. A. Hussainmiya wrote a definitive political history of the reign of the late HH Paduka Seri Begawan Sultan Haji Omar Ali Saifuddien Sa’adul Khairi Waddien, and followed it up with two other books on modern Brunei history. Moreover, his articles on Brunei history have appeared in many local and international journals. He also writes regularly to popularise Brunei history in the print and electronic media, especially in the Borneo Bulletin newspaper, and therefore has become a household name in Brunei Darussalam. Emeritus Professor Nicholas Tarling, the doyen of Southeast
Asian historians, has been deeply involved in numerous publications on Bornean history in general and has more than 40 books to his credit in addition to dozens of research articles. The University of Cambridge honoured him by conferring a LittD degree for his magnum opus, *Britain, Brookes and Brunei* published by the Cambridge University Press in 1971. Professor Nicholas Tarling was a Visiting Professor at Universiti Brunei Darussalam (UBD) in 1977 and also acted as an external examiner for the Department of History at UBD. I am sure the reading public will appreciate their combined efforts in publicising and illuminating an important Brunei historical source.

Yayasan Sultan Haji Hassanal Bolkiah (YSHHB) is particularly privileged to sponsor this publication. The Foundation firmly believes that knowledge creation and sharing are also an important aspect of charity towards humanity. In the past the Yayasan has sponsored several knowledge conventions, seminars and events in pursuit of its goal to promote excellence in education. This is the first time the Yayasan not only sponsors but also comes forward as the publisher of a full-length book. Our Brunei scholars must take this as a sign of encouragement to produce similar publications in order to advance historical research on Brunei Darussalam.

I very much hope that this pioneering edition will lay a trail for similar publications of historical sources on Brunei Darussalam. During the process of nation-building, historical research assumes special significance, more so in Brunei Darussalam. In view of increasing interest in the country’s national ideology, *Melayu Islam Brunei* (MIB), known in English as Malay Islamic Monarchy, this edition should encourage readers to reflect on the political and social ethos of our country on which MIB is based. The proponents of this ideology should be able to examine the various ideas that permeate the Memorandum and highlight the traditional system of Brunei Government practices. It is a compendium of Brunei history, its institutions, and its political ideology viewed from the angle of a foreign power that protected Brunei and ensured its survival into the present. As such I am sure many readers will indeed benefit from the publication of this valuable edition.

Pehin Orang Kaya Seri Kerna
Dato Seri Setia Haji Awang Abu Bakar bin Haji Apong
Chairman
Sultan Haji Hassanal Bolkiah Foundation
Preface

Much can be done to enrich the historiography of Brunei. Apart from books on Brunei history, there remains a great need to discover and publish primary sources. The present publication is an attempt to help fill this gap. Its main objective is to allow the readers, especially those in Brunei, to form their own understanding of their history by giving them direct access to important historical sources. Not everyone has the luxury of time, expertise and energy to visit archives and libraries to conduct research. The Brunei National Archives do have good primary sources, but access is somewhat limited compared to the open facilities for researchers in the British National Archives or other leading world archives. Records in the Brunei Archives need to be catalogued and documented thoroughly, before they can be of use to aspiring researchers.

This book is meant to be the first in a series aiming to publish and publicise primary source documents. If it receives a favourable response and generates sufficient interest among Bruneians in their own history, it will serve as an encouragement to embark on bigger projects to edit and publish similar historical material. There is, for example, a wealth of information in the Brunei State Council Minutes of the period from 1907 to 1959, which can be annotated and edited by competent authors for reference by the public and scholars interested in Brunei studies.

Previous publications of Brunei historical material can be counted in one’s own fingers. Among such works is Ameen Sweeney’s edition of Silsilah Raja-raja Berunai which is an important contribution to early Brunei History. So is the volume on early European sources on Brunei edited by Robert Nicholl who served for some time in the Brunei Museum in the 1970s.ii He collated translations of a few extracts of Portuguese sources that were published by the Brunei Museum. Similarly, an important piece of Spanish documentation belonging to 1600 C.E. was published in the JMBRAS as the Boxer Codex.iii A few other British period documents also have appeared in journals. The most notable example is Anthony Horton’s splendid work on the all-important McArthur Report of 1904iv which is certainly one of the classic editions and a must read British report pertaining to the modern history of Brunei.

The editors of the present publication, themselves makers of narratives of Brunei history, recognise the importance of annotating and publishing significant contemporary reports. We would therefore like to add to this list of published Brunei sources ‘the Memorandum upon Brunei’ written
by R. H. Hickling in January 1955. Although he is not a familiar name in Brunei history, his report deserves to be read by Bruneians and by all those interested in the Sultanate. It is also a document on the history of decolonisation which shaped much of Britain’s policy towards its Borneo dependencies after the Second World War. Hickling was not himself an authority on Borneo in general or Brunei in particular, but this makes the Memorandum more interesting because it brings a fresh mind to the issues. His is also a questioning mind, conscious of the thrust of British policy, but ready to embrace alternative points of view.

Hickling was in a sense a transitional figure. A servant of the latter-day colonial empire, he went on to serve its successors both by drawing on his extensive legal knowledge and experience and through his ability to teach and encourage others to learn. Like some earlier British colonial servants in the Malay World – Hugh Clifford and Frank Swettenham come quickly to mind – he enjoyed imaginative and semi-fictional writing. Some of his short stories clearly derive from his experience in Southeast Asia, and some of his novels are set in Borneo. His last major work was his autobiography, *Memoirs of a Wayward Lawyer.*

Hickling supported the publication of his Memorandum and fully collaborated with the editors. Unfortunately he passed away before its publication. We would like to think of this volume not only as a contribution to Brunei historiography but also as a memorial to him.

We have also included in this volume long excerpts of another report as an appendix which complements the work of Hickling. It is a collective work of seven Brunei gentlemen who came to be known as *Tujuh Serangkai* (lit. ‘Seven Branches’). Both these documents were written for the same purpose and during the same period, i.e. in 1954, when Brunei was trying to introduce a first written Constitution. It would have been very illuminating if a comparative study were made of these two reports, but that lies beyond the scope of this edition. Hickling himself refrained from making too much reference to the Malay Committee’s Report, parts of which were reproduced verbatim in the last sections of his Memorandum. The tenor of the *Tujuh Serangkai* Report was indeed very nationalistic and intended to advance Bruneian aspirations for constitutional reform. Hickling, by contrast, had to follow instructions from the Colonial Office for the constitutional advancement of Brunei and was concerned mainly with the legal implications for both the Constitution and the Succession and Regency Enactment, which the British Government was promoting with the consent of Sultan Omar Ali Saifuddin III.

Hitherto only brief references have been made to the Hickling Memorandum in the theses of A.V.M. Horton and Haji Eusoff Agaki, both submitted to the University of Hull. Dr. Hussainmiya later made good use of the copy of the Memorandum that was made available to him by the Brunei Archives during the writing of his magnum opus, *Sultan Omar Ali Saifuddin III and Britain: The*
Making of Brunei Darussalam. When Professor Nicholas Tarling served as Visiting Professor at the Department of History at Universiti Brunei Darussalam in late 1997, both applied for a research grant from UBD to edit and publish Hickling’s Memorandum. Professor Tarling obtained a UBD travel grant to visit the Sarawak National Archives in Kuching, where he was able to consult the original Memorandum, another copy of which was later forwarded to him by Hickling himself. Professor Tarling also arranged for an honorary research fellowship during the winter months in 2005 so that Dr. Hussainmiya could spend time at the New Zealand Asia Research Institute at the University of Auckland during which period he completed much of the writing and editing work of the present volume. The publication of the completed text was delayed for want of financial support and sponsorship. Thankfully, the Sultan Haji Hassanal Bolkiah Foundation consented to fund the publication and become its publisher.

This edition comes in three parts. The first part is the editors’ introduction which explains the purpose of the publication and contains a brief historical contextualisation, a biographical sketch of R. H. Hickling and his ideas, and finally an assessment of the significance of his Memorandum in the making of the Brunei Constitution of 1959. The second part is the Memorandum proper which is reproduced as closely as possible to the original (retaining the idiosyncratic ways in which the footnotes were added by the author). The editors have added annotated notes to explain many ideas and offer information where necessary. The third part is an appendix containing relevant sections of the translation of the Report submitted by the Malay Constitutional Committee (i.e. Tujuh Serangkai). We feel that Hickling’s Memorandum should be read in conjunction with the variant views put forward by the local committee, so as to provide an illuminating comparison between the thinking of the Colonial Government and the indigenous aspirations of the Bruneians at the time. Hickling’s Memorandum, of course, contains much legal jargon and covers many issues in respect to the constitutional law of the British Commonwealth, and he appropriately cites several authorities on this subject. Readers may be able to extend their interest into constitutional matters by reading the related sources that Hickling cites.

B.A. Hussainmiya and Nicholas Tarling
2011
NOTES


ii Robert Nicholl, European Sources for the History of the Sultanate of Brunei in the Sixteenth Century, Penerbitan Khas, Bil.9, Brunei: Muzium Brunei, 1975.


Acknowledgements

As usual, a collaborative work of this nature rests on the shoulders of many people, not all of whom can be named due to space and other constraints. The editors thank Universiti Brunei Darussalam for the initial research funding, and express deep gratitude to the Yayasan Sultan Haji Hassanal Bolkiah (Sultan Haji Hassanal Bolkiah Foundation) for coming forward to sponsor and publish this work. We must record our appreciation to the New Zealand Asia Research Institute of the University of Auckland for accommodating and providing research facilities for Hussainmiya to complete the writing of the introduction and annotation of the Memorandum. Special thanks must be expressed to the Universiti Brunei Darussalam Library, Sarawak National Archives, Brunei Museum, the Brunei National Archives, the British National Archives and the Brunei History Center for providing many facilities.

A special word of thanks is reserved to Ydm. Pehin Dato Haji Abdul Aziz Omar and Ybh. Pehin Dato Dr Haji Mohd. Jamil al-Sufri who were the inspiration behind the efforts to complete this work. We are deeply grateful to both Ybh. Pehin Dato Dr Haji Abu Bakar Apong, the Chairman, and Ym. Dato Haji Ali Hashim Haji Daud, Managing Director of YSHHB evinced special interest in the publication and promotion of this volume. Dr. A. V. M. Horton helped us to clarify a few problematic issues in the contents of the Memorandum. He was also kind enough to permit us to use some details from his biographical notes on Brunei personalities. Dr. Frank Fanselow, Dr. Paul Brumpton and Zahra Hussainmiya deserve our appreciation for their contributions in copy-editing and proof-reading this volume. We also thank Dr. K. Becek who prepared the map. Dayang Hajah Asiyah Az-Zahra Kumpoh, Assoc. Prof. Iik Ariffin Mansurnoor, Dr. Mohd. Yusop Damit, Assoc. Prof. Dr. Haji Asbol Mail and Dr Haji Abdul Hadi Melayong helped us with finding reference material. Dayangku Azami binti Pengiran Haji Ahmad and Awang Samsudin bin Haji Puasa helped in coordinating this work with the YSHHB. Our thanks are also due to Dr. Johannes Kurz and Dr. Seyed Mohamed Buhari for their help with the index. And to all those who remain unnamed in these acknowledgments, we say a sincere ‘Terima Kasih’. 
## Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>BAR</td>
<td><em>Brunei Annual Reports</em></td>
</tr>
<tr>
<td>BGG</td>
<td><em>Brunei Government Gazette</em></td>
</tr>
<tr>
<td>BMJ</td>
<td><em>Brunei Museum Journal</em></td>
</tr>
<tr>
<td>B.M.P. Co. Ltd</td>
<td>British Malayan Petroleum Company Limited</td>
</tr>
<tr>
<td>BRO</td>
<td><em>Brunei Resident Office</em></td>
</tr>
<tr>
<td>CMG</td>
<td>Companion of the Order of St. Michael and St. George</td>
</tr>
<tr>
<td>CO</td>
<td>Colonial Office</td>
</tr>
<tr>
<td>DAC</td>
<td>District Advisory Council</td>
</tr>
<tr>
<td>DO</td>
<td>Dominion Office</td>
</tr>
<tr>
<td>FMS</td>
<td>Federated Malay States</td>
</tr>
<tr>
<td>FO</td>
<td>Foreign Office</td>
</tr>
<tr>
<td>HCO</td>
<td>High Commissioner’s Office</td>
</tr>
<tr>
<td>HH</td>
<td>His Highness</td>
</tr>
<tr>
<td>HMG</td>
<td>His/Her Majesty</td>
</tr>
<tr>
<td>HRH</td>
<td>His Royal Highness</td>
</tr>
<tr>
<td>JMBRAS</td>
<td><em>Journal of the Malayan Branch of the Royal Asiatic Society</em></td>
</tr>
<tr>
<td>JRAS</td>
<td><em>Journal of the Royal Asiatic Society</em></td>
</tr>
<tr>
<td>JSEAS</td>
<td><em>Journal of the South-East Asian Studies</em></td>
</tr>
<tr>
<td>KCMG</td>
<td>Knight Commander of the Order of the British Empire</td>
</tr>
<tr>
<td>LegCo</td>
<td>Legislative Council</td>
</tr>
<tr>
<td>MIB</td>
<td>Melayu Islam Beraja (Malay Islamic Monarchy)</td>
</tr>
<tr>
<td>Mss.</td>
<td>Manuscripts</td>
</tr>
</tbody>
</table>
n. Footnote /endnote
Para Paragraph
Rt.Hon. Right Honourable
SITC Sultan Idris Teachers’ College
SUK Setia Ushaha Kerajaan (State Secretary’s Office)
SS Straits Settlements
UFMS Unfederated Malay States
Ybh Yang Berhormat
Ydm Yang di Muliakan
Ym Yang Mulia
YSHHB Yayasan Sultan Haji Hassanal Bolkiah
YTM. Yang Teramat Mulia
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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</thead>
<tbody>
<tr>
<td>adat</td>
<td>custom in the widest sense; tradition; common law or customary law in general</td>
</tr>
<tr>
<td>agama</td>
<td>religion</td>
</tr>
<tr>
<td>Awang</td>
<td>traditionally a title for aristocrats, now a courteous term of address equivalent to the English, Mr</td>
</tr>
<tr>
<td>bandar</td>
<td>a city; port</td>
</tr>
<tr>
<td>bangsa</td>
<td>an ethnic group, race</td>
</tr>
<tr>
<td>Cheteria</td>
<td>a noble official, ranked below the Wazir</td>
</tr>
<tr>
<td>Darussalam</td>
<td>Abode of Peace</td>
</tr>
<tr>
<td>Dato</td>
<td>a title of honour (Malaysian equivalent of Datuk)</td>
</tr>
<tr>
<td>Dayang</td>
<td>a courteous term of address to Brunei women (the feminine of Awang)</td>
</tr>
<tr>
<td>hadj</td>
<td>pilgrimage to Mecca</td>
</tr>
<tr>
<td>Haji</td>
<td>an Islamic religious title to indicate one who has completed the pilgrimage to Mecca</td>
</tr>
<tr>
<td>Hukum Shari’ah</td>
<td>law based on Islamic Religion</td>
</tr>
<tr>
<td>imam</td>
<td>the leader of any Muslim community or mosque congregation</td>
</tr>
<tr>
<td>Istana</td>
<td>a palace</td>
</tr>
<tr>
<td>Istiadat</td>
<td>ceremonial (usually combined with adat, i.e. Adat Istiadat)</td>
</tr>
<tr>
<td>Kadi (or kathi)</td>
<td>a Muslim magistrate (adjudicator)</td>
</tr>
<tr>
<td>kampong</td>
<td>a Malay village</td>
</tr>
<tr>
<td>kerajaan</td>
<td>government; also in the Brunei context, appanage (land and serfs) of the Sultan</td>
</tr>
<tr>
<td>ketua kampong</td>
<td>a village headman</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
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<td>----------------------</td>
<td>---------------------------------------------------------------------------</td>
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<tr>
<td>kuripan</td>
<td>an appanage of a State official other than the Sultan</td>
</tr>
<tr>
<td>Lapau</td>
<td>the Sultan’s audience chamber; State Council Chamber</td>
</tr>
<tr>
<td>Melayu Islam Beraja</td>
<td>Malay Islamic Monarchy, the current Brunei official ideology</td>
</tr>
<tr>
<td>Mentiri(Mantri)</td>
<td>a non-noble official; presently refers to Government Ministers as well</td>
</tr>
<tr>
<td>Mentri Besar</td>
<td>the Chief Minister</td>
</tr>
<tr>
<td>Negara</td>
<td>a state; country</td>
</tr>
<tr>
<td>Pehin</td>
<td>the highest title given to non-noble officials</td>
</tr>
<tr>
<td>penghulu</td>
<td>a sub-district chief</td>
</tr>
<tr>
<td>Pengiran</td>
<td>a Brunei noble</td>
</tr>
<tr>
<td>Pengiran Bendahara</td>
<td>the first-ranking Wazir</td>
</tr>
<tr>
<td>Pengiran Di-Gadong</td>
<td>the third-ranking Wazir</td>
</tr>
<tr>
<td>Pengiran Muda</td>
<td>the title given to Brunei princes</td>
</tr>
<tr>
<td>Pengiran Muda Mahkota</td>
<td>the Crown Prince</td>
</tr>
<tr>
<td>Pengiran Pemancha</td>
<td>the second-ranking Wazir (fourth ranking before 1906)</td>
</tr>
<tr>
<td>Pengiran Shahbandar</td>
<td>the highest ranking among the Cheteria</td>
</tr>
<tr>
<td>Pengiran Temenggong</td>
<td>the second ranking Wazir (before 1906)</td>
</tr>
<tr>
<td>Raja Isteri</td>
<td>the royal consort</td>
</tr>
<tr>
<td>rakyat</td>
<td>a subject of a ruler; the people</td>
</tr>
<tr>
<td>Shaikh</td>
<td>a Muslim honorific reserved for people of Arabic origin</td>
</tr>
<tr>
<td>Shari’ah</td>
<td>the Islamic Canon Law</td>
</tr>
<tr>
<td>Silsilah</td>
<td>a genealogy</td>
</tr>
<tr>
<td>Syair</td>
<td>Malay rhymed poetry, the most popular traditional poetic metre</td>
</tr>
<tr>
<td>Titah</td>
<td>a royal utterance (which has the force of command)</td>
</tr>
<tr>
<td>Tulin</td>
<td>hereditary private property</td>
</tr>
<tr>
<td>Wazir</td>
<td>a vizier; Principal Minister; traditional rank of a State Minister</td>
</tr>
<tr>
<td>Yang Di-Pertuan</td>
<td>He who is the Lord; overlord; a ceremonially crowned Sultan</td>
</tr>
</tbody>
</table>
Plates

*Courtesy of Brunei Museum, Brunei History Centre and Information Department:*

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1. HH Sultan Haji Omar Ali Saifuddien III, c. 1954
2. Sultan Hashim Jalilul Alam, c. 1900
3. Sultan Muhammad Jamalul Alam II, c. 1920
4. HRH Sultan Ahmad Tajuddin, c. 1940
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10. Pehin Penyurat Abu Bakar bin Haji Jambol, c. 1954
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14. Rt. Hon’ble Malcolm MacDonald, the UK Commissioner-General in Southeast Asia felicitates Sultan Ahmad Tajuddin during his Silver Jubilee celebrations in 1949
15. Court of the Sultan of Brunei, c. 1846
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18. A group photograph of the members of the Brunei State Council (Chair-HRH Sultan Ahmad Tajuddin) outside the Kajang, temporary premises erected after Allied bombings of the Brunei Town, 1948

20. The Australian soldiers visiting a dilapidated Chinese temple in Brunei in 1945 at the end of the Japanese occupation

21. The British officials are entertained for a sitdown banquet at the Istana Darul Hana in 1954. On the right is Rt. Hon’ble Malcolm, MacDonald, and in the left are HRH Sultan Haji Omar Ali Saifuddien, and Governor Anthony Abell

22. HH Sultan Haji Omar Ali Saifuddien with Sir Anthony Abell, Istana Darul Hana, 1954

23. HH Sultan Omar Ali Saifuddien and the decorated Bruneians with the British Officials after a State Ceremony, c. 1955

24. The itinerant Chinese Trader Peddlers selling their wares in Kampung Ayer, c. 1930s

25. The Brunei royal family with the British royal family during HM Queen Elizabeth II’s visit to Brunei, 29 February 1972.

26. Members of the Brunei delegation (HH Sultan Haji Omar Ali Saifuddien in the centre) bound for London to participate during the constitutional talks with Great Britain, March, 1959

27. Former British Residency Building, Later the British High Commissioner’s Residence

28. Sultan Haji Omar Ali Saifuddien with some leading subjects during his birthday celebrations, c. 1956

29. HH Sultan Haji Omar Ali Saifuddien addressing the Brunei Legislative Council, 1961

30. The Paduka Seri Begawan Sultan chanting ‘Allahu Akbar’ (God is Great) at the declaration of Brunei’s independence, 1 January 1984

31. The Brunei State Council Chambers

32. HH Sultan Haji Omar Ali Saifuddien at the Brunei State Council meeting. Seated next to him are the Resident, C. H. Barcroft, and the State Treasurer, D. H. Trumble, c. 1952

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34. HH Sultan Haji Omar Ali Saifuddien with decorated Bruneians, c. 1958

35. Sir Robert Scott, the UK Commissioner-General in Southeast Asia and HH Sultan Haji Omar Ali Saifuddien at Lapau, Brunei Town, 29 September, 1959 during the signing ceremony of the British-Brunei Agreement

36. Coronation of HM Sultan Haji Hassanal Bolkiah as the 29th Sultan of Brunei, August 1968
Part 1

INTRODUCTION
H. Hickling, then serving as the Assistant Attorney General of the Sarawak Government, visited the neighbouring Sultanate of Brunei on 9 November 1954. His was a special mission: among other things, he was to conduct research on Brunei’s constitutional status and to prepare the legal framework necessary to produce draft legislation for a written Constitution as well as a Succession and Regency Enactment. Thus a main objective of the Hickling Memorandum was to serve as an aide mémoire to help colonial officials to familiarise themselves with conditions in Brunei. The instruction came from Anthony Abell, the Sarawak Governor and Ex-Officio High Commissioner for Brunei. Before finalising the first written constitution for Brunei, the British required a clearer picture of the country’s history and political traditions, having realised that ‘much research and inquiry on the spot would be necessary to establish authoritatively the details of the traditions and customs governing the succession to the Sultanate and other matters of constitutional importance’.

Exactly fifty years earlier, the British Government had dispatched another officer to Brunei on a somewhat similar but more decisive mission. He was Malcolm Stewart Hannibal McArthur (1872-1934), a member of the Strait Settlements Civil Service (later known as Malayan Civil Service). He came to Brunei with a more pressing agenda than Hickling’s. On McArthur’s Report depended the fate of the Sultanate: whether it was to continue as an independent state or was to be partitioned.

1 CO 1030/113, Hugh Ellis (Chief Secretary Sarawak) to CO, 19 November 1954 mentioned that Hickling ‘moved to Brunei ten days ago.’ In fact, Hickling’s visit was originally meant to brief the Sultan and his advisers about the British proposals for the new constitutional status for Brunei, and at the end of this mission, Hickling was asked to stay on and prepare the Memorandum.

2 CO 1030/113, High Commissioner to CO, No 47, Secret, 23 March 1955, Para. 2.

3 Ibid.

between neighbouring Sarawak ruled by the ‘White Rajah’ Charles Brooke,⁵ and North Borneo ruled by the British North Borneo Company.⁶ Having examined various options for the future of Brunei, McArthur took the view that the truncated Sultanate must be preserved as an independent entity. His recommendation was to introduce a British Resident and to reform the institutions of governance. As a result of the Report, the British concluded a Supplementary Treaty in 1905-1906 along the lines of similar treaties signed with Malay rulers in peninsular Malaya,⁷ which laid the basis for Brunei’s survival.

The Hickling Memorandum (hereinafter cited as ‘Memorandum’ in the footnotes) does not hold the same significance as McArthur’s in so far as changing the status of Brunei is concerned.⁸ The two reports are not really comparable. McArthur’s Report is by far a more original and piercing study of the Brunei society than Hickling attempted. In fact, Hickling relied heavily upon McArthur’s Report, which he quoted copiously and at times verbatim in the Memorandum.⁹ Hickling lacked the passion and persuasion of McArthur, who with a missionary zeal was largely responsible for preventing Rajah Brooke from snuffing out the last remnants of Brunei’s sovereignty. Understandably, his Report earned much kudos from the Colonial Office notwithstanding the old Rajah Charles Brooke’s protestations about McArthur’s alleged bias against Sarawak.¹⁰

While McArthur spent six months in Brunei (from May to November 1904) to prepare the Report, Hickling had less than two months from November to December 1954. Unlike McArthur, Hickling had not served in the colonial establishment for long, and one may say that he therefore lacked the required experience. His first posting in the colonial legal service was in Sarawak in 1950, just four years before writing the Memorandum, and while he was still learning his job as

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⁸ In fact, at the request of the higher British officials the exact nature of McArthur’s mission was to be concealed from the Brunei Malays. See McArthur, ‘Report on Brunei’, p. 4.

⁹ See Memorandum, pp. 14-18.

a young Deputy Attorney General. Wanting in time and experience, Hickling also suffered from
the additional handicap of not being able to access many critical primary sources. As he himself
admitted ‘my researches have to some extent been impaired by lack of material’.\footnote{Memorandum, Para 84.} Indeed, the
rudimentary archives maintained by the British Resident’s Office in Brunei were largely lost during
the war. Records, if there were any, had either been destroyed during the Japanese occupation of
Brunei from December 1941 until June 1945, or had been lost due to the Allied bombings during
the Pacific War. The hurriedly written Memorandum, as might be expected, contains its share of
errors and omissions while being deficient in details about the sources and references cited. But one
must remember here that he was not writing for an academic audience. His target group was the
British officialdom which sought a quick report so as to find solutions to make decisions about the
political future of Brunei. Perhaps Hickling was right in expecting the details to be worked out in
a Constitution to be framed by the legal experts serving both the Sarawak Establishment and the
British Colonial Office.

The brief historical account and background survey of Brunei dealt with in the Memorandum
were mostly culled from secondary sources. As regards interviewing people in Brunei, unlike
McArthur, Hickling spoke only to very few people. He could hardly speak Malay, unlike McArthur
who was conversant in Malay and had interacted very well with Bruneians of all walks of life.\footnote{McArthur was ‘popular with the people of Brunei generally, and when he revisited the country in 1918, after an absence of ten years, he received a friendly reception’. McArthur, \textit{Report on Brunei}, p. 10.} By coincidence McArthur went on to become the first British Resident in Brunei following the
acceptance of his Report, whereas Hickling was transferred to Malaya soon after he submitted the
Memorandum.\footnote{CO 1030/113, High Commissioner to CO, No 47, Secret, 23 March 1955.} The comparison ends there.

Despite several shortcomings, the Hickling Memorandum was in part responsible for the
deference with which the British tended to treat Brunei before taking any decisions about the
country’s future. After all, Hickling’s objective was to study the Government of Brunei and to help
produce a draft constitution, and to ‘establish beyond doubt exactly what form of Government is
consstituted by the State of Brunei’.\footnote{Memorandum, Para. 134.} Consequently he managed to convince his superiors that Brunei
‘is a Malay State with a living Constitution based upon a strong sense of history’.\footnote{Ibid, Para. 41.}

Undoubtedly that conviction underlies the tenor of the entire Memorandum. Moreover, as he
was also in the legal team of the Sarawak Government that was drafting the initial constitutional
legislation for that colony, his own views naturally had to be restrained so as to give way to his superiors’ ideas concerning the sharing of power between the colonial administration and the Brunei Monarch. As will be seen later in this introduction, the British political views also spelt trouble for the making of the Brunei Constitution.

The Memorandum is undoubtedly a valuable tool for the students of modern Brunei history. Above all, it reflected and reinforced the colonial officials’ perceptions of the de facto constitutional status of the Brunei Sultanate, especially in the aftermath of the Pacific War. In spite of its relevance to a study of Brunei’s constitutional history, few had accessed this Memorandum in any detail before Hussainmiya summarised it in his book on *Sultan Omar Ali Saifuddin III and Britain*.16 Copies of the Memorandum are kept in the Brunei National Archives,17 Sarawak Archives in Kuching and the British National Archives and one was preserved in Hickling’s possession.18 The Memorandum has never been published. Like McArthur’s Report, it deserves to be read by the public,19 especially in Brunei, because it is a compendium of the country’s traditions, history and political ethos. In view of its intrinsic value for Brunei historians, administrators, lawyers, researchers, students and others interested, this annotated edition is presented to readers, who may recognise in it many crucial aspects of governance in the traditional Brunei system.

This introduction seeks first of all to provide the context in which the Memorandum came to be written; second, to provide a brief background of Brunei’s history until the mid-1950s; third, to sketch biographical details of Hickling and his mindset at the time he wrote it; and finally to examine the significance of the content and its contemporary relevance to the Brunei Government.

When the Memorandum was completed, the Governor/High Commissioner Anthony Abell was away in England on his furlough. ‘Hickling had made such good progress with the work’ were the words from his *locum tenens*, the Acting High Commissioner for Brunei C. J. Thomas, who forwarded the Hickling Memorandum (as annexure ‘A’ to his despatch No. 47 of 23 March 1955)20 for scrutiny to the Colonial Office in London. The Acting High Commissioner further commented: ‘Hickling’s Memorandum is a most valuable summary of past constitutional history and practice

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17 The version available in the Brunei National Archives in Bandar Seri Begawan is slightly different from the original version found in Kuching and the one found with the author, Hickling. It is typed in a different format and contains minor linguistic alterations.
18 The authors of this edition wish to acknowledge their deep gratitude to the late Professor Hickling for his kindness in loaning his own copy.
19 Horton’s published version of *McArthur Report of 1904* is not easily available in Brunei, and seemingly read by only a few people, especially research students.
20 However, the original Memorandum was not to be found in the original annexed report in the correspondence series, CO1030/113.
in Brunei; it will make accessible to your advisers, who are aware of the strong sense of tradition in evidence today in the Malay States, much information not otherwise readily available’. He was also praised for ‘his untiring labour in research and skill in drafting prior to his arrival in Brunei [in November 1954]’ indicating the fact that his work in drafting the Memorandum had started even before his first visit to Brunei.

In Brunei, Sultan Omar Ali Saifuddin III, Sa'adul Khairi Waddin, (r. 1950-1967), [current official spelling as Saifuddien] who had only recently become Sultan, was also keen to understand the nuances of constitution making. For this purpose, he had instructed his Malay Constitutional Committee to submit a report and to make recommendations from a Brunei Malay perspective for consideration by the Colonial Office. The Committee was expected in the main to advise the Sultan on the drafting of a Constitution, the establishment of District Councils, and the reorganisation of the State Council. The Malay Committee’s Report, which Hickling had the benefit of consulting before preparing his own version, had reached the Sarawak authorities in November 1954. The Report caused consternation among the British administration due to the drastic and radical proposals put forward by the Malay Committee. For example, the Committee urged the immediate transfer of power from British hands to the Sultan as well as replacing the British Resident with a local Menteri Besar (i.e. Chief Minister). The authorities believed that such a move was tantamount to transferring power from the British authority to the Sultan without any intermediary safeguards. Yet the British officials had admitted that ‘on the subject of constitutional advance the Committee’s main recommendations were sound and could be accepted in principle by the Sultan-in-Council’. However, in his Memorandum Hickling was not constrained to heed the Malay Committee’s recommendations and avoided commenting point by point on its vision of a future Government. Even so, his version served in some ways as a rejoinder to the Malay Report and the Memorandum included sections of the Report as an appendix.
Both the Memorandum and the Malay Committee’s Report were produced during a period of changing political realities in Brunei in the early 1950s under the new Sultan Omar Ali Saifuddin III, who was crowned on May 31, 1951. Sultan Omar was determined fully to restore the sovereignty of the Brunei ruler. In pursuance of his predecessor Sultan Ahmad Tajuddin’s wish, the new Sultan stepped up efforts to renegotiate the 1905-06 Treaty with Great Britain.

Sultan Ahmad Tajuddin had ascended the throne as a minor when his father Sultan Muhammad Jamalul Alam II died during an epidemic in 1924. The period of Brunei’s abject poverty neared its end during the later part of Sultan Ahmad Tajuddin’s reign. Brunei was blessed with the burgeoning wealth from newly drilled oil wells and export revenue earned from them. Despite this wealth, the British officials adopted a tight-fisted fiscal policy ostensibly to avoid a recurrence of ‘bankruptcy’ that had plagued Brunei at the turn of the century. The financial prudence of the British blighted the reign of Sultan Ahmad Tajuddin and throughout his reign relations with the British officialdom were thorny.

After the Second World War, Sultan Ahmad Tajuddin grew bolder in asserting his rights as the British began to relax their imperial policy towards their subject territories in Southeast Asia. The Sultan’s desire to revise the 1906 Treaty obligations and to secure additional fiscal privileges for the Brunei royal house began to earn sympathetic attention in some British quarters at last. When Sultan Ahmad Tajuddin died while still young without fulfilling his dream, it was left to the new incumbent, his brother Sultan Omar Ali Saifuddin, to demand a change in Brunei’s status and to negotiate a new treaty with Britain.

In view of the changed circumstances, therefore, the British Government thought it wise to urge Brunei to accept a formal (written) Constitution in which the instruments of power were clearly defined for better governance. Among the objectives was the introduction of properly constituted, if not elected, legislative and executive bodies. This is the context in which the Memorandum under study came to be written. In order to understand the contents of the Memorandum and to appreciate the circumstances under which British domination was established in Brunei towards the end of the 19th century, it should also be seen in a longer historical context.

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26 According to the Brunei Annual Report (BAR) of 1924, p. 15, he died of malaria ‘aggravated by the death of his wife and two children in August’.

27 For details of Sultan Ahmad Tajuddin’s unpleasant confrontation with the British administration see B.A. Hussainmiya, Sultan Omar Ali Saifuddin III and Britain, chapter 2.

28 For example, Eric Pretty, who served twice as Resident, first from 1923-28, and later from 1948-51, seemed to have supported the Brunei Royal family beyond the call of his duty, especially the second time when he served under Sultan Ahmad Tajuddin.

INTRODUCTION

Historical Setting

Brunei, at present a tiny Sultanate situated on the northeast coast of the island of Borneo, was once a much larger and a sprawling kingdom. ‘A new nation but an ancient country’, Brunei Darussalam is one of the oldest Sultanates in Southeast Asia. References in Chinese sources to a kingdom called Po-Ni or Po-Li, in the first millennium of the Common Era, may also refer to Brunei, known to have maintained tributary relations with the Chinese and later with the Majapahit empires in Indonesia. Local legends and literary sources date the establishment of the Muslim Sultanate to the middle of the fourteenth century. A small cog in the early Southeast Asian trading network, Brunei reached its zenith during the sixteenth century. When the Portuguese conquered Melaka in 1511, the Muslim traders fled to other port cities in the region. Brunei apparently benefited from the exodus, which possibly increased its population to some 25,000 households, as estimated in 1521 by the Italian traveller Antonio Pigafetta.

In the sixteenth and seventeenth centuries Brunei’s hegemony is said to have extended from the southern Philippines to southern Borneo. However, with the spread of European entrepôts in Southeast Asia, Brunei’s importance began to shrink. Moreover, conflicts with the Spanish based in Manila and internal civil wars sapped the energy of Brunei and resulted in a decline of its wealth and territory. The first three decades of the nineteenth century in particular were a time of troubles for the battered Sultanate. Even then, Brunei still claimed suzerainty over what are now the Malaysian states of Sarawak and Sabah, and, less convincingly, over some of the offshore islands and Palawan. By the end of the century, however, most of this territory had effectively been lost, the last being the Limbang district in 1890 the loss of which divided Brunei into two separate enclaves. When

30 With the loss of Limbang in 1890, Brunei was reduced to approximately its present size (5,765 sq. km.) taking the anomalous form of two enclaves (Brunei-Muara, Tutong and Belait, on the one side, and Temburong, on the other side), each enclave being surrounded on the landside by Sarawak. It lies between longitudes 1140 04’ and 1150 22’ E. and between latitudes 40 00’ and 50 03’ N.
35 Brunei fought a war with the Spanish forces from Manila that invaded the Sultanate in 1582. Dr. de Sande, the Spanish Governor, personally brought his forces to punish Brunei which refused to accept the Governor’s demand to stop all Islamic preaching activities in the region. Successfully initially, the Spanish drove the reigning Sultan to the interior, had to pull back to Manila due to adverse conditions in Brunei. For details, see, J. S. Carroll, “Francisco Sande’s Invasion of Brunei in 1578: An Anonymous Account”, BMJ, Vol 6, No 2, 1986, pp. 47-71.
British intervention in Borneo occurred, Brunei had lost its lustre and vibrancy and was portrayed in contemporary foreign accounts as a moribund state.³⁶

The late nineteenth century history of Brunei has to be understood in the context of direct British involvement. Britain, the major power in Southeast Asia during the century, had only limited interest in this part of the world. First of all, there was no desire to set up an empire in the archipelago to rival that of the Dutch. What Britain wanted — as the Anglo-Dutch treaty of 17 March 1824 made clear — was commercial access to those parts of the archipelago that were in Dutch territorial possession or in State with which they had entered into treaties with local rulers. Apart from that their main interest lay in keeping major maritime powers away from the Straits of Melaka.³⁷ The Dutch could no longer be numbered among such powers and Dutch dominance in the archipelago was indeed a guarantee against more threatening states. Additionally, the treaty confirmed Britain’s possession of Singapore, acquired by Stamford Raffles in 1819.

Raffles himself was unhappy with this policy, and his belief that Britain should after all have an empire in the archipelago helped to inspire the English adventurer, James Brooke, to undertake his voyage to Borneo in the Royalist in 1838. He also inherited the somewhat romantic approach that had imbued Raffles’ writings. In their vision, Britain’s venture would take the form of restoring the ancient Malay monarchies, which had decayed as a result of the inveterate antagonism of the Dutch and become the prey of piratical activities. Brunei came to Brooke’s attention only when he arrived in Singapore, but its position, as he saw it, seemed to fit in with his aspirations.

Having assisted Raja Muda Hashim in restoring order to the outlying province of Sarawak, Brooke was then attracted by the opportunity to govern the province and secured the title of Raja.³⁸ However, he still saw this only as part of a scheme to restore and modernise Brunei. By setting an example in Sarawak, and by backing Hashim at the capital, he started a process that he hoped would secure the backing of British public opinion and of the British Government. He made some progress with this plan. The Royal Navy assisted him by acting against what was defined as piracy, and the British Government, interested in its coal, acquired the island of Labuan as a colony. In 1847 Britain entered into the Treaty of Commerce and Friendship with Brunei, under which the Sultan was bound not to make concessions to other powers without British assent.

³⁸ For details, see Nicholas Tarling, *Britain, the Brookes and Brunei*, Kuala Lumpur, Oxford University Press, 1971.
There was, however, no major reversal of Britain’s colonial policy. Indeed the controversy over Brooke’s use of naval power, and over his application of the term ‘piracy’, induced the British Government to cut back its support for his venture. The colony of Labuan was retained, and a Consul continued to be appointed to Brunei, but Brooke’s hopes of reforming the Sultanate were at an end, not to mention his plans to revive Raffles aspirations for the archipelago as a whole. He began to alter his policy. Making Sarawak itself the focus, the Raja increasingly argued that it was an independent state. The object now, and even more with his successor, Charles Brooke, was to expand the authority of the Raj, taking over control of additional rivers by agreement with the Sultan and his Government in return for additional sums of ‘lease’ or ‘cession’ money.

The process had advanced as far as Bintulu, and the Baram became an issue, when rival contenders appeared on the scene. They were Alfred Dent and Baron Overbeck. As it turned out they were precursors of the British North Borneo Chartered Company.\(^3\) In 1877-8 they secured leases from the Sultan of Brunei of many of the rivers north of Brunei, supplemented by a further series of leases from the Sultan of Sulu. The British Government concluded that the Raja and the Company would soon divide the remnant of Brunei between them and in order to regulate that process and also to avoid the intervention of any third power, the British concluded agreements with each of the three states in 1888. These agreements offered British protection, but in no sense did they make the states colonies. On the contrary, they insisted on their independence. This was emphasised, too, by the provision for British consulates ‘in order’, as Sir Julian Pauncefote put it at the Foreign Office, ‘to establish more clearly that the states remain independent of us as regards their internal Government’.\(^4\) The Governor/High Commissioner at Singapore now became High Commissioner and Consul-General\(^5\) in respect of the Borneo protectorates, though the former title was formally dropped in 1897.\(^6\)

Brunei trusted that the Agreement would help to prevent further encroachment on its already shrunken territory by the acquisitive Raja of Sarawak. In 1887 Lord Salisbury, in a letter to Sultan Hashim, had promised him protection as a means of reassuring him before signing the Treaty.\(^7\) For the same reason, in 1885 Sultan Abdul Mumin, just before his death, had made his nobles swear a sacred oath, *umanah* (or *amanat*), not to alienate any more land to foreigners.\(^8\)


\(^4\) Drafts and memoranda in F.O. 12/75. See also Nicholas Tarling, *Britain, the Brookes and Brunei*, p. 351.

\(^5\) Nicolas Tarling, *Britain, Brookes and Brunei*, p. 397.

\(^6\) Ibid, p. 520.


\(^8\) Nicolas Tarling, *Britain, the Brookes, and Brunei*, p. 318.
The Protectorate Agreement of 1888 proved inadequate to protect the territorial integrity of Brunei. Thus a Foreign Office minute speaks of the Agreement as not standing ‘in the way of such a consummation as the absorption, when the time arrives, of Brunei by Sarawak and the BNBC. It would, in fact, enable H.M. Government to advise the Sultan to accept the inevitable on the best terms procurable.’

In the event, however, the Sultanate of Brunei, though further diminished, did not disappear, and the Protectorate Agreement acquired a different significance and a more positive one. One reason for the change was Raja Charles’ forced acquisition of the Limbang in 1890. The reigning monarch, Sultan Hashim, determined to uphold the *umanah/amanat* (i.e. an oath of allegiance) of 1885, refused to give his assent either in advance or, when the Raja nevertheless went ahead, in retrospect. Nor did he, despite the persuasion applied by his avowed protector, accept the ‘cession’ money that the Raja proffered. The British Government was not prepared to turn the Raja out. But his action, and the Sultan's reaction, certainly made it more difficult for the British to consider that the disappearance of Brunei was inevitable.

There were those among the British who came to think that Brunei’s disappearance might not be desirable. Certainly leading officials in the Colonial Office, in particular C. P. Lucas, were changing their stance. In the 1870s and 1880s, the Colonial Office had been supportive of the Brooke venture, preferring it to the Company and believing that it might be the nucleus of a future British colony. The change of view was influenced by the creation in 1895-6 of the Federated Malay States.

**The Malay States**

In 1874 the British had formally intervened in the west coast states of the Malay Peninsula, i.e. in Perak, Selangor, and Sungei Ujong. The motives behind this have been much discussed in the historical literature. Were they concerned to protect their interests in the tin industry? Did they need to abandon their policy of non-intervention for fear that other powers might intervene? What is of interest in the present context is the mode of intervention. Through the preceding period of non-intervention, the local British authorities had developed the practice of working with the Malay rulers, particularly the ruler of Johore. When intervention was decided upon, it was natural to proceed in a similar way, and the intervention took the form of treaties with Malay rulers, such as the treaty with the Sultan of Perak concluded at Pangkor in 1874. The rulers were bound to seek advice from British Residents appointed to their court on all matters other than religion and Malay custom.

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45 FO 12/78, Minute by Sir R. Herbert, 31 January 1888.
The assumption, based on the experience with Johore, was that this advice would be taken. In fact the situation on the west coast was different, and the first Resident of Perak, J. W. W. Birch, was assassinated. The punitive expedition that followed, however, had long-term as well as short-term effects. Subsequently, the treaties were not revised and advice was followed by the Sultans, and the ideal of Government-by-advice could be sustained. The treaties were not revised, but increasingly the Residents ruled, while the Sultans in effect advised.\footnote{A situation aptly described by J. M. Gullick, \textit{Rulers and Residents: Influence and Power in the Malay States, 1870-1920}, Singapore, Oxford University Press, 1992. Chapter 2} An important medium was the State Council which gave some status to the local ruling class in the decision-making process, but more often than not their function was no more than rubber-stamping the Residents’ policies.

In subsequent decades the states underwent substantial development and modernisation, and their administration became more complex and sophisticated. The next stage was a measure of unification which was provided by the institution of the Federated Malay States (FMS), with a Resident-General based at Kuala Lumpur, under the Governor of the Straits Settlements, also High Commissioner for the Malay States, at Singapore. This system was again based on treaties with the rulers, whose power was clearly diminishing though the negotiator and first Resident-General, Sir Frank Swettenham, assured them that it was not. Indeed the treaty itself now exempted only religion, not custom, from the ambit of British advice.

Satisfied with this achievement on the peninsula, Lucas believed it was a model for the Borneo territories. ‘I look in future to an administration of North Borneo and Sarawak on much the same principles as the native states of the Malay peninsula, with a Resident General at Labuan and residents on the mainland, the whole under the High Commissioner at Singapore.’\footnote{C.O. 144/70 (10680), Minute of 18 May 1896; and Tarling, \textit{Britain, the Brookes and Brunei}, p. 430.} With the colony of Labuan as a base, the three protectorates could become a Borneo Federated States in some kind of parallel with the FMS. The Sultanate of Brunei could fit into this pattern, but the Sultan would have to accept a Resident. Installing a Resident required the conclusion of a Supplementary Agreement in 1905-06. It was the third in a series of agreements between Brunei and Britain, the others, still operative, being those of 1847 and 1888. The latter had established an ‘external’ protectorate, as Paunceforte had insisted, and the new Treaty thus made it an ‘internal’ one. For the initial draft, however, the Foreign Office turned to the Pangkor precedent of 1874. That, of course, excluded religion and custom from the ambit of the Resident’s ‘advice’. In the event, however, the Treaty which Sultan Hashim signed followed the more recent precedent of the FMS. This was no doubt logical, not only because the 1874 phrase was seen by the British as out of date, but also because they hoped that the Agreement was but the first step towards a Federation of British Borneo States in some sense parallel to the FMS. McArthur became the
first Resident. ‘I believe it to be inevitable’, Lucas told Winston Churchill, ‘that British Borneo i.e. the Protectorate of Sarawak, the Protectorate of the Company Territory, and the Protectorate of Brunei shall sooner or later come, like Labuan, directly under the British Crown. I do not want to hurry the process but I believe it must come: again I believe that the change will be for the benefit of the human beings concerned.’

It did not, however, occur as planned. The administration of Labuan, a colony from the start, was taken back from the Chartered Company. But the Colonial Office was in no position to increase its control over Sarawak, though the title of ‘Consul’ was replaced by that of ‘Agent’. The old Raja deeply resented the installation of a Resident in Brunei, for it meant that he could not realise his ambition to absorb the remnant of the Sultanate into his Raj. His successor Raja Vyner Brooke evaded the Colonial Office’s approaches throughout the inter-war period.

Sultan Hashim had been hesitant about accepting a Resident for fear of losing his effective role in government, and Britain had been quite unwilling to incur burdensome financial commitments. Now, however, the British were ready to accept that the Malay States should make a setting-up loan, and prospects of oil, discovered in 1903, could provide revenue. McArthur’s visit helped to persuade the Sultan, and his report helped to persuade the British Government.

Where others had failed, McArthur succeeded. His on-the-spot study in Brunei, during his official fact-finding mission as an acting Consul, neatly and impartially laid out the options: ‘if any action is to be taken with regard to the future of Brunei, the choice must lie between absorption by Sarawak and British protection somewhat on the lines of that which has proved so successful in the Federated Malay States’. McArthur went on to argue the case for the latter. Perhaps his main contribution was to wean official British thinking away from the assumption that partitioning Brunei between Sarawak and North Borneo was both inevitable and appropriate. He argued that under the 1888 Treaty Bruneians were justified ‘in claiming sympathetic consideration of their views as to the future of their country’. As highlighted in his report, the Sultan and Pengirans considered domination by Britain a ‘less obnoxious’ choice than the prospect of losing their identity or the disappearance of their State.

The Supplementary Agreement of 1905-06 specified the relationship between the Resident and the Sultan as follows:

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50 C.0.144/81 (45446). Minute of 6 December 1906.
51 Ibid.
54 Ibid. Paras. 98-146.
55 Ibid. Para. 135.
His Highness will receive a British Officer, to be styled Resident, and will provide a suitable residence for him. The Resident will be the Agent and Representative of his Britannic Majesty’s Government under the High Commissioner for the British Protectorate in Borneo, and his advice must be taken and acted upon on all questions in Brunei, other than those affecting the Mohammedan religion, in order that a similar system may be established to that existing in other Malay States now under protection.56 (Emphases added)

The Residential System (1906-1959)

In theory the Residency System and the Protectorate arrangement did not derogate the sovereign status of the Sultan.57 Throughout the Residency period the British endeavored to treat the Sultan in public with the deference due to the highest authority of the State in whose name all laws were enacted. In real terms, however, the Sultan’s freedom of action was sharply circumscribed by the administrative authority of the Resident, and in that sense Brunei lacked sovereignty.

The Resident was subordinate to the High Commissioner who appointed him, subject to the approval of H. M. Government. Budget estimates had to be submitted for the High Commissioner’s scrutiny. All Enactments passed in the Brunei State Council were also subject to the High Commissioner’s scrutiny. In theory, the High Commissioner was kept informed of all the administrative decisions of the Resident, who transmitted his monthly schedules of official duties for scrutiny and comment. Until 1941 the Governor of the Straits Settlements, based in Singapore, acted as ex-officio High Commissioner for Brunei. In this respect Brunei’s status was equivalent to that of one of the Unfederated Malay States (UMS, i.e., Johore, Kedah, Kelantan, Perlis, and Trengganu). But unlike those States, Brunei had a Resident rather than an ‘Adviser’, which likened Brunei more to the Federated Malay States.

As in the case of the UMS, questions pertaining to Brunei were referred by the Resident first to the Secretary to the High Commissioner, the chief liaison officer between the Resident and the High Commissioner. However, it was the High Commissioner, effectively holding the power of a ‘Governor’ of Brunei, who bore the ultimate responsibility for its proper administration.58 He in turn

57 The complications brought about by the wording of 1905-06 Agreement during the Brunei-Britain constitutional talks in the 1950s are fully discussed in B.A. Hussainmiya, _Sultan Omar Ali Saifuddin III and Britain_, Chapters 6 and 7.
58 According to Sir John Anderson (H. C. 1904-11), there was ‘no practical distinction between the powers of the High Commissioner and those of a Governor. As High Commissioner of the FMS, my authority and powers in those territories are as extensive, and my responsibility for the administration as complete, as within the colony of which I am Governor’. CO 144/79 (35852) Anderson to FO, 7 September 1905, para 6. Cited in A. V. M., Horton, _The Development of Brunei during the
was responsible to the Colonial Office, which set out periodic instructions in keeping with H. M. Government’s policy for overseas colonies and protectorates. The Colonial Office was very much dependent on the High Commissioner’s reports and impressions when formulating its policy towards Brunei. The Colonial Office in turn was responsible to the British Parliament where the reports on political, economic, and social conditions of the protectorates had to be submitted periodically or in response to questions raised by members of Parliament. The Colonial Office was also responsible for scrutinising important legislation, such as preparing legal documents on oil concessions, etc., and supervised the Sultanate’s external relations together with the Foreign Office. However, for the most part the Colonial Office depended on the High Commissioner’s recommendations and those in turn depended on the Resident’s reports.

In the Malay states a primary responsibility of a Resident was ‘to establish a satisfactory personal relationship with the Ruler, and build on that an adequate system of consultation’. But compared to his Malayan counterparts, the Brunei Resident had more freedom of action, and also greater administrative and legal powers, and more areas in which to exercise them—at least until the early 1950s. For a considerable period, neither the Ruler nor his Council were much consulted in Brunei.

With the founding of the Residency, the Sultan’s old, informal consultative Council was reconstituted as the State Council, which ostensibly functioned as the highest legislative and policy-making body after 1907. However informal the Council may have been in the pre-Residential era, it no doubt served to bring matters of utmost importance to the Sultan for final approval. Under the Residency, by contrast, the State Council hardly held that role. During the initial years, the Council met rather infrequently, at times only once or twice a year. Moreover, the local members rarely gave their views in the Council, and anyway the British administration completely ignored them, treating them as illiterates beyond redemption. In the words of the Resident in 1909: ‘Meetings of the Council are but rarely necessary or advisable in the present state of Brunei. Their old age precludes the presence of the Pengirans, Bendahara and Pemancha, and the attitude of the other leading nobles shows that as

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60 It may be worth noting that Clause 10 of the Pangkor Engagement gave the Resident control over the collection of revenue and of ‘the general administration of the country’. See Parkinson, *British Intervention in Malaya*, p. 137. The Brunei Agreement did not include any provision of this kind, but the officers posted to serve as Residents in Brunei had been schooled in the practice of FMS, where (in the formative years of the system) the annual estimates of revenue and expenditure were rarely even submitted to the State Council for formal approval (not at all, in Perak – and only now and again in Selangor). See Sadka, *The Protected States*, p. 185.

yet they are incapable of forming any opinion for themselves, the discussion of which might tend to
the benefit of the country’. And yet all decisions were taken in the name of the Sultan-in-Council. As
Brown commented: ‘the form of the Sultan and Council [sic] as the highest deliberative unit of the State
was retained, but it had no substance other than the authority of the Resident’.63

The powers of the Sultan and his officers in the day-to-day administration of the state had
effectively passed into the hands of the British Resident who had simply become ‘the Government,
to an extent far more than had been the case with the Sultan in the nineteenth century’.64 The
Resident’s powers encompassed virtually every branch of the government, executive, judicial and
legislative. As an observer from the Colonial Office expressed, the Resident for all practical purposes
was ‘the Sultan’s Prime Minister and Chief Justice combined’.65 It was the Resident who appointed
the four District Officers and they were responsible only to him. Even the appointment of most of
the traditional officials and village heads (Penghulu and Ketua Kampong) came under his purview.
He played a prominent role in the State Councils, which served more as a rubber stamp to ratify
his decisions—even though carried out in the Sultan’s name. The Resident thus enjoyed sweeping
powers over almost all spheres of the administration. Even though the Resident had sweeping
powers, in theory the Sultan remained the highest sovereign authority in the land. The Sultan’s name
was invoked in all the government’s actions, making him appear as the centre of power in the eyes
of the populace. The Residents treated the Sultans with deference even when disagreements arose.

Brunei indeed benefited from the rule of the Residents as they ‘took over a visibly disintegrating
state and began the onerous task of ‘cleansing of the Augean Stables’. They fixed Brunei boundaries,
eliminated ‘feudal’ powers in an effort to produce revenue, and developed Western technical and
administrative structures to perform new and expanding functional roles, which freed Brunei from
its medieval past.

Brunei’s economic woes ended with the discovery of oil in quantity in 1929.67 From the export
of oil, the Sultanate built up sound financial reserves, thanks largely to British controls. Socially
and educationally, however, Brunei did not see much progress before the 1950s, due partly to the

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63 Brown, Brunei: The Structure and History of a Bornean Sultanate, p.95.
64 Ibid, p. 122.
65 CO 531/1 (5867), Minute by Risley, 27 February 1907. Cited in A. V. M. Horton, ‘The Development of Brunei during the
Hull, University of Hull, 1984, p. 12.
67 See B. A. Hamzah, The Oil Sultanate: Political History of Oil in Brunei Darussalam, Kuala Lumpur: Mawaddah Enterprise,
parsimonious policies of the colonial administration. It can be argued that the British were primarily concerned with preserving state funds to avoid a recurrence of ‘bankruptcy’ as they termed it. Consequently they opted to spend only very little for development purposes or on improving the living conditions of the people in general. As Brunei’s wealth came mainly from a non-renewable resource, it was deemed vital to conserve income for the future, so as to meet state expenses. Stringent rules by the British were in place for expenditure, which left little initiative to the Residents even if they wished to spend money for emergencies. The Brunei ruling class, in particular, resented the financial control exercised by the British. This brought debilitating political and social consequences to the Sultanate which were difficult to rectify later even after the Bruneians themselves began to command their own destiny. In spite of the great wealth and prosperity the Sultanate was behind in socio-economic progress compared to its progressive neighbours. The Japanese interregnum only (1941-1945) made things worse.

Post-War Developments

When the Japanese invaded Brunei, the British withdrew without offering any resistance. In doing so, they failed in their obligation to defend Brunei in accordance with the 1888 Protectorate Treaty. As elsewhere in the region, local feelings hardened against the erstwhile imperial masters, who now lost their aura of invincibility. When the British returned, their hold on Brunei was not as strong as before. Regionally, the post-war period witnessed important developments: nationalism was on the march, anti-colonial feelings were rising, and Brunei was coming out of its isolation as the Sultanate’s income from oil multiplied. Conscious of their country’s burgeoning wealth and stung by feelings of deprivation, new nationalist elements led mainly by vernacular-educated Malay teachers began to call for better educational, social and political facilities. Emulating the Japanese slogan “Asia for the Asians”, the Brunei elite now demanded “Brunei for Bruneians”. Later in 1954, our author Hickling himself admitted that ‘the influence of these teachers upon the rising generation of literate Malays will, however, be a force to be reckoned with’.69

Even before the war ended, Britain considered various options for reintroducing civilian Government in Malaya and the Borneo territories. According to the plan submitted to the War Cabinet by its Malaya and Borneo Committee headed by Clement Attlee, the pre-war arrangements for these territories were not to be revived. After the war, Sarawak and North Borneo became officially

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69 Memorandum, Para. 6.
British colonies, while Brunei retained its status under an independent ruler. Thanks largely to the efforts of the then Governor General Malcolm MacDonald, Brunei retained its independent identity under its own monarch. He was averse to seeking to end the sovereign status of Brunei by cession or any other means, but suggested that Brunei was too small to stand on its own and should be associated with either North Borneo or Sarawak. Hitherto, Brunei had been administered from the British establishment in Malaya. With effect from 1 May 1948, Brunei came under the jurisdiction of the British administration in Sarawak. In place of civil servants from Malaya, Sarawak-based officers were seconded to serve in Brunei, the Brunei Resident himself being one. Sarawak’s British governor now doubled as the ex–officio High Commissioner for Brunei. The Brunei ruler, his nobles and the people resented the new arrangement. Not so long ago Brunei ruled Sarawak, and now the Sultanate had become subservient to the Sarawak administration. The resulting resentment blighted the prospects for the formation of a Northern Borneo Federation, once the dream of C.P. Lucas.

Realising that the Malayan and Bornean territories would soon need to be given independence, the British desired to withdraw honourably while retaining the goodwill of their colonial subjects. Among the British Government’s proposals, a particularly important one was to unite the Malayan territories, Singapore and the three North Borneo territories, including Brunei, into a super-federation. The proposal to set up a British Southeast Asian Dominion was ostensibly designed to protect British Borneo from a potentially acquisitive Indonesia, while it would also help to level off social and economic inequalities in the territories concerned. Malcolm MacDonald, who became the first UK Commissioner-General for Southeast Asia in 1948, envisaged that such a plan would be implemented in two stages. First, the British–controlled territories of northern Borneo would be united under some form of federation, followed by a union between Malaya and Singapore, which would then pave the way for their ultimate independence from British rule.

But Brunei, despite its small size, did not embrace any plan for closer co-operation with its neighbours. Bruneians were adamantly opposed to sharing their wealth with the other states, even in exchange for assistance in developing their administrative, judicial and business sectors. More importantly, their subservience to the Sarawak administration from 1948 onwards had sharpened their consciousness of themselves as scions of the Malay, Islamic and Monarchic culture. They particularly resisted opening up their country to a further influx of alien migration from the adjoining territories,

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70 CO 537/2244 contains papers regarding the rationale behind the transfer of Brunei administration to Sarawak’s establishment.


72 Addressing a conference of Borneo governors in Singapore, Malcolm MacDonald made a carefully worded public pronouncement that ‘whether this [provisional gathering of the heads of States in Northern Borneo] can develop into a political federation of Borneo territories, leading ultimately to the creation with Malaya, of a Southeast Asian Dominion Government, is another matter, but Bornean federation is both logical and achievable in the not distant future.’ Straits Times, 24 April 1953.
which would inevitably follow under the closer association proposals. Sir Charles Arden-Clarke had insisted in 1948 that the fear that Brunei would ‘lose its independent position as a Protected State’ were ‘groundless’. ‘There is no question of Brunei coming under Sarawak or Sarawak coming under Brunei, or the interests of one being sacrificed to the other… the administration of the two countries would remain separate’.73 If Malcolm MacDonald thought that administering Brunei with Sarawak would help bring the two together, he was wrong: nothing could alienate Bruneians more. Yet, for the British, there was a definite agenda: to unite all three states and also to introduce constitutional government before they were finally to pull out of the region. As Sarawak and North Borneo were their colonies after 1946, this was not a problem, but Brunei as an independent and sovereign monarchical state remained a thorn in their flesh. The British chose not to upset Brunei monarch’s aspirations, treading carefully in introducing a constitution for Brunei. From 1950 onwards, however, the idea of introducing a written constitution for Brunei was gathering momentum for several reasons.

Sultan Omar Ali Saifuddin and Anthony Abell, the High Commissioner

The main promoter of the Constitution was Anthony Foster Abell (later Sir Anthony), Governor of Sarawak and High Commissioner for Brunei,74 who took office at a critical period in the history of both states.75 In Sarawak, Anthony Abell had to first deal with the explosive situation created by the anti-secessionists.76 Due largely to his friendliness, conciliatory approach and personal touch, he was able to bring calm to Sarawak and gradually overcome opposition to the colonial regime. Abell stayed in office for nearly ten years, a truly remarkable achievement under the circumstances, and the more so since his efforts to advance Sarawak politically paid off when on 3 August 1956 the State accepted a Constitution promulgated by the Queen-in-Council.77

Abell confronted a different situation in Brunei, where resentment of Sarawak’s administrative domination was growing day by day, partly because the indigenous Brunei Malays viewed some of the officers seconded from Sarawak as haughty. Again adopting a conciliatory policy, the High

73 Sarawak Gazette, 1 June 1948, No 1083.
74 Born in England in 1906 and educated at Repton and Magdalen College, Oxford, Abell entered the colonial service in Nigeria in 1929. He served there until he became the Sarawak Governor cum Ex-Officio High Commissioner for Brunei.
75 His predecessor, Duncan Stewart, the second Governor of Sarawak, was assassinated in Sibu barely a month after taking office. People in Sarawak, especially the leaders of the Malay community, had been seething with discontent over the cession of their country by Sir Charles Vyner Brooke in 1946 to the British. Sir Charles Arden Clarke, the first Governor had caused a great deal of hardship for those, many of them Malays, who had lost government jobs for failing to pledge loyalty to the Crown. A group of young Malays had plotted to assassinate Clarke, but the victim was his successor who was new to the job.
Commissioner committed himself with almost missionary zeal to advance Brunei politically. He had another unenviable task: to bring Brunei into closer co-operation with Sarawak and North Borneo thereby paving the way for a British North Borneo bloc. In pursuing this aim he faced a dilemma: while in Sarawak he was the highest executive officer, in Brunei he had to be deferential towards a sovereign ruler whose consent was prerequisite for any reform. Though aware of the Sultanate’s rising aspirations to take control of its own fate, Abell steadfastly pursued his agenda.78

The new Sultan, Sultan Omar Ali Saifuddin III was a man of remarkable character. Possessed of an iron will, he was determined to win back the effective sovereignty of the Brunei Ruler from the hands of the British overlordship. In accordance with his late brother Sultan Ahmad Tajuddin’s wish, the new Sultan stepped up efforts to renegotiate the 1905-06 Treaty (i.e., Supplementary Agreement) with Great Britain.

Two predecessors of the new Sultan had lived under the shadow of the British Residents in Brunei. In the first place, each of them had ascended the throne while still a minor. Sultan Muhammad Jamalul Alam II (r.1906-1924) was a minor until 1918, and his reign began when Brunei faced conditions of abject poverty. He, furthermore, bore the full brunt of the British reforms of personal and land law, which circumscribed the prerogatives previously enjoyed by the Sultan over his subjects and the state finances. Realising that the British authority had undermined his sovereignty, the young Sultan listed five demands, instigated by his wazirs, the last of which read: ‘Whatever customs or laws may have been in force in Brunei those customs and laws shall be kept inviolate and unaltered forever’.79 The Resident threatened the young Sultan with deposition from the throne and reduction of his stipends. When the Sultan mutely complied, he was duly rewarded by restitution of his stipend and a knighthood in 1920.

Sultan Muhammad Jamalul Alam’s eldest son, Sultan Ahmad Tajuddin (r.1924-1950), was also a minor just eleven years old, when he was elevated to the throne. He served under regency until 1931, when he turned eighteen, and his coronation ceremony took place only in 1940. Sultan Ahmad Tajuddin continued to be at loggerheads with the Residents, especially in view of the fact that they scarcely let him enjoy the benefits of Brunei’s rising oil income. Sultan Ahmad Tajuddin considered himself the poorest among his contemporary Malayan Sultans, who had their own means to augment their income from private sources and some traditional wealth. In 1949, provided with a paltry monthly allowance

78 Abell was after all not a man of peace as he tended to portray himself while in Sarawak. ‘He once had his knuckles rapped by his superiors for offering Dayak tribesmen five British Sterling pounds for the head of any Communist insurgent. As the Dayaks tended to decapitate first and ask questions afterwards, it was felt that this was tantamount to incitement to murder.’ Anthony Abell, Obituary, The Times, 14 October 1994.

of 3,500 Malayan dollars (fixed at 2s.4d.), Sultan Ahmad complained bitterly that, taking into account Brunei’s annual income of ‘about [dollars] 6,000,000.00 . . . there is nothing for the state to lose if my allowance is increased as man after all is not going to live in this world up to 100 years’.80

Unlike his two predecessors, Sultan Omar Ali Saifuddin III, ascending the throne as the twenty-eighth ruler at the mature age of 35, he was in a position to change the fate of Brunei.81 Gone were the days of penury that plagued Brunei during the reign of his forefathers. He ruled over a little Sultanate that was now one of the British Commonwealth’s major oil-producing countries and on its way to becoming a super-rich state. For better or worse, the Western-style government introduced by the British had ended the political instability caused by disunited and too frequently self-seeking nobility. More importantly the British administration had laid the foundation for strong and centralised state machinery, which helped to revive the prestige of the Brunei monarchy itself.

When Brunei came under Japanese military occupation (1941-1945), the services of Pengiran Muda Tengah (as he was then known) were retained: he was made a member of the State Council on 3 February 1942 and underwent training at the office of the Japanese military administrator, Governor Kimura, starting on 29 June 1942. Japanese rule ended in June 1945, when the British re-occupied Brunei. After a brief period of British military administration, Brunei reverted to civilian rule in 1946.

Pengiran Muda Tengah became Pengiran Bendahara (First Minister) supported by the British, especially by Malcolm MacDonald, on 7 August 1947. Subsequently he became heavily involved in state affairs, as the reigning Sultan Ahmad Tajuddin, his brother, preferred to spend most of his time outside the state and was also sickly. The new Pengiran Bendahara earned the confidence of his people as well as respect from the British, who found his role indispensable as the main link between the administration and the population. As Malcolm MacDonald put it, ‘Brunei is fortunate in having a number of experienced and sagacious men among its high officers and Councillors of the state. Pre-eminent amongst them in the later years of the late Sultan’s reign [was] the then Duli Pengiran Bendahara [Omar Ali Saifuddin].’82

80 CO 943/1 (59721), HH Sultan Ahmad Tajuddin to A. Creech Jones, Secretary of State for the Colonies, 11 July 1949.
81 Sultan Omar Ali Saifuddin III was born on 23 September 1914 in Kampung Sultan Lama, a ward of the famous Kampung Ayer (the Water Village). As a young prince, known as Pengiran Muda Tengah, Omar Ali Saifuddin had been well prepared for his future duties. He was the first of the Brunei Sultans to receive formal education in a foreign institution. In 1932 he, along with his two royal cousins, enrolled at the Malayan College in Kuala Kangsar, Perak. Dubbed the Malay Eton, this was a model residential school established to educate the children of the Malay ruling class. For more biographical details, see Hussainmiya, Sultan Omar Ali Saifuddin III and Britain, pp. 54-61.
82 CO 943/2, (59726), Speech by the Right Honourable Malcolm MacDonald, UK Commissioner General for South-East Asia [on the occasion of the coronation of the new Sultan, Omar Ali Saifuddin III], 31 May 1951, folio 34.
Having ascended the throne in 1950 with the full blessings of the British Government, Sultan Omar Ali Saifuddin was determined to advance his country socially, politically and economically.\textsuperscript{83} In measured steps, he began to assert his independence and challenge the decision-making capability of the British officers.

The relationship between the British authorities and the Sultan underwent important changes during this period. To begin with, the advisory function hitherto exercised by the Resident was increasingly assumed by the ex-officio High Commissioner for Brunei. Anthony Abell, based in Kuching, came frequently to Brunei on official and private visits. He had a high regard for the new Sultan, and he also needed the Brunei ruler’s co-operation and goodwill to carry out reforms and the unification of all three British dependencies in northern Borneo. Abell cultivated a personal friendship with the Sultan.

The direct contact between the Sultan and the new High Commissioner made life uncomfortable for the British Resident in Brunei, who now began to lose the aura of power enjoyed since the McArthur days. Hitherto the High Commissioners rarely visited Brunei from Malaya and hardly interacted with the Sultans. Abell, on the other hand, placated the Sultan; he listened to his complaints about the Resident’s insensitive high-handedness and took remedial measures. For example, J. C. H. Barcroft,\textsuperscript{84} the new Resident seconded from Sarawak in 1951, mishandled the \textit{Hajj} journey of the Sultan and six of his associates.\textsuperscript{85} Sultan Omar Ali Saifuddin’s first duty on assuming the throne was to go on \textit{Hajj} pilgrimage. For this he received a cash advance from the state. Soon after his return the Resident pestered him and even issued an ultimatum to repay the money. Abell, on the other hand, waived the debt, ordering the state to bear the expense for \textit{Hajj}.\textsuperscript{86} The result was Barcroft’s transfer to Sarawak as Secretary to the High Commissioner, probably at the Sultan’s prompting. His successor, J.O. Gilbert, met much the same fate in 1958, when he became \textit{persona non grata} to the Sultan. On both occasions, High Commissioner Abell was reluctantly forced to give in to the Sultan. A later British official would point out that ‘John Barcroft and John Gilbert did not come up to his [Sultan’s] expectations

\textsuperscript{83} The State’s income of $1.5 million in 1932 multiplied to a staggering $276.6 million in 1952, an 18,000\% increase. Income from oil alone ($1.1 million) constituted 73\% of the State revenue in 1932, but in 1952 it amounted to 98\% ($270.1 million) of the total exports. Government revenue came substantially from the royalty payments and taxes paid by the oil company. Between 1932 and 1941 the royalty payments had been $8.5 million, which then increased to a total of $75.5 million between 1946 and 1952. After the introduction of a 20\% flat tax on the income of companies stipulated in the Income Tax Enactment of 1949 (which rose to 30\% in 1953), the Government received an additional $81.6 million from that source in 1951/52. B. A. Hussainmiya, \textit{Sultan Omar Ali Saifuddin III and Britain}, Ch. 3.

\textsuperscript{84} Brunei Resident from June 1951 until June 1953.

\textsuperscript{85} \textit{Hajj} is the pilgrimage to Mecca enjoined by Islam on every able-bodied Muslim.

\textsuperscript{86} For details, see B.A. Hussainmiya, \textit{Sultan Omar Ali Saifuddin III and Britain}, pp.65-66.
and this I presume was largely responsible for his [hostile] attitude towards the Sarawak Government’.\textsuperscript{87}

Under the circumstances, the High Commissioner realised that the 1905/06 Agreement was becoming untenable because it could not restrain this strong-willed Sultan. Moreover, the ruling class sought more latitude to make political decisions and to enjoy the fruits of Brunei’s growing wealth. Their anger over the Resident’s authority grew. Both the British administration and the Sultan faced another lurking danger around the corner: a rising nationalist movement, modelled on the Sukarno-style Indonesian freedom movement, demanding power.\textsuperscript{88}

**The Sultan’s Announcement**

In the face of the growing demand by the Sultan and his Pengirans (nobles) for revision of the British-Brunei treaty as well as for formalizing the issue of succession to the throne,\textsuperscript{89} it was timely for the British to review and re-organise the power structure in Brunei. Abell gave expression to the idea already circulating in the Colonial Office when he wrote in 1953: ‘His Highness is most anxious to obtain a revision of the treaty whereby he can be given greater responsibilities for the internal affairs of the state . . . I have insisted that a revision of the treaty cannot be contemplated until His Highness has established a constitution on democratic and acceptable lines’.\textsuperscript{90} In view of changing British-Brunei relations, Abell wanted to limit the autocratic powers of the Sultan either through a treaty, or, more importantly, through constitutional safeguards based on British democratic ideals. This led to a protracted tug-of-war for political control between the British administration and the Sultan.

The British experimented with democratic institutions in other subject territories and wished Brunei to follow suit. For example, it was hoped that among other reforms a constitution would establish a properly authorised legislative council for Brunei. Indeed there had been a Consultative Council in the traditional system of government to advise the Sultan on important matters of state. This body was reconstituted in 1907 as a State Council when the position of Resident was introduced. As long as the Residents were in command, the State Council remained under their effective control.

\textsuperscript{87} CO 1030/533, Secret and Personal, D. C. White to A. Abell, 26 September 1959.

\textsuperscript{88} See Hussainmiya, *Sultan Omar Ali Saifuddin III and Britain*, Ch. 4.

\textsuperscript{89} A Bruneian scholar, Metassim Haji Jibbah, underscores this issue based on his interview with Pengiran Pekerma Seti Di Raja Sahibul Bandar Pengiran Dato Haji Ali bin Pengiran Haji Daud, a close associate of the Sultan: ‘One may argue that the reason why Sultan Omar Ali intended to give Brunei a constitution was to regulate the succession issue’. (The Sultan’s nomination in 1950 had been contested by the daughter of Sultan Ahmad Tajuddin.) ‘Political Developments in Brunei with reference to the reign of Sultan Omar Ali Saifuddin III (1950-1967)’, Unpublished MA Thesis, University of Hull, 1983, p.23 n 7.

\textsuperscript{90} CO 1022/396, Savingram (Confidential), No. 54, Anthony Abell to the Secretary of State for the Colonies, 13 May 1953.
But after the Pacific War the Council was becoming more of a burden than a help in facilitating British administration, because it came to be dominated by local appointees. The State Council had already become anachronistic and obsolete at a time when the British wanted to introduce modern democratic concepts of governance. Therefore it became imperative to form new institutions under a constitution to perform the legislative and also executive functions that the State Council had performed.

Since 1950 two important developments had undermined the Resident’s de facto executive power over the Council. First, the Council met more often under the new Sultan. Second, the Sultan increasingly demanded that the matters on which he could not agree with the Resident should be brought before the Council for a decision. The Sultan’s own local nominees enjoyed the upper hand as they were on the side of the Sultan and vice versa. On 9 April 1953 they defeated in the State Council the State Treasurer (Incorporation) Enactment, which was meant to give more powers to the British administration on financial matters. The Resident argued that the legislation was intended not to widen the State Treasurer’s powers but only to regularise the existing situation.91 The local members of the Council remained adamant and were poised to gain more control over the burgeoning state coffers. Only the Resident and the State Treasurer had voted in favour of the Enactment.

All the while the Sultan was gaining in maturity; he no longer relied on the advice of the Resident. To make matters worse, the Resident could not even carry out his normal day-to-day administration without exciting the indignation of the Bruneian members of the Council, especially those who grew increasingly vocal and self-confident and were supported by the Sultan himself. On the other hand, the Council’s compliance had become essential if the Resident were to wield authority under the terms of the Treaty in his bid to maintain efficiency and ‘discharge’ his obligations. The British officials especially loathed the role of the conservative Pengirans, i.e. nobles, who had seats on the Council and were behind the Sultan’s intransigence. Hence the High Commissioner proposed to retire all the obstructive Pengirans from the State Council and give them only a ceremonial role in a newly envisaged Privy Council. It was also necessary to separate the State Council’s executive and legislative functions. Overall, the British plan was to restrain the Sultan by turning him into a constitutional rather than absolute ruler. For that purpose constitutional safeguards were needed.

The crucial question was this: Did the British Government have the legal authority to frame a constitution for Brunei? Under the 1905-06 Supplementary Agreement, the Brunei sovereign was an independent ruler, and enjoyed equal status with a British monarch. Brunei was thus an independent state rather than a colony, and the British could not launch a constitution through an Order-In-Council. In effect, Britain could do nothing to contravene the terms of a Treaty that recognised the

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Sultan’s sovereignty. Hickling’s Memorandum lays down the arguments neatly on this issue, which forms a central feature of his whole exercise.

Sultan Omar was shrewd enough to understand the power he wielded. He needed to restrain, if not abolish, the overarching power of the British Resident under a revised Treaty. Moreover, as a sovereign Malay Sultan, he alone could grant a constitution to his people. He would not be dictated to but would ensure that he was the sole power in the exercise of authority in his country. On 12 May 1953 the Sultan delivered an epoch-making speech, expressing his desire to grant a constitution. The Sultan’s opening statement reads:

> For some time it has been my intention and desire to grant my people a written constitution by means of which provision can be made for the Government and well being of the State of Brunei. It is my wish to set out in this constitution firstly the laws by which the succession to the Sultanate shall be secured, and such other matters relating to the Sovereign and his family as is right and proper, and secondly the composition, powers and duties of the State Council together with rules for the conduct of the State business and for the making of laws.92

Apparently in this Titah the Sultan was echoing as much the sentiments of the British as his own. While retaining the British protective umbrella, the Sultan proposed to enjoy full regal power. In the contest to follow, the British simply could not balance their altruistic ideal of introducing progressive constitutional government with the desire to safeguard their own commercial and strategic interests.

Brunei’s constitutional future was also mixed up with another intractable geopolitical problem of the day. The British did not merely want to introduce constitutional government only to Brunei, but also to their Borneo colonies of Sarawak and North Borneo. Uniting the three Borneo territories for administrative, economic and political reasons was an important priority. A uniform political development of the British Borneo States remained the sine qua non for introducing reforms and modernization. The British offered to safeguard the Sultan’s throne for generations to come as a means of securing his compliance to constitutional reforms.

Having declared his intention to grant a constitution in May 1953, the Sultan appointed a Malay Constitutional Committee in July to make recommendations to accommodate rising Bruneian national aspirations. The local advisory committee of seven people came to be known as Tujuh Serangkai (seven branches).93 These gentlemen, as the High Commissioner commented, ‘did satisfy

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92 The Sultan’s Titah. The speech is also reproduced in full in Memorandum, pp. 79-81.

93 Headed by the Sultan’s cousin, Pengiran Maharaja Leila Muda Abdul Kahar bin Pengiran Anak Abdul Yasin, the Committee’s
public opinion and certainly represented a wide variety of views ranging from the very advanced opinions of the teaching profession to the strictly orthodox and reactionary convictions of the mosque officials.\(^{94}\) Their mandate was to draft a report and advise the Sultan, after they had interviewed members of the public and studied the constitutions of other Malay states. The committee first toured the four districts of Brunei, and then visited the Malayan states of Johore, Negeri Sembilan, Kedah and Kelantan. The spirit of the recommendations to be made by a committee overcome by nationalist ambitions was easy to guess. Later, the High Commissioner highlighted the Sultan’s own predicament:

> Throughout these negotiations His Highness has shown great wisdom and firmness in pursuing a middle course between the reckless ambitions of some of the young educated elements, who are represented by a strong and vocal body of school teachers most of whom have recently received training in Malaya, and his own immediate hereditary advisers who naturally prefer the status quo but now are chary of saying so in public.\(^{95}\)

The Constitutional Committee’s report reached the Sarawak authorities by November 1954. Some of its recommendations were too drastic to be implemented. The British needed more time to organise the political future of Brunei, so they could safely transfer power to reliable elements in Brunei. In response, therefore, they made counter proposals.

**The Memorandum**

This was the context in which the Hickling mission to Brunei took place in November 1954. During his short stay in Brunei in November and December in 1954, Hickling worked feverishly to complete the Memorandum. The meagre resources at his disposal apart, he regretted that his researches, especially those into Brunei history, were impaired by a lack of materials.\(^{96}\) He could draw upon his knowledge of constitutional law and some idea in Islamic legal matters.\(^{97}\) As for the recent history of the Sultanate as a protectorate, Hickling consulted mostly the confidential prints of the British Foreign Office, copies

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\(^{94}\) CO 1030/113, Savingram, No. 104, High Commissioner to CO, 5 August 1954.

\(^{95}\) CO 1030/113, Savingram, No 104, High Commissioner to CO, 5 August 1954, Para. 6.

\(^{96}\) Memorandum, Para. 13, see infra, p. 5.

of which were available in both the Sarawak Secretariat and the Resident’s Office in Brunei. The Brunei Annual Reports also became handy, especially the historical introduction that prefaced the 1946 volume. In reconstructing Brunei’s distant past, i.e. the pre-British period, he used Inche Raus Amin’s version of Brunei history. Hickling also met and conducted a limited number of interviews with important members of the nobility, local intelligentsia and Chinese community leaders.

One gets the impression that the Memorandum was intended to reinforce the ideas already circulating among the Sarawak colonial establishment rather than to propose totally new plans. Even before Hickling’s visit to Brunei, the Sarawak officers had drawn up preliminary ‘rough’ draft proposals for the Constitution. It was the work of three officials, namely J. H. Ellis, the Secretary to the High Commissioner, George E. Strickland Q.C., the Sarawak Attorney General cum Brunei’s Ex-Officio Legal Adviser, and Hickling himself. It is hard to determine how much the Hickling Memorandum contributed in modifying their draft. At the outset the Sultan and his advisers agreed in principle to accept the first draft of the Constitution submitted by the acting High Commissioner. That draft yielded very few concessions to the recommendations made by the Sultan’s Malay Constitutional Committee. At that stage the Sultan merely expected the High Commissioner to explain to the State Council the reasons why he could not fully accept the Malay Committee’s recommendations. In fact, as Hickling later recalled, Sultan Omar Ali Saifuddin had asked Hickling to tour the State, and explain the nature of the constitutional proposals.

At this crucial stage the Governor Anthony Abell had gone on furlough to England. His locum tenens High Commissioner Cecil James Thomas took the draft report to be reviewed by the Sultan in his palace, the Istana Darul Hana, on 16 and 17 December 1954. Among those who attended the meeting were Hickling, the Brunei Resident, J. O. Gilbert, and the two principal wazirs. During the drafting of the preliminary version, and during the discussions in both Sarawak and Brunei, Hickling had thus played an important role, especially because he was acting for the Attorney General, George Strickland, who had gone on leave to England.

As soon as Abell returned from his furlough in the UK in late April 1955, he met the Sultan in Brunei. But the Sultan seemed to be in a totally different and defiant mood. The previous meeting on 17 December 1954 between the Sultan and a clueless Acting High Commissioner was a disaster. As Abell was not part of the original discussion team, the Sultan could easily dismiss the agreements

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99 CO 1030/113, High Commissioner to CO, Secret No. 46, 23 March 1955, Para. 2.
100 Ibid.
reached with the team headed by C. J. Thomas. More important, the Sultan having ignored the previous undertakings wanted to start from the scratch expecting, for example, many fundamental changes and alterations to the draft Constitution that had not previously been raised.\textsuperscript{101} The British officials seemed keen to introduce far reaching changes to the political set up of Brunei. Perhaps reminiscing on this constitutional dilemma, Hickling wrote that ‘[O]n the British side, we were beset by the belief that a popular Government of the people, for the people, by the people, is a kind of timeless, moral absolute that is valid at all times, in all places, for all people. Once set down, the proposition looks, and is absurd. Yet many of us, I among them, cherished this kind of delusion, and forced the pace of democracy’.\textsuperscript{102}

Brunei, indeed, offered awkward challenges to the British authorities when they embarked on introducing liberal political changes of their choice. In opposition to this, the Sultan was taking the initiative in entrenching his own power. Yet there were a number of reasons why the Colonial Office treated the Sultan very deferentially rather than risk hurting the sensitivities of an independent Sultan. At no time did he appear to be at risk of being punished by the colonial government for his defiant stand.

**R. H. Hickling (1920-2008): the Man and his Ideas**

Hickling wrote several books, including novels and short stories,\textsuperscript{103} some of them containing valuable reflections on his personal experiences in the East. Above all, it is his autobiography *Memoir of a Wayward Lawyer*\textsuperscript{104} published in 2000 that reveals the mindset and assumptions relevant to our discussion. However, readers must bear in mind that the Memoir was written at a much later stage in his life. One may say that the author had the benefit of hindsight, and in fact was looking back on past events from a current perspective.

Reginald Hugh Hickling passed away aged 86 years at his home town in England at Malvern, Worcestershire on 11 February 2008,\textsuperscript{105} where he had been living a quiet retired life, except for his

\begin{enumerate}
\item CO 1030/113, Anthony Abell to Sir G. C. Whiteley, 7 October 1955.
\item For an obituary of Hickling see "Professor Hugh Hickling: Lawyer who drafted Malaya's controversial Internal Security Act but later regretted the way it was applied [obituary]", *The Daily Telegraph*, 17 April 2004.
\end{enumerate}
occasional visits abroad, especially to Malaysia to give talks. (He was still alive before this book went to press and made some valuable comments on an earlier draft forwarded to him).  

Hickling had a distinguished career in the colonial legal service. Besides his service in Southeast Asia he offered legal advice to many countries, including Sri Lanka, the Yemen Arab Republic, and Gibraltar. In the early phase of his career he was not keen to become an academic. But close upon reaching his fifties he became a Lecturer in South East Asian Law at the School of Oriental and African Studies in London, where he obtained his PhD in law. He returned to Southeast Asia as a Professor of Law and spent most of his academic life in Southeast Asia in Singapore and Malaysia, where he held an adjunct Professorship of Southeast Asian Law at the Universiti Kebangsaan Malaysia. He also taught law for six years at the Charles Darwin University (formerly the Northern Territory University) in Darwin, Australia. Besides fiction, he also published serious academic treatises on various legal topics, including Malaysian Law.

The son of Frederick Hickling, a police inspector, and his wife Elsie, Hugh Hickling was born on 2 August 1920 in Derby, Derbyshire, in the East Midlands. He received his early education at Buxton College. His policeman father hoped that his son would study at Oxford or Cambridge and join the elite. At the interview which was a part of the Oxford University entrance examination, he was asked to evaluate poems of William Wordsworth and of a lesser-known poet, A.E. Housman. Although the expected answer was obvious, Hickling rated the poetry of Housman above that of Wordsworth. The answer shocked the examiner and Hickling failed to gain entry. Reminiscing on the event, he says the examination system was based essentially on ‘diplomacy, rather than scholarship’. Later he said that ‘from the time of that fateful interview, I have been suspicious of brilliant achievement’. This demonstrates a streak of bitterness coupled with rebelliousness in the young man who wanted to do the things that he liked most. By his own admission, he felt somewhat uneasy with the Englishmen of the Oxbridge educated elite, especially those who held power in the colonial establishment. A grammar school pupil, he felt uncomfortable with the Winchester trained boys. After completing his 6th form education, he became an articled clerk in a law firm, and enrolled for one year of approved academic study at the East Midland School of Law. When he sat for the law finals in 1939, the war broke out. He then became an ordinary seaman in the navy. At the end of the war, he sought employment with law firms in London, and from 1946 he worked as deputy solicitor for the Evening Standard newspaper.

106 Hickling to B. A. Hussainmiya, Correspondence, 26 August 2005.

107 Hickling, Memorandum of a Wayward Lawyer, p. 40.

108 Ibid.

109 Ibid, p.56.
Hickling and his wife, Beryl (Bee) Dennett, were heart broken when their firstborn child died and they sought a change of environment. His wife wanted to move as far away as possible from England. So he applied to join the colonial legal service. He had a choice for his first posting overseas: Sarawak or Swaziland. He preferred the former as a result of encouraging words from Sir Charles Arden Clarke, the outgoing Governor. Despite his unfamiliarity with the eastern, and especially the Malay, way of life, Hickling moved to Sarawak with much satisfaction. Little did he think in those days that ‘I was destined to be one of the Englishmen who cheerfully assisted in the dissolution of the Empire’.  

In Sarawak, he first worked under Arthur Grattan-Bellew, the Attorney General who was succeeded by George Strickland, the only legal officers in Government service. The latter, as a seconded officer, doubled as Ex-Officio Legal Adviser for Brunei. Obviously this was an unsatisfactory arrangement, ‘but with not enough people available in service, nothing could be done’. In any case, there were proposals to form a federation of Sarawak, Brunei and North Borneo. The launching of a central judiciary in 1951 for all three Bornean States, which the Bruneians resented, was part of this scheme. When the Application of Laws Enactment was passed in 1951 giving effect to new legal changes in all the three territories simultaneously, the Brunei State Council dragged its feet in ratifying the legislation and agreed to do so only after some veiled threats from the British establishment.

As the Ex-Officio Legal Adviser based in Sarawak, Hickling learnt more about Brunei laws. Thanks to his academic background and wider knowledge of colonial laws, he had acquired some of the expertise needed for undertaking the study on Brunei in 1954. On the other hand, Denis McGilligan from the Sarawak Civil Service, who had in the previous year been appointed as Deputy Legal Adviser in Brunei, lacked local experience. Moreover, the Attorney General was on leave in England. In fact, Hickling was to have been transferred to Malaya, but his transfer had been held up because of this new assignment.

Hickling prided himself of being a man of tradition. By his own admission, ‘when I joined the navy as an ordinary seaman I had discovered - to my own surprise - that what held war together was tradition’. As far as the Malays were concerned in particular, he became convinced that Adat (Malay

100 Ibid, p. 23.
101 Hickling to Tarling, 7 November 1997.
102 It regulated the application in the State of the common law of England, the doctrines of equity and statutes of general application. For details see B.A. Hussainmiya, Sultan Omar Ali Saifuddin III and Britain, p. 132.
103 Hickling to Tarling, 7 November 1997.
104 CO 1030/113, Saving No. 194, High Commissioner to CO, 5 Aug 1954, Para.13.
105 Hickling to Tarling, 7 November 1997.
customary law) played a leading role that was vital to consider in dealing with local societies. Apart from that, the dominant themes of his life in those days were ‘democracy, justice and tradition.’ \(^{116}\)

For Hickling, novel ideas could only be ‘introduced after much conditioning of the people to be affected’. \(^{117}\) This was a view he held about Sarawak too. In an article he wrote in 1956, he quoted the anthropologist Bronislaw Malinowski, in a statement that could also have been attributed to James or Charles Brooke: ‘Rashly applying our morals, laws and customs to native societies would lead to “moral atrophy” and extinction of culture and race’, the anthropologist had written, words as Hickling put it ‘terrifying to the colonial servant’. But self-government, the contemporary objective of colonial administration, could not be attained without bearing such words in mind. Self-government, according to him, had to be ‘attained, if possible, by the maintenance of a stable society, whilst at the same time that society is being persuaded, and indeed urged, advanced to a point at which it is capable of survival in the modern world…. the law must have its roots in society, lest it prove meaningless.’

As a person who loved traditions, what were Hickling’s feelings and attitudes towards the Brunei Sultan Omar Ali Saifuddin who led his state on a ‘neo-traditionalist’ path? In retrospect, Hickling seemed to have had a soft spot for the Sultan, who was ‘sensitive, thoughtful, modest and democratic [in] spirit.’ \(^{118}\) In fact, Hickling later admitted that he ‘felt closest to the Sultan’ compared to the High Commissioner and the Resident with whom he had official dealings. Moreover, Hickling’s main objective was to confirm the authority of the Sultan to promulgate a constitution for the state so that ‘the Sultan could properly do what he sought to do.’ \(^{119}\) In the context of his own admissions, therefore, it seems clear at least on hindsight that Hickling’s sympathies were very much with the Sultan, who had the authority and a royal prerogative to grant a constitution to his people, and that the British could go only so far as to advise him in the process.

But could Hickling, as a colonial servant, so blatantly underwrite the Sultan’s powers when promulgating a Constitution? What would be the (beneficial) outcome for the British who had preserved the Sultanate under their protection for so long? One must remember that Hickling wrote his Memorandum while he was still a newcomer in the colonial service. Wanting in much needed

\(^{116}\) Ibid.

\(^{117}\) Ibid.

\(^{118}\) Hickling to Tarling, 7 November 1997. Hickling in his story ‘The Chief Minister’s House’ - in which he appears in the guise of The Gin and Tonic - he quotes an old Towkay at a meeting on the proposed constitution: ‘would you please go back to His Highness the Sultan and explain that we are very grateful to him for his thoughtfulness, and we have no doubt that this democracy business you mention is a good idea but, if it is all the same to him, tell him we are quite happy with the present system, and shall be content if he would leave things as they are.’ The Gin and Tonic reacted with horror, now he thinks that ‘I was being clever,…but he was simply wise.’ The Dog Satrycon, Petaling Jaya, Pelanduk Publications, 1994, p.4.

\(^{119}\) Hickling to Tarling, 7 November 1997.
experience, he chose to walk a tightrope, contriving to prop up the official line of thinking on the political future for Brunei. As long as he cited the right sources to support his views, he thought he would be on safe ground by offending neither the British officialdom nor the Sultan. No doubt, much of Hickling’s Memorandum was culled from second-hand information from various sources on Brunei history and traditions. Many more details have come to light since then from the writings of scholars on Brunei.\(^{120}\) However, Hickling was the first to highlight some other important sources, using them to support cogent arguments for treating Brunei with care, albeit sternly. Rather than prescribing his own views, he endeavored to persuade by implication.

The Memorandum deals with many salient aspects of Brunei history, society, law, government, politics, and above all its constitutional status vis-à-vis British protection. It provided succinct summaries on all these issues. Although he consulted limited sources on many issues, Hickling actually was not far off the mark. His views corroborate, in fact, much that we know today of Brunei politics and history. He was not a specialist in Malay history and politics able to draw on comparisons with other states of the Malay Peninsula. Even so, despite such limitations of time and sources, Hickling achieved something worthwhile that helps us understand Brunei politics and government in the 1950s.

Unlike other British officials who reported on Brunei in the past, Hickling emphatically underscored the fact that Brunei had a ‘Constitutional Government’ albeit of old vintage implying that whatever changes were proposed must respect the Sultanate’s age-old strong traditions and history. The Sultans of the pre-residential era had governed according to stereotyped formulae. Although these were not very complex, the system provided clear-cut rules which derived from hierarchically structured land and tenure rights.

The government, with the Sultan at its apex, was a hierarchical structure of officials with specific rights and duties. As early as the sixteenth century Brunei practised elaborate statecraft similar to the legendary kingdom of Melaka which is regarded as an archetypal Malay state. A sixteenth century document written by a Spanish official from Manila, who had been residing in Brunei, explains in minute detail its government and institutions, including its legal system.\(^{121}\) Further details of both the ideal and actual government of Brunei have emerged in nineteenth century sources and allow a fairly lengthy description of its institutions and functioning.\(^{122}\) Hickling cited local authorities listing the duties and obligations of the traditional state officials, namely the Pengiran Bendahara, the


\(^{122}\) Brown, *The Structure and History*, pp. 86-118.
Pengiran di Gadong, the Pengiran Pemancha, the Pengiran Temenggong, and Pengiran Shahbandar. The Sultan was not an absolute monarch, but had to consult his principal officers before taking major decisions for the state. As Hickling concluded: ‘...in theory it will be clear that the Sultan has always been regarded as a constitutional monarch, acting on the advice of his Ministers.’\footnote{123} In reality, however, on the eve of British protectorate rule, the Sultan only possessed, as McArthur says, ‘the shadow of power conferred by his so-called sovereign rights’.\footnote{124}

Hickling’s approach was a marked departure from the viewpoint of several nineteenth century western observers who commented disparagingly about the Brunei system of government. British officials were influenced by certain objectives: either to end the monarchy in Brunei or to recommend its modernisation. Thus James Brooke saw his original task in Sarawak, as ‘restoring legitimate Government’ in an area in which it had collapsed.\footnote{125} Brunei virtually lacked government according to the British Consul Hewett, who said that ‘properly speaking it cannot be said that anything in the nature of a Government has up to the present existed in Brunei’.\footnote{126} McArthur was no exception when depicting Brunei as having ‘no system of Government in the usual acceptance of the term—but only ownership.’\footnote{127}

For Hickling, Brunei did have a government and its form was not peculiar to Brunei. One must bear in mind that in the Malay states in general, government was conducted more on a personal basis than in a bureaucratic manner. In the words of a modern scholar of the Malay states: ‘Authority was not specific, functional and institutionalised, but personal and generalised.’\footnote{128} Such a form of government was different from that in the modern West, but it was still a form of government. Some accounts likened the Brunei situation to the ancient feudal system in Europe.\footnote{129} The government in Brunei followed a customary legal system that, as Hickling would argue, formed part of its own (unwritten) constitution. To illustrate, Hickling quoted extensively from a letter of 1885 in which the Sultan described key features of the Brunei ‘Constitution’ and said: ‘Since we became Sultan this

\begin{itemize}
\item<123> Memorandum, Para. 34.
\item<124> Citing from \textit{McArthur Report of 1904}, Hickling Memorandum, para.17.
\item<126> Quoted from Memorandum. para 16. Hickling described Hewett ‘as a prejudiced observer’.
\item<127> \textit{McArthur Report of 1904}, Para. 54.
\item<129> ‘I cannot better convey an idea of this form of government, than to say it bears a near resemblance to our ancient feudal system; for, although there is more respect paid to the Regal Power here, than in any other Malay country I have been in, (for this obvious reason, that the Sultan has entirely the power of appointing the great Officers of state, and each of course can always influence the public councils) yet, however, each Pengiran has the entire sway over his particular Dependants, whose cause they never fail to espouse, even where he may stand in opposition to the Sovereign Authority’. John Jesse, ‘Substance of a Letter, to the Court of Directors, from John Jesse, 20 July, 1975, at Borneo Proper’. In Alexander Dalrymple, (ed.), 1791-1797 \textit{Oriental Repertory} II, 1, pp. 1-8. Cited in Brown, \textit{Brunei: The Structure and History}, p. 90.
\end{itemize}
long time we have followed the ancient custom of former Sultans. After our death our successor must follow these customs, in order that no complications may arise in the country.\textsuperscript{130}

Brunei custom indeed did form the basis of an intricate form of government. Being of considerable antiquity, it shared features of the Malay model of government that was widespread in the region.\textsuperscript{131} An eighteenth century observer opined that the Brunei Sultan enjoyed more ‘Regal Power’ than was the case in other Malay states, because the Sultan possessed ‘entirely the power of appointing the great Officers’, and could ‘always influence the public Councils’.\textsuperscript{132} Hickling concurred: ‘the Sovereign’s prerogative powers appear to have extended, not only to the nomination of an heir (in conformity with the custom) and the State Lands, but also to the appointment of the Regents.’\textsuperscript{133}

Once Brunei signed the Protectorate Treaty in 1888 and the Supplementary Agreement of 1905-06 introducing the Residency System, the ancient customs of Brunei underwent substantial changes. The Sultan’s executive powers were curtailed, while Brunei’s principal ministers had lost their hold on the Government. A positive outcome of the new administration was the solution to the problem of succession to the Brunei throne as the British protection guaranteed not only the sovereignty of the state, but also put a stop to instability in the succession process that blighted the Brunei throne. Both the 1888 Protectorate Treaty and the Supplementary Agreement of 1905-06 implicitly ensured Her Majesty’s Government’s intervention should there be a problem.\textsuperscript{134} Sultan Omar Ali Saifuddin insisted that the unwritten law and traditions governing succession should be included in a clear and unambiguous manner in an Enactment which should come into force on the same date as the Constitution. The matter was examined in some detail by Hickling\textsuperscript{135}, who consulted the Sultan, his associates and many eminent Brunei Malays. His authoritative information provided the basis for drafting the first ‘Succession and Regency Enactment’ in 1959.

\textbf{Protectorate or Protected State?}

One of the difficult issues which Hickling had to deal with was the nature of sovereign powers of the Sultan under British protection. He felt ‘some difficulty in deducing the true constitutional position of sovereignty in Brunei’, given the wide powers in the Supplementary Agreement and

\begin{itemize}
  \item \textsuperscript{130} Ibid., p. 10. See also D. E. Brown, ‘Sultan Abdul Mumin’s Will and Related Documents’, \textit{BMJ}, Vol.3, No.2, 1974, pp. 156-70.
  \item \textsuperscript{131} Brown, \textit{The Structure and History}, pp. 86-92.
  \item \textsuperscript{132} Cited in Ibid, p. 90.
  \item \textsuperscript{133} Memorandum, Para. 35.
  \item \textsuperscript{134} For example see article II of the Protectorate Treaty of 17 September 1888. ‘In case any question should hereafter arise respecting the right of succession to the present or any future Ruler of Brunei, such question shall be referred to Her Majesty’s Government for decision.’ Also see article III of the 1905-06 Supplementary Agreement.
  \item \textsuperscript{135} See the details in Memorandum, Para. 27-35.
\end{itemize}
subsequent constitutional practice. He also delved into the perennial arguments about the nature of British control over protected states. Colonial authorities and scholars have different definitions of a protected state and a colonial protectorate. In the former, as Halsbury puts it, the administration is conducted in the name of the local sovereign and in the latter by the British Crown. Brunei, as the authorities generally agreed, was a protected state. On the other hand, Hickling opined that its exact position was ‘far from clear’. His argument was that Brunei indeed was such a protected state under the 1888 Agreement. But the provisions of the subsequent 1905-06 Supplementary Agreement had changed the status of the Sultanate to that of a colonial protectorate as defined by Halsbury. Under the new Agreement the Sultan had to act on the Resident’s advice, and therefore in Hickling’s view ‘the status of Brunei approximates more closely to that of a colonial protectorate than to that of a protected state’.

Connected to the distinction between a protected state and a colonial protectorate was the application of the Foreign Jurisdiction Act [FJA] of 1890. Under that Act the Crown could legislate in a protected state, in theory merely to exercise its jurisdiction over British subjects in so far as this was conferred by treaty with the sovereign of the territory concerned, though in practice it generally extended further. In a colonial protectorate the jurisdiction of the colonising power was more or less complete. Hickling reached the conclusion that it would be possible to confer a constitution on Brunei ‘by means of an Order in Council under the Foreign Jurisdiction Act’.

His legal argument seems, however, to have been faulty. The fact that a sovereign has to take advice does not necessarily mean that the adviser shares or absorbs sovereignty. Indeed the British Government had not taken such a view in respect of the peninsular states. The main object of the notorious mission of Sir Harold MacMichael to the Peninsula in late 1945 was, after all, to secure revised treaties with the Malay rulers conferring on the British Government full powers to legislate under the FJA, for even in the FMS the British did not conceive of themselves as sovereign. Their powers under the FJA themselves did not amount to sovereignty, though they were not anxious to clarify the point. The attempt to increase their authority was indeed to create a political uproar.

136 Memorandum, Para. 84.
138 Memorandum, Para. 138.
139 Ibid, Para. 141.
140 Ibid, Para. 142.
141 Ibid, Para. 141.
among the Malays that undermined the proposed Malayan Union. That, of course, only underlined the correctness of Hickling’s political judgment, whatever the validity of his legal reasoning. It was, as he put it, not ‘the correct solution’. Indeed the British authorities, as he noted, had dropped the idea of securing additional powers from the Sultan.

**Nationality Issues**

Another crucial issue highlighted in the Memorandum was the question of Malayan nationality and citizenship that virtually killed the Malayan Union proposals. Particularly problematic was the issue of Chinese citizenship rights based on the *jus soli* principle of citizenship by place of birth. The Chinese in the Federation became unhappy when the Malayan legislators refused to recognise the *jus soli* principle in the case of Chinese who were born in the Peninsula and considered this a breach of international law. But their rights were enshrined in later acts giving many Chinese and others the right to acquire Malayan nationality. It was known that the Brunei Sultan’s subjects resented the inclusion of the Chinese into their own state on the *jus soli* principle, and visiting Malayan dignitaries to the Brunei court, according to British reports, advised the Bruneians not to repeat the Malayan experience.

It was not surprising therefore that Hickling devoted perhaps disproportionate space to the discussion of this one issue in such great detail. Much reluctance was evident on his part in defining Brunei citizenship or nationality. In contrast, the Malay Committee recommended clear-cut legislation to determine the status of the subjects of the Brunei Sultan. By solely acknowledging the birth rights of the seven indigenous nationalities in the context of rising nationalist fever in Brunei, it was becoming evident that recent immigrants, mostly Chinese, were in danger of being sidelined under the proposed nationality enactment. It seemed that during the recent visit of the Malay Committee to the Peninsula, they were reminded everywhere ‘about the danger of Chinese expansion’. Throughout their report there were references to citizenship and immigration laws so as to protect the Sultanate from foreign influence and infiltration. Thus the Malay Committee proposed in part ‘F’ of its Report some very severe restrictions on the acquisition of Brunei citizenship by foreigners other than Malays, an issue that has become difficult to retract even today.

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143 Memorandum, Para. 144.
144 Ibid, Para. 123.
146 ‘Puak Jati’ as it was defined in the Nationality Enactment of 1961, including Brunei Malays, Kedayan, Belait, Tutong, Dusun, Bisaya and Murut.
147 CO 1030/113, Saving, 104, High Commissioner to CO, 5 August 1954, Para 3.
INTRODUCTION

In the peninsular Malay States, the absence of a nationality enactment had left the status of the large Chinese community undefined. There had been correspondence on this issue in the 1930s between the FMS High Commissioner Sir Cecil Clementi, and the Colonial Secretary J.H. Thomas. At no stage in the discussion was there any doubt that the Chinese born in the Malay States were, in fact, subjects of the Rulers or that their status as British Protected Persons was derived from the fact of their being subjects of the local rulers. British nationality policy in the FMS based on the principle of *jus soli* had always assumed that locally born persons were subjects of the protected states and thereby accorded British Protected Person status.

Hickling’s view seems to be that “any person born and resident in Brunei is a natural born subject of the Sultan” even though he did not wish to offer a definition of the term “natural born subject of the Sultan”. Such a person (who satisfied the birth and residential criteria) could even be a Chinese who held dual nationality as a subject of China based on the Chinese Nationality Law of 1929 (that made a Chinese born anywhere a Chinese subject).\(^\text{148}\) It would appear that Hickling answers the question of whether a Chinese could be both a subject of the Sultan and a subject of the Chinese government in the affirmative.

But herein lies a problem: who should be defined as a “subject” of the Sultan? In Malaya the problem was that the sovereign Malay rulers who ruled over the Malay *Kerajaan* would not accept the alien Chinese, even locally born, as their subject since the latter (1) were not Malays, (2) did not embrace the Islamic faith and (3) did not follow Malay customs. As the Malay rulers enjoyed internal sovereignty under the terms of the Anglo-Malay treaties, it would be outside the scope of Britain’s legal authority to define who should be the “subjects” of the rulers. In the same way the Brunei-British Supplementary Agreement of 1905-06 which was derived from the Anglo-Malay treaties, stated that the advice of the British Resident must be taken and acted upon in all questions other than those affecting the Mohammedan religion. Would then Britain’s power also include the right to decide who could be the “subject” of the Brunei Sultan? In the Malayan case, British legal advice made it clear that Britain did not have the jurisdiction to legislate so. If this was the case for Brunei, then Carnell’s statement (that Hickling cited)\(^\text{149}\) suggesting that there could be “Chinese subjects” of the Rulers (referring to the Malayan example) would appear to be misleading. On the other hand, Chinese residents could still qualify under the separate categories of British protected persons (based on the provisions of the Order in Council of 1949) as British subjects. Moreover, for Hickling, the problem of Chinese possessing dual nationality did not seem to be a major hurdle.

\(^\text{148}\) Memorandum, Para. 112-114


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38 | *Brunei: Traditions of Monarchic Culture and History*
In the proposed Brunei Constitution, electoral politics required a definition of the citizenship status of the Sultan’s subjects to determine who would be the electors, i.e. voters in the process. This was an additional sensitive issue which Hickling had to deal with. His recommendation took account of the political implications of such a step. According to him there was no undue hurry to introduce a specific Nationality Act as recommended by the Malay Committee which wanted the exclusion of the Chinese in any proposed legislation. For Hickling this issue could still be resolved under the British Protectorates, Protected States and Protected Persons Order-in-Council of 1949, (applicable to Brunei, which was an adjunct to the British Nationality Act of 1948) in order to protect the interest of non-Malays in Brunei for some time to come. Nonetheless, Hickling was apprehensive and admitted:

My own fear is that by giving shape and definition at the present time to the urgent demands of what might not incorrectly be described as Brunei nationalism, the development of the three Borneo territories (at least) into a healthy and strong federation capable of taking its place in the international community may well be retarded; and for this reason I am reluctant to recommend the taking of such a step without the most serious reflection upon its necessity at this time. To create a separated nationalism out of a total population of approximately 55,000 people, of whom perhaps more than twenty per cent might qualify therefore, appears to me likely to lead to serious difficulties at a later stage.\textsuperscript{150}

It is important to note at this juncture how this nationality question was handled by the British legislators.\textsuperscript{151} The definition of nationality issues and the delineation of territorial borders are at the

\textsuperscript{150} Memorandum, Para. 111.

\textsuperscript{151} Great Britain had an imperial and extensive conception of territory so that \textit{jus soli} encouraged voluntary immigration. Before the Second World War, all subjects of the British Empire were equal in their allegiance to the monarch and all persons born in the territory of the Empire could gain British citizenship simply by residing in the territory of the United Kingdom proper. Following the Canadian example, the 1948 legislation on nationality had taken into account the emergence of six separate forms of citizenship, the most important of which was the British one and that of the Commonwealth countries. These six forms of citizenship together constituted the concept of British nationality. After this extensive application of \textit{jus soli} led to the arrival of an unexpected number of colonial immigrants in the United Kingdom who soon became citizens, British legislation on nationality underwent a swift and silent revolution away from extended and pure \textit{jus soli}. From the mid-fifties onwards, Great Britain modified its legislation to restrict further immigration from Commonwealth countries. The passing of the Commonwealth Immigrants Act in 1962 and of the Immigration Act in 1971 put limits to their freedom of entry into the United Kingdom and created an intermediate distinct category between nationals and aliens: patrials, or those benefiting from a right of abode. This right was attributed to citizens of the United Kingdom or to those of the colonies, provided that they were born, adopted or registered in the territory of the United Kingdom, or that they had been residents in the United Kingdom for at least five years. The 1981 legislation created a British citizenship. It automatically attributed \textit{jus soli} to children born in the United Kingdom of a British citizen or of a non-British permanent resident born in the United Kingdom. Otherwise, a minor could acquire British citizenship if he resided in the United Kingdom for ten continuous years prior to applying.
core of a nation-state. If territory determines the geographical limits of state sovereignty, nationality determines who owes full allegiance to that state. Beyond these limits one will find foreign land, foreign sovereignty and foreigners. Drawing territorial boundaries within which some persons are included as citizens and others excluded as foreigners, and permitting some foreigners to acquire citizenship under certain conditions and some citizens to lose their citizenship, is a prerogative of the state which it exercises by various legal means which may be set out in nationality law. One of the tools used to define nationality is the principle of the determination of a person’s birthplace – or *jus soli*: the fact of being born in a territory over which the state maintains, has maintained, or wishes to extend its sovereignty.

As for Brunei, there were protracted discussions between the British administration and the Brunei Sultan over the merging of three British Borneo territories, which had implications for the citizenship of the Chinese. The entire Sarawak British officialdom, including Hickling, supported the merger for political and economic reasons by which all three territories stood to benefit. In contrast, the Brunei Sultan and his advisers adamantly refused it, unwilling to share their newly found wealth with the adjoining territories, even though these had once been part of Brunei. Any step to define a Bruneian nationality, nay a Brunei identity, at that crucial stage of negotiation of a Borneo federation was certain to nullify the Borneo States proposal. Furthermore, Hickling was concerned that by introducing a separate Nationality Act in Brunei, where only twenty percent of the Sultanate’s population would qualify, might lead to serious difficulties at a later stage. For that reason he advised ‘that the problem of local citizenship can be shelved for some time’.

**Language of Law**

While soft-peddling on such issues as the Nationality Enactment, in other areas Hickling preferred a strict legal approach. He appropriately sharpened the language of the proposed legislation, especially in such areas as the High Commissioner’s powers in order to remove the ambiguities in past agreements with regard to *de facto* British control of Brunei. One of the principal demands of the Bruneian side had been to abolish the position of the British Resident and to replace the office with either a person to be styled as the British Adviser, or better still, to have a High Commissioner to be resident in Brunei. The powers of the Resident or the Adviser would be transferred to a local *Menteri*

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152 Perhaps Hickling was right in the context of the intractable problems of giving Brunei national status to many Chinese residents in Limbang, Sarawak, which was a thorny issue in Brunei’s rightful claim to part or all of Limbang. The strict Brunei citizenship laws are so rigid that the Chinese in Limbang may not qualify, and even if they did, there were a number of stateless persons of Chinese origin inside Brunei whose status needed to be settled.

153 Memorandum, para 117.
Besar as the Malay Committee desired. This was indeed a drastic demand which the British would not yield to. In the past British authority in Brunei was exercised on thin legal grounds under the purview of the Advice Clause in the Supplementary Agreement. The proposed Constitution and Agreement should be drafted, as Hickling saw it, with as few complications and ambiguities in its language as possible, if the British were to be effective in their future role in Brunei vis-à-vis the Sultan.

The Supplementary Agreement of 1905-06 gave wide and general powers to the British Resident which as Hickling thought was creating some difficulty in ‘deducing the true constitutional position of sovereignty in Brunei.’ But any proposed legislation, under the new Constitution for the State, must require the assent of the High Commissioner before acquiring the force of law, Hickling concluded. He did not want to go into the details of the allocation of powers that were meant to be included in the draft Constitution for Brunei. Although he detailed the various powers of the British Resident/Adviser and the High Commissioner in the draft Constitution, he avoided commenting on the controversial Menteri Besar issue which was very close to the hearts of its Malay promoters.

By the time the original constitution idea for Brunei was mooted, the Colonial Office had come to realise the legal loopholes in the way the laws had been passed by the British administration since 1906. In 1949, the British had realised that crucial aspects of their authority in the Sultanate stood on flimsy legal foundations—a discovery that they kept pretty much to themselves. Indeed there were serious procedural lapses in the way that the British Residents had been passing laws for Brunei. By invoking the Sultan’s name, the Residents were quite accustomed to pass laws - known as Enactments - through the medium of the Brunei State Council, where the Sultan was expected to preside in person. The controversial land legislation between 1907 and 1909 passed against the protests of the Ruler despite the understanding that the Sultan of Brunei was an autocratic sovereign when he alone (unless he delegated his powers) could make laws for the Government of the State. The Protectorate Agreement of 1888 and the Supplementary Agreement of 1905-06 had not given the Resident authority to pass legislation for Brunei but only to give effective advice. Yet, using the de facto executive authority of the ‘advice clause’ in the Agreement, the Residents had arrogated legislative powers to themselves.

154 Memorandum, Para. 84.
155 Ibid.
156 Possibly Sultan Ahmad Tajuddin’s proposed visit to the UK in 1950 to negotiate with the Colonial Office regarding a revision of the treaty prompted British authorities to review their legal status in Brunei.
157 C. H. Dawson, Abell’s predecessor as Acting Governor of Sarawak and High Commissioner for Brunei, on the advice of Arthur Grattan-Bellow, the attorney general of Sarawak, seems to have been the first official to raise this issue with the Colonial Office. CO 943/1, (59706), Item 1. C. H. Dawson to A. Creech Jones, Secretary of State for the Colonies, No. 7, 14 October 1949, Para. 2.
INTRODUCTION

The colonial administration was naturally worried about the fact that the Enactments passed since 1907 had a dubious legal basis. The Sultan and the lawmakers did not formally approve them although the legislation had been passed under the guise of the Sultan-in-Council. What if any one did challenge the validity of Brunei laws in a court of law? Summarising the predicament a Colonial Office legal expert, J. C. McPetrie, stated in 1950 that ‘subject to the Treaties, the Sultan is an absolute sovereign, and . . . law making power must be vested in him. The Council has no legal status. There is no constitution, or at least no written constitution, for the state, and the form and method of legislating are not prescribed anywhere’. 158

This confirms that the Sultan’s assent was formally needed to make laws. The Enactments thus passed in the Brunei State Council from 1907 to 1930 were revised and collated in book form, and although the book claimed to be issued ‘by authority’, it was not in fact backed by any statutory authority. Nevertheless, as the law courts officially accepted all such public statutes, there was no doubt that the book would be accepted as authentic. But Enactments passed after 1930 had not even been collated in book form until 1949, and that created an obvious legal issue. The individually printed copies of the Enactments did not claim to be printed ‘by authority’ and did not bear the name of any authorised printer (Brunei did not have a Government Printer until 1951).

To resolve this difficult issue the Colonial Office legal experts initiated a course of action to revalidate the laws, lest legal complications could arise if someone decide to challenge them in a proper court of law.159 Thus the year 1951 saw the introduction of several important legal Enactments. It was not a mere coincidence that in one year a record number of eighteen legislative Enactments were submitted to the Sultan-in-Council for approval. The scope and implications of most of the Enactments thus passed were far-reaching. First, the Interpretation and General Clauses Ordinance gave retrospective statutory validity to the laws already passed. Other Enactments bound Brunei to the neighbouring states of Sarawak and North Borneo, such as Enactment No 11 known as the Superior Courts (Authorization) Enactment (which provides for the replacement of the present superior courts by such court or courts as Her Majesty may by Order-in-Council establish and provide for the hearing of such appeals from such Courts or Courts by Her Majesty in Council). The Courts Enactment of 1951, which came into force on 1 May 1952, transferred to the High Commissioner, by virtue of the Enactment, powers of reprieve and pardon in capital cases.

With the passing of additional Enactments, and especially in their application to all the three Borneo territories, some legal conflicts emerged in relation to the actual powers of the High Commissioner for Brunei. For instance, with effect from May 1, 1952, Brunei also adopted the

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158  CO 943/1, (59706), J. C. McPetrie’s Minute to Sir Kenneth Roberts-Wray, 20 June 1950, Para. 3.
159  J. C. McPetrie highlighted the fact that the State Council had no legal authority to function in this manner. Ibid.
Sarawak Penal Code, and this appeared as Chapter 22 in the revised edition of the Laws of Brunei; and by section 54 of the Penal Code the Sultan alone is given the power to commute a death sentence, a provision in conflict with the more recent amendment to the Brunei Criminal Procedure Code. Hickling rightfully highlights the legal complications from introducing laws with retrospective effect. As he admitted, ‘to the lawyer as well as, no doubt, the laymen, the situation has become obscure, and it is a matter of some difficulty to determine the present correct constitutional practice to be followed in relation to the confirmation of sentence of death in capital cases, reprieve and pardon etc.’\(^\text{160}\) These and other difficulties made him to admit that

I offer the foregoing views with some diffidence, since the exact legal position is far from being as clear as it should be; but from the purport of the Enactment of June 24, 1953, it is clear that it was never intended, by the Courts Legislation of 1951, to derogate from any powers the High Commissioner would have on this important topic.\(^\text{161}\)

A Summing Up

The Hickling Memorandum, as noted earlier, did not prescribe any specific provisions that were meant to be included in the proposed Constitution for Brunei. However, having been part of the legal team in Sarawak, Hickling played some role in the actual drafting of some key provisions of the Constitution, especially with the language in the draft. He placed a high premium on precision and clarity while also underscoring the dictum that “the colonial draftsman had to draft his laws in such a manner that they could be clearly understood”.\(^\text{162}\) Elaborating further he wrote:

Laws must be expressed in simple terms that can readily be understood not only by those who make and administer them, but also by those to whom they are applied - a degree of imprecision may sometimes be desirable, for while a tight suit may be attractive, it can seldom be worn with comfort.\(^\text{163}\)

It is pertinent to observe that with hindsight, and especially so in his later years, Hickling seemed to have felt some form of angst for having to impose the colonialist will on local societies.

\(^{160}\) Memorandum, Para. 95.
\(^{161}\) Ibid, Para. 96.
\(^{162}\) Ibid, p. 183.
\(^{163}\) Ibid, p. 188.
INTRODUCTION

For instance, when he served as a legal draftsman in Malaya, towards the end of emergency rule, he became the ‘notorious’ architect of the draconian Internal Security Act (ISA) of 1960. Many years later a distinguished local lawyer took Hickling to task on this Act by suggesting that the draftsman was responsible for the inequities of the Act. Hickling was quick in replying that the draftsman too had a conscience but did not make policy. Nonetheless, Hickling felt the protestor made a valid point and admitted that ‘a draftsman should refuse to proceed with any proposal repugnant to his conscience, from however high an authority that proposal may emanate’.\(^{164}\)

So how does this episode explain Hickling’s real stand towards Brunei? What were his obligations and his brief as a colonial servant in the 1950s? Was Hickling an ‘imperialist’ who wanted to perpetuate the British supremacy over Brunei and subjugate the sovereign Sultan to the High Commissioner’s authority until such time as the British could withdraw nominally? Or did Hickling unduly caution the Colonial Office from taking an affirmative, if not an aggressive, stand towards Brunei and its ruler during the negotiations about the Constitution? In view of the difficult position the British authorities faced at the time and also because of the middle path trodden by people like Hickling, the task of drafting a satisfactory constitution for Brunei to satisfy both the British requirements and local aspirations was rendered difficult. Ever since the first constitutional drafts were mooted, the British had to retract many clauses to accommodate the Sultan’s wishes, making the whole exercise almost a ‘non-event’.

Demanding many fundamental changes and alterations to the draft Constitution,\(^{165}\) the Sultan refused to entertain restraints on absolute monarchy. He was unwilling to hand over power to non-aristocratic groups, initiate electoral laws or nationality enactments to accommodate the interests of the British Protected Persons, control over finances, and public service and so on. Throughout the negotiations, the British offered several drafts for approval by the sovereign Sultan, and every time these were rejected by the Palace. The Sultan took the firm stand that Brunei was not a colony and sovereignty rested in him and it was his prerogative to grant a constitution. He tried to extract maximum concessions from the British to establish his supremacy as the *de facto* local sovereign. Playing a clever game, the Sultan’s advisers inserted many amendments that virtually undermined both the letter and spirit of the original drafts of both the Constitution and Agreement. Thus the proposed amendments dismayed the British to the extent that they thought that the objective was to make them give up the whole exercise, while the Sultan gradually gained maximum power and privilege in the process through successive concessions granted to him by the British law makers.\(^{166}\)

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\(^{164}\) Ibid, p.130.

\(^{165}\) CO 1030/113, Anthony Abell to Sir G. C. Whiteley, 7 October 1955.

\(^{166}\) 1030/461, Secret and Personal. E. Melville to Anthony Abell, 24 July 1958, Para. 8.
On the ground, the colonial promoters of the Brunei Constitution, especially High Commissioner Abell, had regretted Whitehall’s failure to take coercive measures against the Sultan and his State Council which made it impossible for the administration to carry through their ideas. No doubt the Colonial Office let the Sultan off the hook on many occasions during the negotiations before the final promulgation of the Constitution.

With regard to Brunei, the British acted with the conviction that they were dealing with a sovereign king of another state, regardless of the ambiguities of its status as a British protected territory. At the outset, the Sultan of Brunei perhaps did not realize that the intention behind the British prodding was to rationalise his country’s political future in order to bring his state in line with British ideas also applied in other post-colonial states. On the contrary, having made the initial announcement, and relying on his own Constitutional Committee’s recommendations, he would have expected the British to assist him through their learned advice to formulate a constitution of his own choice. That explains why he gave the green light to the British to prepare the legal instruments.

Abell, on the other hand, as the promoter of the Constitution, later felt he was not fully supported by the Colonial Office in introducing British conceived reforms in Brunei. It is a complex story discussed in detail elsewhere. Suffice to say that the original draft in which Hickling had a hand underwent a metamorphosis by the time it was finally promulgated after an almost six-year protracted tussle. So what was the responsibility of Hickling, who was a member of the drafting team, in this fiasco? More specifically, what portion of responsibility should he bear for the failure of the British to introduce democratic reforms in Brunei? With hindsight, Hickling seems to be trying in his Memoir to distance himself from admitting responsibility for this matter.

Hickling must have had his views and perceptions, but given the need to reform Brunei, he preferred to be on the side of his masters. His task was to draft a constitution, and in accordance with ‘the principles of which had already been settled’. All he could achieve was to advise the legal department and, where possible, to rid the draft constitutional proposals of ambiguities. It was not up to him to implement the draft, but he stood firmly behind the High Commissioner in his attempt to define the future role of the British in Brunei. Whether he was sympathetic to the Sultan is hard to determine. In fact, he reminisced about the Sultan in his later years saying ‘he was a quiet but remarkable Ruler’. He went on to elaborate:

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168 R. H. Hickling, Memoir of a Wayward Lawyer, p. 106.

As head of a small state Sultan Omar Ali Saifuddin needed the protection of a powerful friend such as Britain, but he was a thoughtful, careful man, and not one to be hurried into precipitate action, either in the establishment of a Borneo Federation, or a state within Malaysia. He cherished the independence of his state, and successfully maintained it to the limits that were possible, appreciating Pope’s lines.

*for forms of Government let fools contest,*

*whatever is administered is best.*\(^{170}\)

Whatever the outcome of the Memorandum may have been at that time, the British deferred to Hickling’s advice in one area at least: introducing a constitution for Brunei was not merely a legal issue, but more of a political matter. Probably the British Government could have bulldozed its way by means of an Order-in-Council under the Foreign Jurisdiction Act. But that was not to be. For, Hickling’s last words in the Memorandum ‘however neat and secure such a method of promulgation might be, it does not offer the correct solution’ \(^{171}\) — carried the day.

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\(^{170}\) i.e., Epistle III.

\(^{171}\) Memorandum, Para. 144.
Part 2

THE MEMORANDUM
Editors’ Note

The Hickling Memorandum is reproduced in the following pages as closely to the original as possible. It has not been possible, because of the poor quality of the original text to produce a facsimile edition of the Hickling Memorandum but the ‘typewriter fonts’ of the original have been used as well as the original scaling of the report. The original page numbers from the text have also been retained as have the asterisk marks (*) in the original document that Hickling inserted to indicate footnotes. The editors have also retained inconsistent spellings of some personal names and titles. The edition also includes the appendices and the Brunei Royal Family chart prepared by Hickling himself. Super numerals have however been added by us to the text and the footnotes in order to expand on Hickling’s brief bibliographic references and to refer to detailed annotations in the endnotes.

The English translation of the A, B, F and H parts of the Malay report by the Tujuh Serangkai i.e., the Brunei Malay Constitutional Committee attached as the appendix 1 in this volume is also reproduced without editorial amendments or emendations.
Memorandum upon Brunei
Constitutional
History
and
Practice
by
R. H. Hickling
Assistant Attorney-General
Sarawak.

JANUARY, 1955.
NOTE: This memorandum has been prepared from the sources indicated in the footnotes or text, and is intended merely to contain such information as is considered necessary to an appreciation of the present proposals for constitutional reform.
INTRODUCTORY

Situated on the North coast of Borneo, and covering an area of approximately 2,226 square miles, the State of Brunei forms two enclaves into the State of Sarawak, by whose territory it is entirely surrounded. Upon the question of the partition of the State affected by the excision of Limbang in 1890*,1 criticism can still be heard from those who fail to appreciate the reasons for that action of the Rajah of Sarawak. However, the discovery of a commercial oilfield at Seria in 1929,2 and the consequent increase in the revenues of the State since that date, has put an end to any anxieties occasioned by the loss of the Limbang territories, and claims thereto are put forward as a matter of national pride, instead of upon the grounds, of economic necessity advanced by the Sultan in 1894.

2. Racially the population of Brunei (given as 40,657 in the 1947 Census, but now - according to the Annual Report for 1953 - estimated at 54,109) can be divided into the following main groups: -

<table>
<thead>
<tr>
<th>Racial or Cultural Group</th>
<th>Approximate (1947)³ Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Malays</td>
<td>16,742</td>
</tr>
<tr>
<td>Chinese</td>
<td>8,300</td>
</tr>
<tr>
<td>Kedayans</td>
<td>6,726</td>
</tr>
<tr>
<td>Dusun</td>
<td>2,757</td>
</tr>
<tr>
<td>Tutong (Melanaus)</td>
<td>2,517</td>
</tr>
<tr>
<td>Dayaks</td>
<td>1,330</td>
</tr>
<tr>
<td>Indians</td>
<td>454</td>
</tr>
<tr>
<td>Europeans</td>
<td>394</td>
</tr>
</tbody>
</table>

In the first Annual Report, for 1906, the then total population was estimated at 25,000 made up as follows:-

* This is a matter that should be resolved by any new Treaty negotiated with His Highness.
3. Of those racial or cultural groups, the Report on the 1947 Population Census **, defining literacy as ability to read and write a simple letter, gives the following tables of illiteracy:

<table>
<thead>
<tr>
<th>Cultural Group</th>
<th>Approximate number of group - Illiterates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Malay</td>
<td>11,235</td>
</tr>
<tr>
<td>Chinese</td>
<td>3,730</td>
</tr>
<tr>
<td>Tutong (Melanaus)</td>
<td>1,898</td>
</tr>
<tr>
<td>Kedayans, Dusuns and other Indigenous peoples</td>
<td>8,441</td>
</tr>
<tr>
<td>Sea Dayak</td>
<td>1,106</td>
</tr>
</tbody>
</table>

4. About one-third of the total population is centered in and around the oilfield of Seria. By the end of 1953, the British Malayan Petroleum Company Ltd. at Seria had in its employment a labour force employing 4,952 persons, in addition to a staff of 1,182 Europeans and Asians. In consequence the bazaars, of Seria and Kuala Belait present an even more prosperous appearance than that of Brunei itself, and (as in Brunei) business is conducted almost entirely by Chinese traders.4

* The increase in the number of Chinese from approximately 500 in 1906 to 10,040 in 1953 bears out a statement appearing in the Annual Report for 1923: “A promising feature in the influx of Chinese traders.”

** By J.L. Noakes, M.B.E., at page 59
5. The present prosperity of the State conduces to a certain sense of apathy among the non-Malay communities who apparently consider that their interests are protected either by the Resident or by the B.M.P. Co. Ltd., although I do not know what the position is in the Chinese schools. Winstedt quotes a well-known member of the Chinese side of the Malayan Civil Service as writing at the time of the abortive Malayan Union, “Popular demand for democratic representation there was none.”* I think that is a fair general comment upon the attitude of the contemporary Brunei Chinese: he comes to Brunei upon its own terms in order to make money, and politics is a profitless business.

6. Such apathy does not extend to a minority of the traditionally apathetic Malay people, notably the school teachers of Brunei. Like their Chinese counterparts they are more sensible of present day political trends, and they look to Indonesia, as much as to Malaya, for political inspiration. Those I have met have been distinguished by a quick intelligence and marked ability to understand and discuss political issues, but — I may perhaps be unjust — I could not help feeling that most of them had a disposition towards venality. Certainly they are shrewd enough to emphasise in conversation the differing conditions of service of Government and B.M.P. Co. employees, and to make capital out of other similar issues. The influence of these teachers upon the rising young generation of literate Malays will, however, be a force to be reckoned with.

7. The existence of the Limbang “corridor” appears to hamper administration only to a small extent, and the compactness of the State, altogether with the road-building and telecommunications plan now under way, will all conduce to a more efficient conduct of the affairs of the State, provided such centralising tendencies are not permitted to impede the development of local government.

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8. Of the languages used in the State Malay is, of course, the commonest: after this come English and the three Chinese dialects of Hokkien, Kheh and Cantonese, whilst the indigenous peoples (other than the Malays and Kedayans) use their own languages or dialects.

9. The religion of the State is that of Islam, according to the Shafii sect of the Sunnis. Of the Sunnis interpretation of Muslim law Withers-Payne writes * that its sources are -

(1) the Koran;
(2) the Hadis or Sunnat, the tradition derived from the Prophet by word, action or even silence (takrîr);
(3) The Ijma’a-ul-Ummat, the decisions of the leading disciples of the Prophet, and especially the first four Caliphs, Abu Bakar, Omar, Osman and Ali; and
(4) Qiyas, the exercise of private judgment by the use of reason and analogy in interpreting every implication of the Commandments in the Koran and the Hadis.

According to this system of law — termed locally, as in Sarawak the ‘hukum shara’ - the nearer in degree excludes the more remote, and lineal male descendants exclude all agnatic ascendants and collaterals so that, for example, a son’s son will be preferred to the son’s father. I mention this, since the question of determination of law is of course relevant to the question of the royal succession.

10. In an interesting pamphlet called “Stories of Brunei: its Laws and Customs,” compiled by Mohd Amin in 1942,¹⁰ there is a reference to a variation of the religion of Islam.

The Story relates that -

* The Mohommedan Law of Inheritance according to the School or Shafii. (Singapore, 1932), p. 1.¹¹
“During the reign of Sultan Abdul Momin* there was a learned Pengiran by the name of Haji Abdul Momin who had studied in Mecca and Egypt. On his return he introduced the religion of Islam in its orthodox form into the country. This Pengiran Haji had many pupils, and when he died it is said that his pupils inherited a book written in his own hand. Some of the pages were stuck together and were found to have writing on the inside of the leaves. The Haji’s pupils thought that between these leaves was written the wisdom of the true religion, so they put it into practice, and it is still practiced to this day. In actual fact between the leaves there was much that was wrong, and which the old man had been able to correct before he died. His pupils who did not examine the instructions very carefully mistook the false for the true, and thought their former teacher had deliberately concealed it during his lifetime. This teacher is venerated and obeyed even today by the descendants of his pupils, and has been given the title “Makam Maulana di Subok.”

11. This is probably that Haji referred to by Spenser St. John**12 (who as H.M. Consul-General had resided in Brunei) when he observes that “to add to the difficulties of the country, a religious schism has appeared... About twenty years ago, a Bornean Haji, named Mohamed, taught that God had no personality; to say he had, was to acknowledge oneself an infidel.... The religious world, shocked at this heresy, sent a deputation to Mecca, who returned denouncing Haji Mohamed as a false teacher. He replied by accusing the hajis of deceiving the people; that his was the true doctrine as taught by the elders of the Church, and that he would go and inquire for himself.

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* The twenty-fourth Sultan, who reigned from 1852 to 1885.
After an absence of two years, he arrived full of Arabic and learning to uphold his former opinion. The controversy waxed hotter and hotter; deputation and counter-deputation went off to Mecca; but each party always asserted that the learned doctors had decided for them. Rival mosques were built, with their rival Imams and preachers. The people of the capital, not understanding the question, ranged themselves under their chosen leaders, and added to their political differences their religious quarrels.

“The present Sultan, and the family of the late Rajah Muda Hassim, with about a tenth of the city, but nearly all the hajis, support the orthodox or personality theory, while the pangeran tumanggong, the rest of the family of the late Sultan, and most or the sections of Brunei, are followers of haji Mohamed’s doctrine. This controversial haji died about two years ago.”

Whatever might have been the position, it is now clear that the schism has healed, and that the present religion is according to the orthodox teaching of the Shafii sect.

12. McArthur*, writing in 1905, suggests that in addition to the “hukum shara” there is also a body of law known as the “hukum kannu”14, a variant of the “hukum shara”; but I cannot find any confirmation of such a law locally, although the “kanun”, a code of civil and-criminal law in force prior to the introduction of the residential system, is sometimes referred to in past records, and I believe Hughes-Hallet15 (who was Resident from 1936 to 1938) had traced a copy of this code.

* Further correspondence respecting the Affairs of Borneo, Part 3016, p.65; and see infra, para. 32.
Early History

13. Owing to a lack of historical records it is difficult to write of the early history of Brunei with any degree of confidence, although for a brief sketch or that history no better introduction can be found than that appearing in Chapter I of the Annual Report of the Year 1946; a publication which, by virtue of its many Appendices (which contain copies of important constitutional documents) is invaluable in my research upon this subject. A useful sketch also appears in Chapter IV of Hugh Low’s “Sarawak: Its Inhabitants and Productions”, published in 1848. In that chapter the author observes that -

“The Kingdom of Brunei is said by the natives themselves to have been first formed by large settlements of Chinese; and in Forrest’s Voyages he relates that the brothers of Sharif Ali, the first Sultan of Magindanau, of the Mohammedan religion, became king of Borneo towards the latter part of the fifteenth century. It is probable that these brothers, with another who became Sultan of Sulu, had in their capacity of Zerifa, or descendants of the Prophet, gathered many followers on their road from Mecca at the Malayan kingdoms on the peninsula, and they have appeared, at the Kingdoms of which they afterwards became the sovereigns, not only as spiritual teachers, but also as temporal princes. It is not likely that the three came at one time, but the Sultan of Magindanau being himself successful, perhaps invited the other two.”

14. As is written in the pamphlet called “Stories of Brunei: its Laws and Customs”, already referred to, “the genealogy of the successive Brunei Rajahs, their descendants, the extent of
their dominions and the events of their reigns are recorded in hand-written books possessed by many of the Brunei pengirans and inherited by them from their forbears.” The writer states that during the fourteenth century “Brunei was a dependency of the Hindu Majapahit Empire, paying annual tribute in the form of one jar of betel juice”; and in the Annual Report for 1946, at page 5, it is noted that “In Brunei the traditional ceremony, the royal procedure and the nomenclature of officers of State, all commemorate Hindu and Chinese influences. The Hindu influence emanated from the Empire of Majapahit in Java and according to Javanese records a Javanese force expelled Sulu marauders from Brunei in 1368, and Brunei is mentioned as one of the countries conquered during the reign of the Angka Wijaya who was the last King to reign over the Majapahit before it was vanquished by Mohammedan Malacca.”

15. Of the government of Borneo Low writes (op. cit., p.107) that “it appears to have been despotic, or oligarchical, according as the power and talent of the prince or the nobles prevailed. The great officers of State appear usually to have been selected from the royal family. The title or the prince was formerly Iang-de-per-tuan, which has been translated “The lord who rules”; but “the ruler” appears to be equally appropriate. The second person in the Kingdom was formerly styled the Rajah Mudah, and was the successor to the throne; but the present Sultan, Omar Ali, has never been properly invested with the supreme title of Iang-de-per-tuan, and is, consequently, only styled sultan by courtesy - a title foreign to the court language of Borneo”. Low adds, concerning Omar Ali, “on his right hand he has a malformation resembling a thumb, which stands at an angle from the true thumb. This alone, according to the laws of Borneo, would have disqualified him for the throne; for these provide that no person in any way imbecile in mind, or deformed in person, can enjoy the regal dignity, whatever title his birth might have given him.”
On this point it is perhaps worth adding that the ordinary law of Shafiite inheritance does not exclude an heir, certainly in so far as the distribution of property is concerned by reason of his physical defects.

**The Government of Brunei**

16. Writing from Brunei on April 10, 1903, *Hewett*, the British Consul - admittedly a somewhat prejudiced observer - observed that “properly speaking it cannot be told that anything in the nature or a Government has up to the present time existed in Brunei. A family has been in possession of the country whose right to oppress the inhabitants and practice robbery and extortion survived unchecked and unquestioned up to the death or the late Sultan Abdul Mumin” - the Sultan who “succeeded the throne by the will of his predecessor and the general consent of the people and) who set out the ancient constitution and the differences between Keraja’an, Kuripan and Tulin.”

17. It seems clear that (certainly according to Sir Frank Swettenham, who first put forward the idea of a British Resident for Brunei) the views of Hewitt(Sic: Hewett) were exaggerated; and in a letter of...1881 (*) sent by Sultan Abdul Momin to Sir Charles Lees, Governor of Labuan, a clear definition of the source of the revenues and the constitution of the Government of Brunei is afforded. In that letter the Sultan states-

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* Further correspondence, etc., Part 28, p.21.
** Brunei Annual Report, 1946, p.91.
(*) Further Correspondence, pt.27, p.27.
“We wish to acquaint our friend respecting Brunei customs which have been handed down from ancient times and which are still in force.

“The inheritance of the Pengirans from their ancestors, whether in rivers or followers, is called ‘Tulin.’ The Sultan for the time being reigning in Brunei cannot collect any duty from the rivers or people. The Pengirans who own the rivers collect the revenue, and their authority descends to their heirs.

“The party of the country which belongs to the Raja is called ‘Negri Keraja’an’, and includes land and people. The Sultan collects the revenue, but he cannot bequeath the property to his children or grandchildren unless they succeed him on the throne. The rivers and people that belong to the Wazir are called ‘Kuripan’. The Wazir collects the revenue, but at his death the property reverts to the Sultan until his successor in office is appointed. He cannot bequeath the ‘Kuripan’ to his children or grand-children.

“The custom is the same as regards the rivers and followers belonging to the ‘Kepala Mentri’, they are called ‘Kuripan’. The Mentri has the right to the revenue from the river, but, if he dies, it reverts to the Sultan.

“Regarding rivers that are ‘Tulin’, their owners may do just as they wish, but the Sultan may exercise his authority over the owners, and they must enforce his commands upon their followers.

“Since we became Sultan this long time we have followed the ancient customs of former Sultans. After our death our successor must follow these customs, in order that no complications may arise in the country.
Constitution of Brunei Government.*31

Sultan

Four Wazir - Pangeran Bendahara

“ di Gadong
“ Temonggong
“ Pemancha

Eight Chetrias- Pengiran Shahbanda[r]

“ Paduka Tuan
“ Maharaja Dinda
“ [Ke]Suma Nagara
“ Kerma Indra
“ Si Raja Muda
“ Suta Nagara
“ Derma Putra

Sixteen Mentri

18. This document also appears as follows - **

“We also wish to inform our friend [of] the rules and customs of’ Brunei from time immemorial up to the present, which are still in force.

“A Chief who inherited property from his ancestors, rivers or men. Such property are called ‘sungi tulin’ (private river) and ‘hamba tulin’ (private slaves). The Ruler

* Of the constitutions of the Malay States Winstedt writes, “Like Burma, Siam and Cambodia, mediaeval Malacca and most of the modern states have constitutions founded on the astrological number 4, 8, 16 and 32... In most Malay countries there are not only four chief ministers, but 8 major chiefs and 16 minor chiefs, and, below the last, mediaeval Malacca and modern Perak have had also 32 petty chiefs. Thirty-two chiefs plus a king made up the number of gods in Indra’s (the Hindu Lord of Mount Mehru, the Hindu Olympus with its 33 gods, and controller of the weather) heaven, and a Malay Kingdom was considered as an image of the heavenly world of Stars and gods.” (Op. cit., p.85).32

** Further Correspondence, etc., Part(y) 27, p.35.33
“of Brunei collects no revenue from this said river or men. The owning Chief collects the revenues and is at liberty to bequeath them to his heirs.

“The portion of the country, rivers and men, which are Crown property, are called ‘negri krajaan’ (Crown land) and ‘hamba krajaan’ (Crown slaves). The Ruler may collect revenue there from but cannot bequeath them to his heirs except to his successor.

“The portion of rivers and men belonging to a Minister are called ‘Sungei Kuripan’ (official river) and ‘hambi kuripan’ (official slaves). The said Minister collects revenue there from, and, if he dies, the same revert to the Crown until his successor is appointed. Such property cannot be bequeathed to his heirs. As such, rivers and men belonging to the upper class Ministers are called ‘Kuripan.’ The Minister is at liberty to collect revenue from the river. If he dies, they revert to the Crown.

“As regards ‘sungei tulin’ (private river) the owner can do as they (sic) wish, the Rajah can impress the wishes of the Government upon the owners and he will give effect to the Royal command upon his followers.

“Since we became Sultan we have observed the custom of former Rulers; after our demise those who succeed us should obey this custom, so that no confusion may happen in the country.”

19. There is a further explanation of these rights in a memorandum of 1897,* which states that

* Further Correspondence, etc., Part 22, p.92.34
“Tanah Kuripan means territory which is granted by a the Sultan to a Chief, and is held by him during this tenure of office, after which it reverts to the Crown. Tanah Tulin is Crown land belonging by hereditary right to the Raja. Tanah Waris is Tanah Tulin that has been alienated by the Raja to a Prince of the Royal Blood.”

20. Of the rights referred to in the Sultan’s letter of 1881 McArthur, Hewett’s successor, writing to Sir John Anderson on May 27, 1904, confirmed, after various enquiries, that “no Sultan has ever alienated ‘tanah Kerajaan’, and not even ‘tulin’ rights can be sold without the Sultan’s approval.” Hewett himself wrote in 1901 that “it is both law and custom in Brunei that only the Sultan can make a will bequeathing territorial rights, except those already holding such rights under existing ‘Tulin’ grants.”

21. Hughes-Hallett, writing in 1940**, states that “Brunei traditions are perpetuated in the annals known as the ‘Selasilah’ or ‘Tersilah’, the original conception of which are credited to the fourteenth Sultan.” Later (page 31) he observes that Sultan Hassan (the ninth Sultan) “modelled the Court etiquette upon that of the Sultan of Achin and created the offices of Pengiran di- Gadong and Pengiran Pemancha, making with the two former Wazir, a total of four.

“In the annals, this is the earliest mention of Wazir and in conjunction with the previous allusion

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* Further Correspondence, etc., Part 26, p.22.
to Chetria * it is reasonable to attribute to this period the traditional constitution, as brought to the notice of the Consul-General in 1881. The constitutional establishment provided for four ministers of State, or Wazir: the Pengiran Bendahara, Pengiran di--Gadong, Pengiran Pemancha and Pengiran Temonggong; there were eight Chetrias or subordinate ministers; Pengirans Shahbandar, Paduka Tuan, Maharaja Dinda, Suma Negara, Kerma Indra, Si Raja Muda, Setia Negara, and Derma Putra (an authority in Brunei has a longer list, containing 38 titles); and there was a representative council of 16 Menteri, or officers of state, chosen from among the leading peoples the chiefs of the different districts or kampongs of Brunei town. It was recognized that the traditional succession was not essentially hereditary, but arbitrary, from amongst the four Wazir, and a Brunei Sultan was not despotic in theory or practice but had to consult on all important occasions with his chief officers, likewise all important documents had to bear at least two of their seals.”

22. Spenser St. John**, elaborates Low’s sketch (page 12) of the government of the State, and gives a picture of the constitution of about 1850. “The Government”, he states, “consists of a Sultan, now dignified by the higher title or Iang de per Tuan, freely, to be translated by ‘He who governs’. The office is at present held by one who has no claim by descent, but was chosen to avoid a threatened struggle between the popular, but illegitimate, sons of the late Sultan and the more legal aspirants to the throne.... Neither in theory nor practice is a Brunei Sultan despotic- he must consult on all great occasions with his chief officers, and all important documents should bear at least two of their seals.

* "It is during the reign of Sultan Saif-ul-Rejal [c.1580] that the annals first mention officers of the state called ‘Chetria’; these officers are specifically mentioned in a version of the traditional constitution set down by a Sultan in the nineteenth century; it may therefore be supposed that at this period the ancient constitution was being resolved.”

“The four principal officers of State are: the bandahara, for home affairs, the de gadong for revenue and government stores, the pemancha, for home affairs likewise, and who on certain occasions may supply the place of the bandahara, and transact business for him, and the tumonggong, who is supposed to protect the coast and lead all warlike expeditions.” He adds, “there is a fifth officer, of lower rank, the Shabandar, to look after the affairs of commerce, and regulate the intercourse with strangers frequenting the port.

“Each of the four great officers is entitled to eight assistants of noble blood, besides others of inferior rank.... There is a class of officers who possess very great influence in Borneo, they are the ministers chosen from the ranks of the people, the chief of whom is called the orang kaya de gadong.* Seldom is anything of importance undertaken without consulting them, as they are known to have a powerful following, and greatly to influence the minds of the people. At the demise of a sovereign their influence is especially felt, and if they were united, I believe they would carry out their views in spite of any opposition.”

23. In a letter of Consul Trevenen38 written from Brunei to the Marquess of Salisbury on April 2, of 1896**, it is stated that-

“The principal Chiefs of Brunei, immediately under the Sultan, are the Pengeran Bandahara, Prime Minister, Pangeran di Gadong, Treasurer,

* This office is still in existence and the present holder is a member of the State Council. The office is quite distant from that of Pengiran di Gadong, now vacant.
** Further Correspondence, etc., Part 21, p.45.
Pangeran Shabandar, Pangeran Maharaja Dinda, Pangeran Suta Negara, in the order named. (Pangeran may be translated as Chief*)

“Each of these men should have his definite duties according to the custom of Brunei; for instance, the Pangeran Bandahara, general superintendence, di Gadong, treasurer, etc., while the consent of these two is essential to the validity or any Concessions granted by the Sultan.”

* Spenser St. John (op. cit.) observes that “every descendant of a noble family, whether legitimate or illegitimate, is entitled to call himself pangeran or ampuan, which causes the country to swarm with poverty-striken gentlemen, who are a curse to the industrious classes.” As a result of this “more than half the daughters or the nobility cannot procure husbands as they are not allowed to marry a person of inferior rank, and must receive a large marriage portion.” This statement is still substantially true today, although the title of ampuan, which by tradition fell to a certain pengiran residing in, I believe, the Temburong district, who refused the title of pengiran, is not used, except by the older generation. The title of pengiran carries no emoluments, but the holder can be deprived by His Highness (acting with the advice of his ministers) of the title. A case occurred recently of a pengiran being so deprived of her title, owing to immoral behavior.
24. That some form of ministerial government has been part of the Brunei system appears clear from McArthur’s comprehensive and invaluable report of December 5, 1905.* McArthur observed that “the Government of Brunei is despotic in theory, the Sultan being the sovereign of the whole territory. As, however, the State is divided up into ‘negri’ and ‘hamba kerajaan’ or Crown property, ‘negri’ and ‘hamba kuripan’, or official property, and ‘negri’ and ‘hamba Tulin’, or hereditary private property, it would, I think, be more accurate to describe the country as an aggregation of small and semi-independent fiefs acknowledging one head.” After reciting the extracts from the document “known as the will of Sultan Abdul Mohmin,(sic:Momin)” (see para. 17, above) McArthur adds that “it will be seen from this (document) that in many districts the Sultan only possesses the shadow of power conferred by his so-called sovereign rights”. The document also explains the present vacancies in the offices of Pengiran di Gadong and Temanggong. His Highness, to whom the revenues have reverted, is too poor to forego them.”

25. At the time of McArthur’s report (1904) the existing Minister were the Pengirans Bendahara, Pemancha and Shabandar, whose official revenues were derived from their “Kuripan” properties, that is, the properties - “rivers or men” - to which the Minister was entitled in right of his office, ** In fact, however, McArthur noted that “the Sultan should, according to the ancient constitution of Brunei, be assisted by four Ministers of State, the Pengiran Bendahara, di Gadong, Pemancha, and Temenggong”, whose offices “are usually filled by

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* Further Correspondence, etc., Pt. 30, p.4F.
** It is recorded in the minutes of the State Council meeting of September 10, 1936, that the ‘Kuripan’ of the Pengiran Bendahara and the Pengiran Pemancha had been extinguished by payments of $9,500 and $3,500 respectively.
members of the Royal family”, and from whom “the Sultan’s successor is usually chosen, it being left to them and to the spokesman of the people to nominate one of their number. Theoretically, each of these Ministers has separate functions to perform. In any matter affecting the State the Sultan is supposed to consult them, and their “chops” are necessary on any important State document”.

“The Pengiran Bandahara* holds the highest position in the State next to the Sultan, and is supposed to be more or less responsible for the internal administration of the country. He acts as Regent when necessary, keeps, or should keep, the State archives, and forms a Court of Appeal from the decisions, in their respective spheres, of the other Ministers.”

“The Pengiran di Gadong is the treasurer and tax-collector. The idea of taxation being apparently inherently connected with Brunei minds in the agricultural population, he is also in general charge of the Kedayan and Bisayas.”

“The Pengiran Pemancha” seems to be little more than a deputy of the Pengiran di Gadong.

“The Pengiran Temenggong is in charge of the forces of the State, leads expeditions and carries out execution.”

“There is another Minister, the Pengiran Shahbandar, who is, I believe, a comparatively recent innovation. He deals, theoretically with all questions of commerce, port dues and the like, and is supposed to exercise a general control over foreign traders.”

* The Bendahara has also been described as the Chief of the Mohammedan community- see para. 49, below.
The Sultan

27. McArthur in his report of 1905* states that “the succeeding Sultan should be chosen from among the four principal Ministers of State.” This appears to be substantially correct, although the nomination itself was apparently effected by the Sultan; for example, it is recorded in the Annual Report for 1906** that the “Sultan Hashim Jalilulalam Akammadin died at an advanced age in May. He was succeeded by his eldest legitimate son and nominated successor, Sultan Muhammad Jamalulalam, a youth about 17 years old. The two surviving Ministers of State, the Pengiran Bendahara and Pemancha, were nominated by will joint Regents during the minority of the new Sultan. The illness and death of the Sultan gave an opportunity for a certain amount of intrigue, but it was of an unimportant character, the Sultan’s nomination of a successor being generally welcomed by the inhabitants of the State.”

28. This nomination of the second legitimate son, coupled with the death, circa 1899, of the oldest legitimate son, avoided the troubles foreseen by Acting Consul Keyser, writing to the Marquess of Salisbury on December 25, 1898 (*) when he wrote-

“The present Sultan is said to be 78 years of age, and he has not yet according to custom, nominated his successor......
According to the law of the country, there are four families from which a successor can be appointed. There are Bendahara, Digadong, Pemancha, and Temenggong. The present representatives of the two former, Pengiran Bendahara and Pengiran Digadong, are brothers, and nephews of the last Sultan,
being the children of his sister. These are the chief Ministers who hold positions of considerable power. They are not, however, on good terms with the Sultan.40

"On various occasions the Sultan has been approached by the Consul, Mr. Trevenen, to appoint a successor, but has not yet done so. The Sultan has a son, who, if he is to succeed him, should now be given some responsible office such as Temonggong, now vacant. The Sultan is extremely anxious that this son should reign after him, but yet does not venture to acknowledge him in the usual manner since he knows that he is of weak intellect and his nomination would provoke general dissatisfaction and disapproval.

"In addition to this it is openly stated that were the Sultan to nominate a successor, even his own son, it would, in reality, mean his death, and of this he is himself aware.

"......failing a formal nomination of a successor to the throne, the natural heir is Pengiran Bendahara, and I believe that, supported by his brother Digadong, the power would pass into his hands without trouble."

29. Keyser’s fears were to some extent unfounded, even in 1890, for by Article II of the Treaty of September 17, 1888, It is expressly provided that -

"In case any question should hereafter arise respecting the right or succession to the present or any future Ruler of Brunei, such question shall be referred to his Majesty’s Government for decision."
That Treaty, which by Article I thereof declared that “the States of Brunei shall continue to be governed and administered by…… Sultan Hashim Jalilull Alam Akamadin and his successors, * as an independent State under the protection of Great Britain,” was confirmed by Article III of the Supplementary Agreement of 1905 and 1906; and in the preamble to that Agreement (the primary object of which was to provide for the reception in Brunei of a British Resident) it is stated that-

“His Highness trusts that the British Government will ensure the due succession to the Sultanate of Brunei.”

30. Sultan Muhammed Jemalulalam was duly installed as the Yang di per-Tuan of Brunei in 1918 - the first installation since the introduction of the residential system. On his death in 1924 he was succeeded by his eldest son, Sultan Ahmad Tajudin Akhazul Khairi Wadin; and, as the new Sultan was then only twelve years of age, the Pengirans Bandahara and Pemancha were proclaimed joint Regents, a regency that continued until September 19, 1931.**

31. On June 4, 1950, the Sultan died in Singapore, at the age of thirty-seven, leaving daughters but no male heirs; and on June 6 “ his younger brother Pengiran Omar Ali Saifuddin was formally proclaimed Sultan at the request of the Council of Ministers and with the approval of His Majesty’s Government.”(*)

The new Sultan “had been First Minister (Bendahara) since July 1947.” (+) In July also the Pengiran Pemancha, who had held that office for thirty-seven years, was appointed Pengiran Bendahara and Pengiran Muda Alam appointed Pengiran Pemancha; whilst in September of that year another Pengiran was appointed Pengiran Kerma Indra, “with the customary ceremonials.”

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* The word “heirs” appears to have been carefully avoided.

** When the Sultan “assumed full powers.” He was formally installed as Yang di per-Tuan on March 17, 1940.


(+) Idem
32. Upon the law regulating the succession McArthur wrote in 1904* - “It appears that there are two codes of social law in force in Malay countries. There is the “hukum shara” or Mohammedan law proper and the ‘hukum Kannu’, [Kanun]or local law, dealing with questions of royal succession and the like. A Malay is entitled, like all Mohammedans, to four wives. Those of equal rank with him are called ‘istri’, those of inferior rank ‘gundek’. By the ‘hukum shara’ all his male children, whether by ‘istri’ or ‘gundek’, are entitled to equal shares in his property on his decease, the actual right of representing the family devolving upon the oldest son. ‘Istri’ is generally translated ‘wife’ and ‘gundek’ is generally translated ‘concubine’. I think that if any authority on Mohammedan law is consulted he will agree that such a rendering is not correct, for ‘concubine’ connotes in English illegitimacy in the children of such union. The title ‘gundek’ seems to convey no such idea. It merely means that the wife to whom it is applied is of inferior rank to her husband, while the title of ‘istri’ connotes equality of rank. **

“If the custom of a Malay State follows the ‘hukum shara’, all the sons of the Ruler have equal shares in his estate, and the eldest is, theoretically, his successor, no matter whether he be the son of an ‘istri’ or a ‘gundek’. I believe the ‘hukum shara’ has been followed in the past in the States of the Malay Peninsula, except in one fairly recent instance in Johore. It appears to have been invariably followed in Borneo. (*) The Sultan of

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* Further Correspondence, etc., Part 30, p.65.
** Fyzee, in Outlines of Mohammedan Law (O.U.P., 1949)43 states that “if a Muslim married a fifth wife, such a marriage is not void, but irregular.”

(*) A list of the Sultans of Brunei is added in the Appendix hereto. This list is of doubtful authority, but has been made up from the best sources available.
Brunei is the son of a ‘gundek’, so are the Pengiran Bandahara and Pemancha. So are all the various ‘tulin’ owners (whose rights have been recognized and bought and sold) that I know of, except Pengiran Muda Binjai Mohamed Tajudin (referred to in my Report on Brunei), who traces his descent through an unbroken series or ancestors of equal rank.

“But there exists, alongside the ‘hukum shara’, the disturbing element of the ‘hukum kannu’, which I cannot attempt to translate by any English phrase, but the bearing of which it is perhaps possible to explain by instances. Malays themselves admit that it is usually invoked to assist in the carrying out of political schemes and intrigues, as it gives an excuse for setting aside the usual succession. By the ‘hukum kannu’, if ever it is put in force, only the descendant of royal ancestors on both sides may succeed as Ruler, though, even so, the property left will be divided according to ‘hukum shara’.”

33. In spite of the precedents cited by McArthur, Malay opinion in the State does not now agree with his contention that the eldest son, whether by a isteri or gundek, is theoretically a successor, for Brunei custom admits of no such right in relation to an illegitimate son, as the son of a gundek would be considered. Again, as Mr. Justice Taylor wrote in 1937, “it is important to realise that although the Malays are generally strict Muhammedans they have never adopted the whole of the Mohammedan law.”* Whatever the general practice elsewhere may be, it appears clear that the contemporary Brunei interpretation of ‘hukum shara’ treats the succession as agnatic, restricting it to lineal relationship of the legitimate male heirs; and McArthure is therefore correct in saying that the ‘hukum shara’ has always been followed in the State.

34. From the foregoing it will be clear that the Sultan has in theory always been regarded as a constitutional monarch, acting on the advice of his Ministers. Hewett** speaks of the “full Court which

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* Journal of the Malayan Branch, Royal Asiatic Society, Vol.XV, Malay Family Law.144
** Further Correspondence, etc., Part 27, p.23.
constitutes the Government of Brunei”, which in 1896 investigated and adjudicated upon certain claims to ‘tulin’ rights. This “court” consisted of the Sultan, acting in consultation with the Pengirans Bandahara, di Gadong and Pemancha, together with “all the Councilors and all the Ministers of State”; and its judgment was signed by all members, although the Governor of North Borneo afterwards contested the validity of two signatures to the settlement. A draft lease of minerals, prepared in June, 1883* refers to a grant by the Sultan after having “taken counsel with our Ministers and Advisers”, and a lease of November 5, 1884, to the British North Borneo Company** was executed by “His Highness Abdul Momin, Sultan of Brunei, and the Pangeran Bandahara and the Pangeran di Gadong, for themselves, their heirs, successors and assigns.” When the Rajah of Sarawak raised a query upon the method of execution of a concession to the Central Borneo Company, Mr. A.H. Everett45 wrote to a Mr. Hamilton on August 30, 1890, as follows (*): -

“With regard to the Rajah’s query, written on the translation, whether the Sultan’s seal alone on such a document makes it legal, I have always understood that it does, so far as Crown lands are concerned; but in the case of Sovereign Power being ceded, then the deed should contain, in addition, the seals of the two principal Ministers, according to strict Brunei custom - a custom not always observed.”

35. Everett’s view appears, therefore, to have been borne out in practice; and the Sovereign’s prerogative powers appear to have extended, not only to the nomination of an heir (in conformity with custom) and the alienation of State lands, but also

* Further Correspondence, etc., Part VI, p.42.
** Further Correspondence, etc., Part VII, p.31.
(*) Further Correspondence, etc., part 22 p.31
To the appointment of Regents. For example, in a document of 1884 described as “The Sultan of Brunei’s Chop appointing Pangeran Tummonggong” it is stated—

“Whereas We, the Sultan of Brunei (i.e. Sultan Abdul Momin), do hereby make known to all the inhabitants of the country that Pengiran Tummonggong is herewith appointed to act as Sultan, and to govern the whole Kingdom of Brunei and its dependencies for ever.

Dated 27th Mohurrum, 1302.”

This Pengiran Tummonggong was in fact a nephew of the Sultan, whom he succeeded in 1885, and the above document may therefore have been (as it appears to be) a formal nomination of the Tummonggong as the next heir.

**The Royal Revenue**

36. Of the Royal revenues Spenser St. John writes **—**

“Nearly every district belongs to some particular family, which by usage possesses almost unchallenged power over the people, and is thus removed from the control of the Government. Many districts are divided among various families, who have each certain villages, and live on the amount they can obtain by taxes or forced trade. The Sultan possesses a large number, and each of the principal nobles have several, while many, formerly wealthy, have dissipated their property, and sold their rights to others.”(*)

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* Further Correspondence etc., Part V11, p.78.
** op. cit.
(*) McArthur in Appendix I of his report of 1905, gives a list of the districts affected by the principal ‘tulin’ and ‘kerajaan’ rights.
37. Writing on May 14, 1896, Mr. Hughes noted* that-

“The territory still in the hands of the Sultan is insignificant, compared with either North Borneo or Sarawak, but it comprises some of the most fertile lands, both minerally and agriculturally, on the northwest coast of Borneo. It has also a larger population per square mile than either - there is no system of government in Brunei, some few items are farmed out to Chinese and the revenue derived from these is mortgaged many years in advance. The bulk of the revenue is raised by the custom of what is called ‘Casting the Anchor’,47 which means that the Sultan’s steam launch is sent up the rivers to the various villages and a sum of money, the amount being at the discretion or the person in command of the expedition, is demanded from the Headman; if it is not paid within the time fixed a party is landed and everything portable is carried off, including the women and children who are sold into slavery. Brunei I consider quite hopeless, the present Sultan, if he is not suffering from softening of the brain, is quite incapable of anything approaching government, while his advisers are corrupt and rapacious to the last degree .... The native and Chinese inhabitants-would, I believe, welcome any change except incorporation with British North Borneo; they would prefer to come under the Government of the Crown, but failing that they would be better off under the rule of Rajah Brooke.”

38. Keyser, commenting on affairs in the Belait and Tutong districts in 1899, writes in similar vein**

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* Further Correspondence, etc., Part 21, p.48
** Further Correspondence, etc., Part 24, p.85
“The principal cause for discontent is that the Sultan and Pengirans have enforced the ‘Dagang Sarah’.

Explain as follows:-

A man is sent by the Sultan or Pangeran with a quantity of cotton goods and brassware. The people concerned are informed that, by the Sultan’s orders, they are to buy.

The ‘Penyuru’, a man who holds the Sultan’s duly sealed authority, then supplies each family with various goods, whether they desire them or not, informing them that they must pay certain prices. The price demanded is usually three times the value of the articles.

The people are then ordered to go to the jungle to collect produce, and the ‘Penyuru’ states that he will return in a month’s time.

At the appointed date, those who can pay do so; those who cannot, have property confiscated.

In cases where there is no property or value, children are demanded as payment. When a child is an orphan, he is always taken as the property of the Sultan for alleged debts of the father.”

39. Of these practices Sir C. Mitchell wrote *, “such methods of taxation, which are common to uncivilised Malay countries, are well understood by the natives, but naturally lead to some discontent an the somewhat rare occasions on which they are enforced.” They nevertheless continued until the beginning or this century, and must be within the personal knowledge of many persons now living, for Hewett wrote in 1901** -

* op. cit., Part 24, p.92
** op. cit., Part 27, p.3
“The practice has prevailed and been recognised of the Sultan sending representatives round to the different districts, including those under ‘Tulin’ tenure, to demand ‘Pertolongan’ or contribution to the Royal expenses. These demands are not made at any regular or stated intervals, the periods being governed solely by the Sultan’s will or necessities.”

Fortunately the introduction of the residential system put an end to the public unrest precipitated by the arbitrary demands for the expenses of royal marriages and the like.

**Constitutional Development since 1906**

40. With the appointment of McArthur as the first Resident in 1906 the ancient customs of Brunei became subject to new influences. The policy followed by the Residents is dealt with in later paragraphs, but I feel that the following opinion of the then permanent head of the Colonial Office, published in 1933*, offers a useful summary of the general line of policy adopted in the early days of the residential system; and indeed, the opinion appears equally pertinent to British Borneo today:

“From a purely economic point of view it would no doubt be advisable in a country the size of Malaya to have one Central Government administering the whole territory. There is, however, the political aspect of the problem....

* quoted in Winstedt, op. cit., p.141.
“Moreover it seems clear that the maintenance or the position, authority and prestige of the Malay Rulers must always be a cardinal point in British policy; and the encouragement of indirect rule will probably prove the greatest safeguard against the political submersion of the Malays which would result from the development of popular government on western lines. For, in such a government the Malays would be hopelessly outnumbered by the other races owing to the great influx of immigrants that has taken place into Malaya during the last few years.

“Politically everything seems to point to the desirability of the Rulers and their respective governments being allowed to have control of their own domestic affairs without interference except in those cases where a unified policy is clearly necessary.”52

As far back as 1911 — at a time when memories might have been bitter — it is recorded * that “the Brunei where ever he may be domiciled looks to the Sultan of Brunei as his sovereign”; that observation of personal allegiance has in fact increased; the state is a Malay State with a living constitution bound upon a strong sense, of history, and with their present wealth the people are politically ambitious, although their ambitions have not yet been overtaken by general education. All these factors emphasise the need for care in the guiding of constitutional development in the State; and novel ideas can only be introduced after much ‘conditioning’ of the people to be affected. A brief survey of development since the residential system was introduced will perhaps illustrate these points. In spite of the energy with which the economic problems were immediately tackled, (e.g., in 1906 a sum of $ 200,000 was borrowed from the Federated Malay States, many monopolies such

* Annual Report for 1911.53
as opium, boat tax, cattle exports, tobacco and spices, were redeemed, and by a Proclamation of the Sultan Straits Settlements currency was made legal tender) care was taken to ensure that such development did not at first make any substantial changes in the old constitution. At the same time a State Council was established.54 This apparently derived in principle from practice in Malaya, where the first State Council appears to have originated, for, writing of difficulties encountered in about 1880 by the Resident of Perak with the Regent there, Sir Frank Swettenham55 states* that “fortunately a great safety-valve was discovered in the constitution of the State Council, on which the Regent, the principal Chiefs, two or three of the leading Chinese, and the Resident and Assistant Resident had seats. The functions of this Council were mainly legislative….. all death sentences were referred to them..... they dealt with the appointments and salaries of all Malay chiefs and headmen ...... the annual estimate of revenue and expenditure were laid before them for their information..... The Perak State Council proved such a success that similar Councils were instituted in each of the States, and the procedure in all is identical.”

42. At the first meeting of the State Council of which I can find any record56, held in the Council Chamber, Brunei, on June 29,1907, it is recorded that “the following lists given by Pengiran Bendahara to the Acting British Resident (Chevallier) is a complete list of those who have a constitutional right to sit on the State Council -

- His Highness the Sultan;
- The Pengiran Bendahara;
- The Pengiran Pemancha;
- The Pengiran Shahbandar;
- Pengiran Kamindra (sic);
- Datoh Perdana Menteri;
- Jawatan Akubakar;
- Tuan Imam;
- Orang Kaya Laksamana.”

* British Malaya (Revised Edition, 1948) p.22657
It will be observed that at this time neither the Pengiran di Gadong nor the Pengiran Temonggong were members of the [apparently newly constituted] State Council; and the absence of these offices may well have been due to the assumption by the Resident of the portfolios of finance and law and order: a conclusion reasonably to be inferred from the parlous condition of the State finances, and the fact that the first action of the State Council, once its constitution had been established, was to take prompt steps to endeavour to extinguish all claims to “tulin” rights in the State.

The membership of the State Council appears to have varied in its early days, and it appears that at one time the Assistant Resident was regarded as a member. At a meeting on September 6, 1909, the Sultan cast doubts upon the power of the State Council to transact business in the absence of the Pengiran Pemancha; and at the same meeting the Sultan questioned the validity of Enactment No. 1 of 1907, since the Enactment did not bear his seal: a contention rebutted by the Resident, who explained that it was “not the custom to require the Ruler of the State to affix his seal to Enactments in proof of their having been passed.”

The difficulties encountered by the Resident on April 9, 1953, when the State Council rejected the State Treasurer (Incorporation) Bill, introduced into Council by the Resident and the State Treasurer, appeared to have occurred as early as the meeting of September 6, 1909, already referred to, when the then Resident (Owen) called upon his Highness “to act upon his express advice, tendered in accordance with the clause of the Treaty which provides that the Sultan must follow the advice of the Resident, to pass The (Land) Enactment law.” The Sultan on that occasion disregarded the advice tendered by the Resident, who then warned the Sultan “that his approval of the Enactment (was) necessary, and that unless it (was) given within a specified time, the matter (would) have to be reported to His Excellency the High Commissioner. “The Enactment (the Land Code) was apparently enacted three days later.
44. After this date there are references to the enactment of legislation (for example, the Muhammadan Marriages and Divorce Registration Enactment, passed on March 15, 1913, and coming into force on June 17, 1913* - an Enactment which might have been considered outside the scope of the Supplementary Agreement of 1905 and 1906) “subject to the approval of the High Commissioner”; and the influence of the High Commissioner is also to be directly observed in certain sections of the Courts Enactment of 1908, under which [section 23(ii)] records or preliminary enquiries in capital cases had to be forwarded to the High Commissioner, who could then direct that the trial be held before either the Resident’s Court, or the Supreme Court of the Straits Settlements, sitting in either Brunei or Singapore; indeed, by section 24 of the Enactment the High Commissioner had power, in cases in which sentence of death had been pronounced, to “confirm the sentence of death or to commute it into one of imprisonment or to pardon the person sentenced.”*** In March, 1941, the Courts Enactment of 1908 was amended to provide for appeals to the Singapore Court of Criminal Appeal in capital and certain other cases (as well as to the Singapore High Court from decisions of the Resident’s Court) but the powers of the High Commissioner in relation to confirmation of death sentences, commutation and pardon appear to have survived this change. With the pausing of the Courts Enactment of 1951 (Chapter 6 in the Revised Edition), however, the Courts Enactment of 1908, as amended from time to time was repealed; and the powers of the High Commissioner (see paras. 85-96 infra) in relation to pardon and reprieve, etc., appear to have been assumed, with legal, but possibly doubtful constitutional propriety, by the Sultan alone.

* Presumably the latter date was that on which the High Commissioner’s approval was given.

** In the Annual report for 1909 is a record of the reprieve of four murderers by the High Commissioner, acting on the “recommendation of the Resident” (sic); and on August 22, 1927, “the British Resident requested the Pengiran Bendahara to issue an order for the execution of ... two Tutong murderers... the sentences of death having been confirmed by H.E. the High Commissioner in Singapore” ; a reference indicating one of the functions of the Pengiran Bendahara in those days.
45. The State Council appears generally to have been, and to be, presided over by His Highness the Sultan.* Peel, writing in July, 1946** states that “at present the State Council consists of eight members, including myself as Vice-President, His Highness being President. Apart from the Resident all the members are Malays, including the Sultan’s Ministers of State.” This does not appear to have been accepted as a definite constitutional practice: for example, at a meeting of the State Council held on March 10, 1954, the Duli Pengiran Pemancha took the Chair, in the absence of the Sultan, in spite or the fact that both the Resident and the Duli Pengiran Bandehara were present: although at a meeting held on June 2, 1949, the Duli Pengiran Bandahara had, in the absence of both the Sultan and the Resident presided although the Pengiran Pemancha was then present.

46. The number of members of the State Council appears to have varied considerably from time to time: On March 15, 1913, I note from the minutes that only five members- the lowest number recorded in the minutes - were present to transact business: these five members including the Sultan and the Resident. By December 9, 1915, there appear to have been at least 17 members (including the Sultan

* The present state Council consists of the Sultan as President, the Resident, the State Treasurer, the Duli Pengiran Bandahara, the Duli Pengiran Pemancha, Maharajah Laila, the Dato Perdana Mentri, Pengiran Kerma Indra, the Orang Kaya di Gadong, the Chief Kathi, Mr. George Ah Foot (Chinese), Mr.R.E.Hales (Managing Director, British Malayan Petroleum Co. Ltd.), in addition to seven observers; see para. 130 infra.

** See 2 in B.R.O. sec. 1/4650
of the State Council or any other records I have perused, although generally the constitution of 1927 appears to have been adopted as a basis of the Council’s constitution; and it seems probable from the records, although there is no decision on the subject, that five members (including the Sultan and the Resident) constitute a quorum.

49. In spite of the terms of the Constitution of 1927 it is clear that no ex officio appointments have ever been accepted in relation to the membership of the Council, except in relation to the Sultan himself, and the Resident: neither of whom takes any affirmation upon assuming membership of the Council. All other members are in fact appointed by name, but for no express period: death or resignation constituting, apparently, the only methods (but see para. 51, below) by which a member of the Council can cease to be a member. Membership is in itself an honour, and in the Annual Report for 1920 it is recorded that the Sultan conferred the title of Dato Shahbandar, with a seat upon the State Council, to a Malay magistrate, “in recognition of good work.” Even in the case of the Duli Pengiran Bendahara and the Chief Kathi62 (who are described in the minutes of a meeting of October 26, 1936, as “the Chief of the Mohammedan community”—and the “Chief of the Mosque officials” respectively] membership of the State Council was a personal matter, apparently made independently of the acceptance of the office itself. For example, on August 7, 1947, the Duli Pengiran Bendahara63 was appointed a member, by name, as was the Chief Kathi, on July 28, 1941.64

50. Every member of the State Council, other than the Sultan and the Resident, is required to make an affirmation at the first meeting of the Council attended by him as follows; and this whether he be a British Subject—or a subject of His Highness the Sultan—the latter being, of course, an indefinite status-
Bahawa ada-lah...
dengan sasunggohnya dan suchi hati akan mangaku dengan
sa-benar benar-nya akan ta’at dan setia menjalankan jawatan
saya dalam Ahli Majlis Meshuarat Keraja’an Negri Brunei,
Tertulis pada..........hari bulan ........19“
This can be freely translated as -
“ I....... hereby solemnly and sincerely declare that I will hold my
office in the State Council with devotion and loyalty.
Dated this......... day of........... 19”

There appears to be no formal oath of secrecy, as such, in spite of the fact that
with the introduction of observers the sessions of the Council, certainly in its
legislative functions, appear to be open to the public.

51. Although reference has been made to the appointment of members
of State Council by the Sultan, acting with the approval of the Resident, it is
clear from practice that in fact every such appointment is made by the Sultan
acting with the approval of the High Commissioner. The tenure of office of such
members is (as indicated in para, 49, above) not expressly limited in point of
time, and is therefore terminable only on death, resignation or (I offer the last
possibility with some diffidence) removal by the Sultan, acting with the approval
of the High Commissioner. As far as I can trace, there is only one, reference in the
minutes or the State Council meetings to any formal resignation appearing in the
minutes of November 8, 1947, when “the Pehin Dato Shahbandar’s resignation
was accepted by His Highness”: 
in spite or which, the Shahbandar appears to have continued to attend meetings of the State - Council, and apparently as a member, until his death on April 5, 1949. Whether other members appointed by name, such as Mr. R. Henniker-Heaton and Mr. D.H. Trumble have ever formally resigned their memberships I do not know: but the present constitution (November, 1954) of the State Council appears to be the Sultan, the Resident and ten other members.

52. In general the minutes of the State Council meeting indicate that its functions have been, ever since its formal establishment in 1907, both legislative, executive and, in certain matters, judicial; in consequence it is sometimes difficult to distinguish these several functions. In a confidential letter to His Highness on September 22, 1952, the Resident stated that -

“As far as I know the functions of [The State] Council have never been clearly defined and at times I have been myself perplexed to know whether a certain matter should or should not be referred to Council. The Council undoubtedly is an advisory body; as I see it, it is there to advice your Highness on matters of general policy, amongst which I suppose must be included our legislation. I do not think it was intended, however, that Council should deal with detailed administration although, of course, an appeal from a decision of the administration would lie to Your Highness in Council……. If it is now considered necessary or desirable to consult Council on details of administration then I think Your Highness must consider dissolving the present State Council and setting up a new body.”

* In a letter to His Highness on September 29, 1952, the Resident proposed “two separate Councils, all the members of which would be nominated by Your Highness, namely,
(a) a small Executive Council of 5 or 6 members, which would meet frequently ... to deal with detailed matters of administration, and
(b) a State Council with at least 12 members and possibly more, which would meet only two or three times a year to pass legislation.”
On the legislative side the Council enacts various measures, rarely expressly reserving their operation for the approval of the High Commissioner, but more frequently leaving this to be inferred. That such approval was always regarded as necessary is indicated by the fact that on January 12, 1925, a measure previously passed by the Council was re-enacted, the Attorney-General of the Straits Settlements having redrafted the measure; and on November 17 of that year an Enactment was passed by the Council “at the request or the Secretary of State.” On April 8, 1948, it is recorded that “the Council.... has no objection to the issue by His Majesty of (an) Order in Council in respect of Brunei”, Under the British Nationality Act, 1948: such an Order being considered “an external matter which does not affect the Government of Brunei,” All this is a far cry from 1908 when it was recorded in the Annual Report (page 7) that “the consideration of proposed laws by His Highness in Council is an innovation in a State where formerly the Sultan and Chiefs were laws unto themselves, At present the members appear to consider all the proposals solely in the light of their own personal interests evidently suspecting that these may be adversely affected.”

53. This reference to “no objection” to Imperial legislation is characteristic of the relationship between the Sultan and the Crown; but on November 14, 1951, a somewhat healthier tone prevails, when it is recorded, quoting a message from the Resident (who was ill) that “it is essential that the Superior Courts (Authorization) Bill-should be enacted today for within a few hours His Majesty the King will pass an Order in Council agreeing to His Highness’s request that Superior Courts should be constituted within the State of Brunei...... it would be very difficult for this Council, after the exchange of despatches between His Highness the Sultan and His Majesty the King, to refuse to pass this legislation. The Bill was duly passed. Such an attitude would appear more consistent with the renewal of the Sultan’s
declaration of loyalty to the throne and person of His Majesty the King, “on
November 14, 1918; the Sultan’s affirmation of the “loyalty of the State to the
British Crown” on September 4, 1939; and the Sultan’s affirmation of the “the
unswerving loyalty of the State to His Majesty the King- Emperor on July 6,
1946.

54. Concerning State finances, it is recorded in the minutes of the meeting
of December 22, 1921, that the Resident “lays on the table Estimates for 1922
approved by His Excellency the High Commissioner.” In 1923 (August 9) it was
decided that expenditure in excess of the approved estimates was (according
to a communication from the Secretary to the High Commissioner, in reply to a
query from the Resident concerning “the limits of his powers in expending money
in cases where no provision for the same existed in the Estimates”) in order
“provided such expenditure was approved by the Council.” In 1925 (December
30) the Estimates for 1926 were placed before the State Council by the Resident,
and approved by the Council- a practice which appears to have been followed since
that time.

55. That special expenditure has always required the approval of the State
Council appears clear from past history; for example, the State Council approved
a gift of $500,000 to the United Kingdom “for Imperial defence,” on February 9,
1935; the distribution of sums from “the Mohammedan Fund” for alms distribution
on October 26, 1935; the extinguishment of the ‘kuripan’ of the Bendahara and
Pemancha on September 10, 1936; a gift of $100,000 “towards the cost of the
war”. On April 1, 1940; and the loan of $40,000,000 to the Federation of Malays,
on November 3, 1953. As the work of the State Council became more onerous
in this regard, however, a Finance Committee (of which there is no record in
the minutes of the State Council, other than a reference on April 16, 1952, to
the appointment of the Pengiran Maharaja Laila.” as a member of the Finance
Committee during the absence in the U.K. of Pehin Dato Perdana.
Mentri") was established in 1950 (see Notification No. 54 of May 19, 1950). This Committee consists of the State Treasurer as Chairman, sitting with two members of the State Council, and its functions are defined in the notification as being-

(i) to examine all proposals for the expenditure of the public money in the forthcoming year and to record their approval or disapproval and in the latter case to state their reasons;

(ii) to submit to the British Resident their recommendations after having examined the proposals as in (i) above;

(iii) to introduce to the State Council via the Chairman the final estimates of expenditure as approved by the Resident;

(iv) to examine all applications for warrants for expenditure supplementary to that already approved in the printed Estimates in excess of $5,000 in any one application and to record their approval or disapproval and in the latter case to state their reasons.”

56. Originally meetings of the State Council appear to have been held ad hoc, for the transaction of such business as there might be, and in 1909 it was noted (Annual Report) that “meetings of the Council are but rarely necessary or advisable in the present state of Brunei”; but on June 25, 1928, it was agreed that the Council should meet monthly, “on the last Monday in the month”; a ruling which, like many others of the Council, appears to have fallen into desuetude shortly after its promulgation.
However, on March 16, 1936, a more flexible ruling was adopted relating to agenda, which were henceforth to be supplied to members “a few days before meeting.”

57. In spite of the fact that “Sultan in Council” is defined in the Interpretation and General Clauses Enactment (cap. 4, sect. 2) as meaning
   - “The Sultan acting after consultation with the State Council but not necessarily in accordance with the advice of such Council nor necessarily in such Council assembled”,
   - a definition in conformity with Treaty obligations but not in accordance with constitution practice, which has always required the Sultan to act with the approval of at least two of his Ministers - I can find no record of the Sultan’s having acted against the advice or the State Council; and as far as the Council itself is concerned it would appear that its advice need not be unanimous: for on July 30, 1928, it is recorded in the minutes that the objection of one member was “very properly over-ruled by all the other members of the Council.”

58. One important executive decision appears to have been taken on December 2, 1940, when it was agreed that “subject to the terms of the Treaty between His Britannic Majesty’s Government and His late Highness Sultan Hashim of Brunei made in December, 1905 and January, 1906, all selections made by the British Resident for, appointments in the Brunei Administrative Service, and all other appointments carrying a salary of $150 per month or more shall in future be submitted to the State Council of Brunei for the formal approval of the Council, subject always to the right of the Resident, when the exigencies of the service so require, to make temporary or acting appointments to any of the posts mentioned.” Whether this “ruling has been strictly followed appears doubtful, although the actual establishment of the Brunei Administrative Service, etc., is approved by the State Council in the Annual Estimates. Secondments under the Sarawak Establishment Agreement of April 22, 1948,
are, however, always submitted to the State Council for approval; and on September 30, 1952, it was agreed by the Resident that “revision of salary schemes and allowances in Brunei should be laid before the State Council”.

59. The State flags appear to have been discussed frequently in Council. On August 9, 1934, the Sultan announced that “he wished to change his flag by the insertion of a ‘panji panji’ as a crest, he complained that when travelling his flag was apt to be mistaken for the flag flown by ships when cases of sickness were on board.” It was agreed that designs should be submitted for the Sultan’s approval. Again, on September 6, and October 6, 1947, it was agreed that State flags flown on Government vessels should have “the arms of His Highness coloured blue,” and “State flags on Government offices should bear the arms of His Highness, in red;” and at the meeting of October 6 it was suggested that “there should be two flag-staffs at the Government offices, Brunei, one should be used solely to fly the Brunei State flag and the other for the Union Jack when the British Resident is in the office”- a proposal apparently (according to current practice) accepted by His Highness.

60. In the judicial sphere the State Council appears from time to time to act as a supreme court of appeal in religious matters; and on July 29, 1940, the Council overruled a decision given by the Chief Kathi - an officer (see, e.g. minutes of December 26, 1939) whose appointment requires the Sultan’s confirmation.

61. Traditionally it would appear that the Duli Pengiran Bendahara is the Sultan’s first Minister, although as I have indicted earlier, this ancient principle has not always been observed in practice. On October 30, 1924 both the Duli Pengiran Bendahara and the Duli Pengiran Pemancha were, upon the death of Sultan Jemal-ul-Alam on September 19 of that year, acting as joint Regents: a state of affairs which
and the Resident); on July 14, 1921, is the first mention of a Capitan China as a member; by October 25, 1921, there were 18 members and, by December 22, 1921, 21 members, including the Sultan and the Resident. Indeed, by December 30, 1925, there appear to have been at least 23 members, and the Resident at that meeting “expressed surprise at the large attendance at Council, and asked the Joint Regents (the Bendahara and Pemancha) whether there were not certain definite rules as to the constitution of the Chamber.” The minutes record that “the Regents appeared very hazy on the matter, and agree to consult together.”

47. Apparently as a result of the Resident’s concern the question of the constitution of the State Council was raised at a meeting held on April 8, 1927, where it recorded that “the Constitution of the State Council was discussed, and finally agreed upon, with the approval of His Excellency the High Commissioner, as follows -

His Highness the Sultan;
The Pengiran Bendahara;
The Pengiran Pemancha;
The British Resident;
Pengiran Shahbandar;
Pehin Dato Perdana Mentri
Pehin Orang Kaya di Gadong;
Pehin Capital China;
Two members appointed by His Highness the Sultan ( or by the Regents ) with the approval of the British Resident.”

48. It would appear that the new Constitution prove unsatisfactory for there is a reference in the minutes of the meeting of March 16, 1936, to the fact that “the question of the constitution of the State Council was discussed between the British Resident and His Highness. It was decided to postpone the matter for reconsideration.” What further consideration, if any, was given to the matter, does not appear from the minutes or any subsequent meeting.
continued until the Sultan assumed “full sovereign power on the termination of his minority,” on September 19, when the Sultan had attained the age of eighteen.* In 1924, on the death of the Sultan leaving an heir of twelve years of age, the duli Pengiran Bendahara and the Duli Pengiran Pemancha were again proclaimed joint Regents. On June 20, 1932, at a meeting presided over by the Sultan, it is recorded that “at the request of the Council the Duli Pengiran Bendahara and Duli Pengiran Pemancha consented to act as joint Regents during the absence of his Highness the Sultan in England;” and on August 10, 1933, the Resident, in welcoming the Sultan’s return, made a speech “formally calling upon the Pengiran Bendahara and Pengiran Pemancha to hand back their powers as Regents. The Duli Pengiran Bendahara and the Duli Pengiran Pemancha made speeches welcoming His Highness and handing back their powers.” The Pengiran Bendahara and Pemancha were again appointed joint Regents on November 26, 1935, although they do not appear formally to have “handed back their powers” at a later date.

62. The practice relating to the Regency does not appear to have been uniform, for, at a meeting of September 9, 1946, from which the Sultan was absent, the Duli Pengiran Pemancha pointed out “when His Highness the Sultan is away it was the practice in the past for the Duli Pengiran Bendahara and the Duli Pengiran Pemancha to act as joint Regents.” No action appears to have been taken upon this proposal, however, and although on April 16, 1952, the Duli Pengiran Pemancha and the Pengiran Muda Hashim were appointed as joint Regents during the Sultan’s absence in the United Kingdom, there is a precedent for the appointment of a single Regent in the minutes of the State Council meeting held on August 25, 1941, when the Sultan “with the concurrence of the State Council”, appointed the Duli Pengiran Bendahara to act as Regent during the Sultan’s absence on a pilgrimage to Mecca.

The report of the Constitutional Committee appointed by His Highness now recommends a Regency until the new Sultan is twenty-one years of age.
63. There is also a “Juma’ah Shara-iah’ or Religious Council, and it was proposed (State Council Minutes, December 2, 1948 and January 3, 1949) that this should be formally constituted. There is in fact a Religious Advisory Board for the State (v. Not. No. 154/1954) consisting of the Duli Pengiran Pemancha as President, and fifteen other members, appointed by the Sultan, although for no express period. All these members are of course Malays. Under section 17 of the Courts Enactment, 1951, the Sultan in Religious Council hears appeals from the judgments of Courts of Kathis. This Council “shall consist of such persons learned in the Muhammadan law and religion as the Sultan may appoint”, and the Sultan need not necessarily accept it’s advice. At present this Council consists of the Duli Pengiran Bendahara as President, and nine other members (v. Not. No. 146/1954.). There is also an Appointments Board for Religious officials, consisting of the Chief Kathi and four other members appointed by the Sultan (v. Not. No. 146/1954).

64. Honours are within the province of the Sultan alone, and the following orders have been created (see the Gazette Supplement for May 31, 1954):

- The Most Esteemed Family Order;
- The Most Honourable Order of the Crown of Brunei;
- The Brunei Meritorious Service Medal.

**The High Commissioner and the Resident**

65. Originally the Governor of the Straits Settlements was, by a Royal Commission of December 10, 1906, High Commissioner for the Malay States and Brunei, as well as being appointed the British Agent for Sarawak and North Borneo. With the reorganisation effected during the period 1946-1948, however, the office of Governor-General was created, and by a
Commission dated May 15, 1946, the Right Honourable Malcolm MacDonald was appointed “Governor-General of the Malayan Union, the Colony of Singapore and such other territories as may be placed under his direction.”

66. As is well known, the MacMichael Agreements of 1945, upon which the reorganisation of the Malayan Union was to be effected, proved, in fact, unworkable, and the Malayan Union gave way to the Federation of Malay, while, at the same time, the Agreements of 1945 (which gave full jurisdiction to the crown) were replaced by the Federation of Malaya Agreement. At the same time “for the better co-ordination of policy and administration,” by a Commission of August 10, 1948, the office of the Commissioner-General was established, and the Right Honourable Malcolm MacDonald appointed Commissioner-General for the United Kingdom in South-East Asia. “The wider jurisdiction of the previous High Commissioner, in so far as it covered the Borneo dependencies as well as Malaya, has been inherited in an attenuated form by the Commissioner-General in South-East Asia. His headquarters are in Singapore, and his sphere covers all the territories of Malaya and Borneo, although it was purposely left imprecise until the reorganisation was complete. (The Commissioner-General) is the only constitutional link between these territories.”

67. “The Commissioner-General has no executive powers; he co-ordinates and directs policy, and may convene conferences on any subject to be attended by the Governors and other British representatives within his sphere. For a brief transitional period the Resident in Brunei was responsible to him, as

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* The substance of this and the following paragraph is derived from Wright, British Colonial Constitutions, 1947 (O.U.P., 1952) p.75.
formerly to the previous High Commissioner; but in 1948* the Governor of Sarawak was appointed High Commissioner for Brunei, and the administrative separation of Borneo from Malaya became complete.”

68. It is perhaps incorrect to state that the Commissioner-General is “the only constitutional link” between the British territories in Malaya and Borneo, since the Crown itself is the real link between these two territories; but for practical purposes the Commissioner-General may be termed the direct constitutional link between the territories in spite of the (necessarily) nebulous nature of his instructions of November 12, 1948.

69. The Commission of March 9, 1948, appointing the “person for the time being Administering the Government of [the] Colony or Sarawak to be ............High Commissioner for the.............State of Brunei” superceded the earlier Commission of December 10, 1906. By the Commission of 1948 the Governor or Officer Administering the Government Of Sarawak is appointed by the Crown-

“as such High Commissioner to act in Our name and on our behalf, and in all respects to represent Our Crown and authority in matters occurring within the said State ** (of Brunei), and further to take all such measures and to do all such matters and things in the State** aforesaid as in the interest of Our service think expedient, subject to such instruction as (the High Commissioner) may from time to time receive from Us or through one of Our Principal Secretaries of State.”

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* March 9, 1948: Commission appointing the Officer for the time being Administering the Government of the Colony of Sarawak to by High Commissioner for the Protected State of Brunei in the Island of Borneo: v. Sarawak Government Gazette Extraordinary of May 1, 1948; Brunei Gazette Notification No. 44 of 1948.

** My italics
70. It will be observed that, chronologically, the earlier Commission followed within a year of the conclusion of the Supplementary Agreement of 1905 and 1906, providing for the reception of the Resident, who was by the Agreement appointed “the Agent and Representative of His Britannic Majesty’s Government under the High Commissioner for the British Protectorate in Borneo” (sic); and that Agreement in fact provided that the Resident’s advice—

“must be taken and acted upon on all questions in Brunei, other than those affecting the Mohammedan religion, in order that a similar system may be established to that existing in other Malay States now under British protection”.

This provision clearly derives from Clause vi of the Treaty of Pangkor of 1874, which provides “That the Sultan receive and provide a suitable residence for a British Officer, to be called the Resident, who shall be accredited to his Court and whose advice must be asked and acted upon in all questions other than those touching Malay religion and custom”.

71. It is from this Article of the Supplementary Agreement of 1905 and 1906, as read with the Agreement of 1888, the Treaty of 1847 and the Agreement of 1856 (in so far as they still apply) that the powers of the Crown, acting through the High Commissioner, are derived; and it will be observed that, whereas by Article I of the Agreement of 1888 it was provided that the status of protection under Great Britain “shall confer no right on Her Majesty’s Government to interfere with the internal administration” of the State of Brunei (further than was therein provided), the Supplementary Agreement of 1905 and 1906 in fact arrogated to the Crown, through the High Commissioner and his Agent, the Resident, power to require the Resident’s advice to be acted upon in the State in relation to all questions whatsoever, other than those affecting the Mohammedan religion.
72. These wide general powers have to some extent been modified by constitutional practice. Certainly in the legislative field since 1906 (beginning with Enactment No. II of 1906, the earliest I can trace) every Enactment has been “enacted by His Highness the Sultan in Council”; and at the head of every printed copy of such Enactment appears the signature and title of the British Resident, although without any explanatory words of assent, as in the case of, for example, a Governor acting under his Royal instructions. (In the executive field it is of interest to note in the Annual Report for 1910 (page 10) that “certain applications for large areas of State land had.............received the sanction of His Excellency the High Commissioner”.

73. Since the Resident is “the Agent and Representative” of the High Commissioner, it seems clear that the constitutional convention now requires the High Commissioner’s approval to all legislation: and this principle has apparently been extended to legislation “affecting the Mohammedan religion”, for both the Mohammedan Laws Enactment of 1912 (Enactment No. I of 1912) and the Mohammedan Marriage and Divorce Registration Enactment of 1913 (Enactment No. III of 1913), enactments which might be held not to have required such approval, have in fact borne the Resident’s approval, in the usual form: although whether this was so ex abundanti cautels or otherwise is no doubt a matter for argument.

74. I have been unable to trace any express references to the early functions of the High Commissioner, but the following extract from a despatch of September 7, 1905, *from H.M. Consul General at Singapore (Sir John Anderson, subsequently Governor of the Straits Settlements) to the Marquess of Lansdowne, is of interest-

* Further Correspondence, etc., 1905, p.120
“With regard to the proposal that I should be appointed High Commissioner for the British Protectorates in Borneo, so long as the British North Borneo Company and the Government of Sarawak retain their present complete independence, such a step would be misleading and a source of great embarrassment to the two Governments and myself. In the East here there is no practical distinction between the powers of the High Commissioner and those of the Governor. As High Commissioner of the Federated Malay States my authority and powers in those territories are as extensive, and my responsibility for the administration as complete, as within the Colony of which I am Governor.

I do not mean to imply that if the Governor of the Straits Settlements is to be appointed High Commissioner for the Borneo Protectorates he must be invested with the same full authority as he enjoys in the Federated Malay States, but the immediate result would be that I should receive frequent appeals against the action of the Governments of those Protectorates in matters of internal administration, and unless His Majesty’s Government are prepared to support me in claiming the right to inquire into such appeals and, if necessary, to over-rule the local authorities, no advantage would result from the change.

“That the change, if it means giving the Governor here real powers of control, would be welcomed, more especially in the territory of the Company and in this Colony, with which practically the whole of the trade of Borneo is conducted, I am satisfied.”
After animadverting upon certain affairs in Sarawak, the Consul-General adds-

“I only mention these matters to make it clear what would be involved in the appointment of the Governor of the Straits Settlements as High Commissioner for the Borneo Protectorates. As Consul-General such matters do not concern me; as High Commissioner I should feel it incumbent on me to inquire into them, and unless His Majesty’s Government are prepared to support me in interfering to that extent in the internal affairs of these Protectorates, the present title should continue.

“My personal view is that the assumption of protection in the case of States with only a rudimentary political organisation involves a moral responsibility for the carrying on of the Administration in accordance with the ideas of humanity and civilization, and that it is high time that the step suggested was taken; but I desire that there should be no misunderstanding as to what it involves, and, if His Majesty’s Government decide that it is to be taken, I shall do my best to discharge the duties placed upon me faithfully, but at the same time with the earnest desire to avoid friction or unnecessary interference with the Governments of the Protectorates concerned”.

The Marquess of Lansdownes, in a letter to the Consul-General at Singapore of November 28, 1905*, refers to the Resident as the “Imperial Resident at Brunei under the High Commissioner at Singapore”; and in the Consul-General’s Instructions to Campbell and MacArthur,** who were selected by

* Further Correspondence, etc., p.129.
** Further Correspondence, etc., p.134.
him" for the purpose of negotiating with the Sultan [of Brunei] for the reception of a British Resident on whose advice the administration of his country should in future be conducted, as is the case in the Federated Malay States," it was stated (letter of November 9, 1905, para.4) that-

"It must be made clear to the Sultan and his Chiefs- the Pengirans, Bendahara, and Pemancha- that the whole of the administration and the whole powers of legislation and of taxation, and administration of justice, are to be conducted on the advice of the Resident, whether they are vested in the Sultan or in any of his Chiefs as tulin owners."

77. The Instructions continue as follows-

Instead of the casual and irregular revenues which they [the Sultan and his Chiefs] have hitherto received from their offices or the exercise of their rights, they must be prepared to accept in future fixed annual payments, and it must be made clear to them that the amounts of any such payments may be revised in the case of their successors in the light of the actual costs of the administration ........ The amount of the annual payments to the Sultan and the Pengirans, Bendahara and Pemancha should not exceed 15,000 dollars in the case of the Sultan, and 7,000 dollars each for the others."

These instructions appear to have been executed, and at the present time His Highness and his two Ministers ‘santapan’\textsuperscript{76} appears to be incorrectly described as “personal emoluments”, for allowances have accrued from the former kuripan rights. I believe His Highness does draw certain moneys from
Sarawak as part or his “Kerajaan” rights, in addition to the sums shown in the Estimates; and I understand that the Duli Pengiran Bendahara and the Duli Pengiran Pemancha draw small annual sums in commutation of their former “kuripan” in relation to several districts of Sarawak and North Borneo, respectively.

78. It will be observed (see para 70, above) that the Resident was to be the “Agent and Representative of His Britannic Majesty’s Government under the High Commissioner for the British Protectorate in Borneo.” These words follow the words used in the Malayan Treaty of Federation of 1895, by which the Rulers of Perak, Selangor, Negri Sembilan and Pahang agreed “to accept a British Officer, to be styled the Resident-General, as the agent and representative of the British Government under the Governor of the Straits Settlements”*; and since the expressed object of the supplementary Agreement of 1905 and 1906 (establishing the office of Resident) was that “a similar system may be established to that existing in other Malay States now under British protection”, it is pertinent to consider the Residential system of such Malay States.

79. Jones** states that “today the meaning of the phrase ‘agent and representative’ is a matter for speculation. No manner of doubt existed in the mind of the Federation’s begetter and main architect. Writing eleven years later (that is in 1906) Sir Frank Swettenham uses these words,....... It was for the first time plainly stated that he [the Resident-General] should have executive control, under the direction of the Governor......’And as the first Resident-General he would have special knowledge”.

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* Maxwell, Treaties and Engagement affecting the Malay States and Borneo, (1924), 77 p.71.
** Public Adminstration in Malaya, 1953, 78 p.33
80. The Resident-General of 1895 took over the administration of each of the Residents of the Federated States; and the duties of the Residents had been defined in a despatch of Lord Carnavon on June 1, 1876* (described by Swettenham as embodying “the only detailed instructions ever issued by the Colonial office in regard to the function of the British Residents”) as “the giving (of) influential and responsible advice to the Ruler, a position the duties of which are well understood in the East”. The Despatch continued-

“The Residents are not to interfere more frequently or to greater extent than is necessary with the minor details of government; but their special objects should be, the maintaining of peace and law, the initiation of a sound system of taxation with the consequent development of the resources of the country, and the supervision of the collection of the revenue, so as to ensure the receipt of funds necessary to carry out the principal engagements of the Government, and to pay for the cost of the British officers, and whatever establishments may be necessary to support them.”

81. As Jones tersely observes** “as such a programme involved changes of a most radical nature, some agency more powerful than advice would be essential, and to be content to call the instructions disingenuous, involves much restraint”; and he adds, (*) “the Residents had not taken over a system of government and improved on it. While punctiliously careful to observe the stipulations of the treaties that

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(*) Op. Cit., p.29. At page 30 Jones states that “Brunei external policy was placed under British control”: I do not consider that statement comprehensive enough, for internal affairs are in fact under similar control.
there should be no interference with Malay religion and customs, they had in every respect assumed the whole burden of administration”; and the Federation of Malaya Annual Report, 1953, states (page 368) that “although the title of the British officer appointed in pursuance of the Treaties varied - in Perak, Selangor, Negri Sembilan and Pahang he was called Resident, in the other States, Adviser - it was never intended that there should be any difference in their functions; they were all meant to be advisers. But from the very start in Perak, Selangor, Negri Sembilan and Pahang the Residents not only advised on policy, they were placed in such a position that they had to see that any policy decided upon was put into operation; they became in fact not alone advisers but the chief executive officers of the State. In the other States, on the other hand, the Advisors had almost always confined themselves to the giving of advice; the translation of that advice into action in internal affairs was a matter for the Malay administration.”

The position in Brunei resembles on the above basis and past history, that which until recently prevailed in Perak, Negri Sembilan and Pahang; and indeed, as Mr. Treacher wrote to Sir Frank Swettenham in 1903, when his views were sought upon the introduction of a Resident, “advice to Brunei Rajahs would be of little use unless the same meaning is attached to the term as in the Federated Malay States.”*

82. In view of the emphatic statements of the first High Commissioner, Sir John Anderson, referred to above, the comments of Jones upon the Residential system of Malaya and, most importantly, the actual text of the Supplementary Agreement of 1905 and 1906, it is clear (as I have indicated earlier) that the High Commissioner’s powers extend, through the Resident, to the approval or disapproval of any legislation enacted by the Sultan in Council other than (perhaps) legislation affecting the Mohammedan religion.

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* Further Correspondence, etc., Part 28, p.52.

(see next page)
The Brunei Order in Council 1906 in fact provided that “all functions hitherto discharged, and power, authority and jurisdiction hitherto exercised in Brunei by the (former British) Consul shall, from and after the commencement of this Order, be exercised by the Resident” (Article 4). What these functions were (other than those specifically conferred by the Order in Council of 1901) I cannot ascertain; but in any case the Order in Council itself, if it ever came into force was revoked by the Order in Council of September 28, 1908.
As a learned writer observes, “in Brunei, though in law the Sultan remains an independent sovereign, internal affairs have hitherto been under the control of the Resident”; in spite of which (to paraphrase the author) the Crown is the fundamental institution of, and possesses legislative authority throughout the Dependant Empire, with the exception, he adds with caution, in Brunei (inter alia) “in so far as it does not possess full or sufficient jurisdiction.”

83. When, for example, the unified Judiciary was established for Sarawak, North Borneo and Brunei the Sultan in Council enacted the Superior Courts (Authorisation ) Enactment, 1951, giving His Majesty power to establish Courts by Order in Council; the Courts Order in Council (*) recites that Enactment but, unlike the Sarawak, North Borneo and Brunei (Appeal to Privy Council) Order in Council, 1951 + does not purport to be made by virtue of the powers conferred by (inter alia) the Foreign Jurisdiction Act, 1890: although it seems to me that such powers could, by virtue of the wording of the Supplementary Agreement of 1905 and 1906 and the subordination of the Resident to the High Commissioner, also have been invoked in relation to the establishment of the Courts: a view supported, in my opinion, by the fact that the office of the High Commissioner in fact initiated the Courts Enactment of 1952 (Chapter 6 in the Revised Edition of the Laws of Brunei). This view is, I feel, also confirmed by 1901 and the Brunei Order in Council, 1906, and by the Order in

* Wight, British Colonial Constitutions, 1951, p.10; this conflicts with Jones’ views, and indicates the confusion prevailing upon the powers of the High Commissioner. It is also not correct to describe the Sultan as an “independent sovereign”, for he has always acted with the advice of at least two of his Ministers.

** Wight, op. cit., p. 91.

(*) S.I. 1951 No. 1948.

+ S.I. 1951 No. 1949.
Council of September 26, 1908, revoking the two earlier Orders in Council, all of which were made “by virtue and in exercise of the powers in [that] behalf by the Foreign Jurisdiction Act, 1890, or otherwise in His Majesty vested. *” These Orders in Council related of course only to matters peculiarly within the province of existing treaties. An earlier Order in Council of 1890 (which as far as I can deduce related to British Courts in Brunei, and was never brought into force) was revoked in 1901: presumably that Order was also made under the Foreign Jurisdiction Act.

84. It will be seen therefore, that there is some difficulty in deducing the true constitutional position of sovereignty in Brunei, when the wide and general powers of the Supplementary Agreement of 1905 and 1906 are reviewed in the light of subsequent constitutional practice; but my researches (which have to some extent been impaired by lack of material*) indicate the need for indicating the description of legislation which, under any new Constitution for the State, must require the assent of the High Commissioner, before acquiring the force of law: a step that may require the promulgation of an amended Commission relating to the Office of High Commissioner.

Sovereign Powers in Capital Cases

85. As indicated earlier, until the enactment of the Courts Enactment, 1951, which come into force on May 1, 1952, the High Commissioner had, by virtue of the Enactment of 1908, powers of reprieve, etc., in capital cases.

86. In 1951, however, the Sarawak Penal Code and Criminal Procedure Code Adoption Enactment, 1951, was passed, and this Enactment (which also came into

* In conjunction with the Information Officer (Inche Suhaimi) I am taking steps to collect for the State archives such ancient documents, etc., relating to Brunei History as may still be extant.
force on May 1, 1952) adopted the Sarawak Penal and Criminal Procedure Codes, as amended up to January 1, 1952, “with such formal alterations and amendments as may be necessary to make the same applicable to the circumstances of the State...... (to) have effect in the same manner as if they had been expressly enacted by the Sultan in Council”; and at the same time the adoption of the Federation codes, under the Federated Malay States Adoption Enactment, 1939 (now the Malayan Laws Adoption Enactment, Cap.3) was revoked.*

87. Acting under the powers conferred upon him by the Revised Edition of the Laws Enactment of 1951, the Commissioner for the revision of the Laws included in the Revised Edition reprints of both the Sarawak Penal and Criminal Procedure Codes, adopted “with formal alterations and amendments,” etc., in pursuance of the Adoption Enactment of 1951.

88. Under the Sarawak Criminal Procedure Code (section 244) sentences of death are, in conformity with the provisions of Article II of the Sarawak Royal Instructions, considered by the Governor, acting with the advice of the Supreme Council; and in the Brunei Revised Edition of the Laws, (Chapter 7, section 244) similar powers were conferred upon the Sultan.

* By this Enactment the F.M.S. Criminal Procedure and Penal Codes were, until May 1, 1952, in force in Brunei, “with such formal alterations and amendments as may be necessary to make the same applicable to the circumstances of the State.” The F.M.S. Penal Code (Cap.45, section 54) conferred powers of commutation in capital cases “upon the Ruler of the State in Council”; and the same authority has power, under the F.M.S. Criminal Procedure Code (Cap.6, Sec.281) to order execution, commutation or pardon of the death sentence. In view of the powers of the High Commissioner under the Courts Enactment, 1908, such provisions would not be applicable in law to the circumstances of the State, nor were they in fact so regarded. The new Brunei Revised Edition of course puts the powers into the hands of the Sultan alone, not the Sultan in Council.
89. The Revised Edition of the Laws of Brunei sets out the law in force or enacted in the State as at March 22, 1952: and on June 24, 1953, an Enactment amending the Criminal Procedure Code by (inter alia) substituting the words “High Commissioner” for the word “Governor”, wherever that word occurred, was passed; and this Enactment was, clearly, intended to indicate the nature of some, at least, of the “formal alterations and amendments” necessary for the adoption of the Sarawak Criminal Procedure Code; and it is perhaps unfortunate that, in spite of the earlier provisions relating to the powers of the High Commissioner, under the Courts Enactment of 1908, the Revised Edition of the Laws contains references in the Criminal Procedure Code, e.g., Sect. 244, to the Sultan—although by virtue of the Enactment of 1953 the powers under that Code now devolve upon the High Commissioner.

90. The powers in the Criminal Procedure it is Code are not, in my view, in themselves adequate to confer full powers of reprieve, etc. In Sarawak those powers subsist, as indicated earlier, under (inter alia) the Royal Instructions, and also under the Penal Code; and in fact by section 54 of that Code the Governor is empowered to commute sentences of death for any other punishment provided by the Penal Code.

91. I do not propose to consider here the difficulties of construing the various provisions of the Sarawak Law, with its added complication that, under the Prisons Ordinance (Cap. 70, sect. 8(3) “no person may be sentenced to a longer term of imprisonment than fifteen years”, since, whatever else is difficult to construe, it is clear that the overriding authority rests in this context with the Governor.
92. Brunei has, however, with effect from May 1, 1952, also adopted the Sarawak Penal Code, and this appears as Chapter 22 in the Revised Edition of the Laws of Brunei; and by section 54 of that Code the Sultan alone is given power to commute sentences of death; a provision in conflict with the more recent amendment to the Brunei Criminal Procedure Code.

93. By section 7 of the Revised Edition of the Laws Enactment, 1951, the Sultan in Council was given power by proclamation to order that the Revised Edition of the Laws should come into force “as from such date as he thinks fit”, and by section 8 of that Enactment the Revised Edition becomes “in all Courts of justice and for all purposes whatsoever the sole authentic edition of the Enactments of the State in force on such date as may be specified in the proclamation”. Since there is no such provision in the Brunei Interpretation and General Clauses Enactment (Chapter 4) as there is in the Sarawak Interpretation Ordinance, 1953 (Sec. 15 (a)) prohibiting retrospective subsidiary legislation, there seems no doubt that a proclamation under Section 7 of the Enactment of 1951 could be retrospective in its operation.

94. On November 30, 1953, by a proclamation under Section 7 of the Revised Edition of the Laws Enactment, 1951, the Sultan in Council approved the Revised Edition of the Laws of Brunei, and ordered “that it shall come into force on the 15th day of October, 1953.”

95. To the lawyer as well as, no doubt, the laymen, the situation has become obscure, and it is a matter of some difficulty to determine the present correct constitutional practice to be followed in relation to the confirmation of sentence of death in capital cases, reprieve and
pardon, etc. In view of the fact that, at the time specified by the proclamation, that is, October 15, 1953, the Criminal Procedure Code as printed in the Revised Edition of March 22, 1952, contains no reference to “Governor”, the amending Enactment of June 24, 1953, is in that respect probably nugatory; and it appears to me that the powers of reprieve, commutation and pardon are at present properly exercisable by the Sultan acting alone: although clearly he must in the exercise of those powers still have regard to his obligations under the Supplementary Agreement of 1905 and 1906*, and follow the advice of the Resident upon the matter, even although it is theoretically possible for the Resident to have no copy of the reports of the High Court Judge who tried the case, and of either the Chief Justice or the Court of Appeal.

* And see also the Agreement of 1856 which in relation to “English subjects” (it may be that this term also includes British subjects) states that “no punishment can be inflicted on them heavier than accord with the customs of the English”: it is likely that at present capital cases involving such persons must still be referred to the High Commissioner, as the representative of the Crown.
96. I offer the foregoing views with some diffidence, since the exact legal position is far from being as clear as it should be; but from the purport of the Enactment of June 24, 1953, it is clear that it was never intended, by the Courts legislation of 1951, to derogate from any powers the High Commissioner should have on this important topic.*82 Certain other amendments to the Codes may also be necessary in relation, for example, to the definition of a subject of the Sultan, for the purposes of the Penal Code.

* On this point I should add that I can foresee difficulties in seeking to return the power of pardon, etc., to the High Commissioner, and for political reasons it may well be desirable to leave the matter alone, allowing constitutional practice to produce a solution to the problem.

An interesting point may also arise in connection with section 20 of the Appeal to the Privy Council Order in Council (which provides that “any order which His Majesty in Council may think fit to make on an appeal from a judgement of the [Court of Appeal of Sarawak, North Borneo and Brunei] shall be enforced in like manner as any judgement of [that] Court should or might have been executed) may arise in relation to the acceptance of any advice tendered by the Judicial Committee: for under the present Criminal Procedure and Penal Codes powers of pardon, reprieve and commutation of sentences would appear to be vested, not in the High Commissioner, but the Sultan alone: see above.........
The Status of a British Protected Person in Brunei

97. It is unfortunate that neither His Highness nor the members of the Constitution Committee were aware of the provisions of the British Protectorates, Protected States and Protected Persons Order in Council, 1949: *83 had they been so cognisant, their recommendations relating to citizenship might have been different. **

98. By section 12 of that Order in Council the status of British Protected persons having a connection with a protected state is defined as follows:

“(1) A person who, under any law providing for citizenship or nationality in force in any protected state, is a citizen or national of that State shall be a British protected person by virtue of his connection with that State.

(2) If in any protected State no such law as is mentioned in the preceding section is in force, the provision of section 3, section 4, section 9, section 11 and section 13 of this Order shall have effect in relation to that State as if it were a protectorate.

(3) If any question arises whether any such law as is mentioned in subsection (1) of this section is in force, a certificate of a Secretary of State on the question shall be conclusive.”

(4) (Special provision relating to Zanzibar).

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* S.I. 1949 No. 140.
** See Infra, para. 133, parts J and K
99. The section of the Order in Council referred to in section 12 relates to legitimated children (section 3); posthumous children (section 4); registration of women married to British protected persons (section 11) and the renunciation of status by a national of a foreign country (section 13). By section 9, it is provided that a person shall be a British protected person by virtue of his connection with a protectorate or trust territory. Since Brunei has at present no law providing for citizenship or nationality, the provisions of section 9 apply to Brunei by virtue of section 5(2) and section 12 (2) as follows:

“Subject to the provisions of section 13 of the Order, a person shall be a British protected person by virtue of his connection with Brunei-

(a) if he was born (whether before or after the date of the Order in Council, that is, January 28, 1949) in Brunei; or

(b) in the case of a person born elsewhere than in Brunei before January 28, 1949, if his father was born in Brunei; or

(c) in the case of a person born elsewhere than in Brunei on or after January 28, 1949, if his father was born in Brunei, and was a British protected person at the time of that person’s birth.”

100. Under section 13 of the Order in Council any person who is of full age and capacity, and a British protected person “under any provision contained in section 9, section 10 or section 11 of
(the) Order” (I am assuming that this terminology covers persons within the scope of section 9 by virtue of section 12) and who is also a national of any country other than

the United Kingdom;
any British Colony;
Canada, Australia, New Zealand,
the Union of South Africa,
Newfoundland, India, Pakistan,
Southern Rhodesia and Ceylon;
Eire;
Any protectorate;
any protected state; or
any mandate or trust territory;

may make a declaration renouncing his status as a British protected person, and the High Commissioner (in the case of Brunei) must cause such declaration to be registered, unless the declaration is made during any war in which His Majesty may be engaged - when the High Commissioner has discretion to withhold registration. Upon registration, the applicant ceases to be a British protected person.

101. As far as I am aware no British protected person in Brunei has ever made such application, nor have forms of declaration and application, nor any manner of making such forms, ever been prescribed by the High Commissioner.

Naturalisation of a Brunei Protected Person

102. The foregoing provisions relate only to the definition of the status of a British protected person in relation to the State of Brunei. Further machinery is provided under the British Nationality Act, 1948* for a British protected person

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* 11 and 12 Geo. 6, 56, sect. 10.
who is of full age and capacity* to become a citizen of the United Kingdom and Colonies by a certificate of naturalization granted by the High Commissioner with the approval of a Secretary of State.

103. The qualifications leading to the granting of a certificate of naturalisation are set out in the Second Schedule to the British Nationality Act, 1948, the provisions of which are made applicable to Brunei by section 8 of the Order in Council of 1949. By virtue of this provision the qualifications for naturalization as a citizen of the United Kingdom and Colonies are as follows-

(1) The applicant must be ordinarily resident in Brunei and have been so resident throughout the period of twelve months (or such shorter period as the High Commissioner may in the special circumstance of any case accept) immediately preceding his application; or, the applicant must be in the service of the Crown, under Her Majesty’s government in the United Kingdom;

(2) The applicant must be of good character;

(3) The applicant must have sufficient knowledge of the English language, “or any other language in current use” in Brunei; and

(4) The applicant must intend to reside in Brunei, the United Kingdom, any Colony, protectorate or United Kingdom trust

* This will be determined according to the rule laid down in section 32(9) of the Act of 1948. There appears to be no explicit provision in Brunei law defining the age of majority.
territory, or in the Anglo Egyptian Sudan or (seemle) any Malay State; or to enter into or continue in Crown service in the United Kingdom, or under any international organisation of which Her Majesty’s government in the United Kingdom is a member, or in the employment of any society, company or body of persons established in the United Kingdom or any Colony, protectorate or United Kingdom trust territory.

104. Exactly what would be construed as a “language in current use” in Brunei may on occasion be difficult to termine; but there seems little doubt that the term would include the Malay language and Chinese dialects.

Naturalisation of an Alien Resident in Brunei

105. By virtue of the provision of the British Nationality Act, 1948, and the Order in Council referred to under the preceding heading, it is possible for an alien (that is, “a person who is not a British subject, a British protected or a citizen of Eire”—u. section 32(1) of the Act of 1948) to qualify for naturalization as a citizen of the United Kingdom and Colonies if-

(op. The Sarawak Interpretation Ordinance, 1953, where the age is fixed in relation to Asians as 18) and presumably the general provision of Muslim Law will be applicable: on which Fyzee observes (Outlines of Muhammadan Law, O.U.P., 1949 p.179) “puberty is the age of majority in Islam, and in the absence of evidence it is attained at the age of 15”. However, since the concepts of protected person and citizen of the United Kingdom and Colonies arise under the Imperial Act, the better view would appear to be that “full age” means (in the absence of express provision in Brunei law) of the age of twenty-one years.
(a) he has either resided in Brunei, or been in Crown service under Her Majesty’s government in the United Kingdom, or partly the one and partly the other, throughout the period of twelve months immediately preceding the date of his application;

(b) (during the seven years immediately preceding the said period of twelve months he has either resided in Brunei or any other protected State, or in the United Kingdom or any Colony, protectorate or United Kingdom mandated territory, or been in Crown service as specified in paragraph (a), or partly the one and partly the other, for periods amounting in the aggregate to not less than four years;

(c) he is of good character;

(d) he has an adequate knowledge of’ the English language, or any language recognised in Brunei “as being on an equality with the English language”; and

(e) he intends, in the event of a certificate being granted to him, to reside in Brunei, the United Kingdom, any Colony, protectorate or United Kingdom trust territory, or in the Anglo-Egyptian Sudan or (seemle) any Malay State; or to enter into or continue in Crown service under Her Majesty’s government in the United Kingdom, or service under any international organization of which Her Majesty’s government in the Untied Kingdom is a member, or service in the Employment of a Society, company or body of persons established in the United Kingdom or established in any Colony, protectorate or United Kingdom trust territory.
106. It will be noted that by virtue of paragraph 105 (d), above, a more restrictive requirement is imposed upon an alien resident in Brunei than upon a British protected person resident in Brunei, seeking naturalisation: in the latter case the applicant must have a sufficient knowledge of English, or any other language in current use in Brunei”, whereas in the former the applicant must possess a sufficient knowledge of English or” any language recognized (in Brunei) as being on an equality with the English language.” It seems clear, therefore, that an alien seeking naturalization in Brunei must (inter alia) have a sufficient knowledge of either English or Malay.85

To this extent, therefore, status as a British protected person facilitates admission to citizenship of the United Kingdom and Colonies in the case of, for example, a Chinese speaking only a Chinese dialect.

107. An important discretion is, by virtue of paragraph 2 (d) of the Second Schedule to the Act of 1948 (when read in conjunction with section 10(2) of the Act and section 7 of the British Protectorates, Protected States and Protected Persons Order in Council, 1949) vested in the High Commissioner for, by this sub-paragraph, he may -

“allow period of residence of service earlier than eight years before the date of the application to be reckoned in computing the aggregate mentioned in..... sub-paragraph (b)”:

that is, the High Commissioner may allow residence or service earlier than eight years before the date of the application to be reckoned in computing the aggregate period of not less than four years’ residence required under paragraph 105(b) above.
Effect of Enactment of Brunei Citizenship Law

108. As a result of the provision of section 12 of the Imperial Order in Council of 1949, the status of a British protected person in Brunei is already defined. That section does, as already indicated, expressly provide in subsection (1) that -

“ A person who, under any law providing for citizenship or nationality in force in Brunei is a citizen or national of that State, shall be a British protected person by virtue of his connection with that State.”

This provision is, of course, qualified by subsection (2), which applies certain provisions of the Order “if in any protected state no such law as is mentioned in (subsection 1) is in force.”

109. If any definition of Brunei citizenship or Brunei nationality is afforded by any local Enactment, the present definition of a British protected person, referred to in paragraph 2 above, will disappear, and with it the simpler procedure for naturalisation at present possible for the British protected person resident in Brunei, under the provisions referred to in paragraph b above. The law relating to the naturalisation of aliens, will, however, be unaffected by any such local legislation, and, to take one simple example, a Chinese resident in Brunei may still qualify for naturalisation (see paragraph 105) if, inter alia, he has a sufficient knowledge of English and Malay, resided in Brunei for twelve months, and resided in Brunei for a total of at least four years preceding the period of seven years immediately preceding the date of his application. *

*See next page
By a decision of the State Council of May 26, 1954, it was agreed that Brunei Certificates of Identity under the Passport Regulations could be issued to-

(a) British subjects, and
(b) Aliens fulfilling the following qualifications:

(i) five years' continuous residence for Malays from Malaya, and also for British subjects who have emigrated from Sarawak or North Borneo, and who have lived in Sarawak or North Borneo for five years;

(ii) ten years continuous residence for British subjects and aliens who have emigrated from elsewhere. This will not include persons who have Commonwealth passports.

Exactly what these provisions mean I am unable to determine.
110. Of Malayan citizenship F.G. Carnell writes * that “owing to deep-seated communal cleavages between indigenous and immigrant peoples, and the consequent lack of common culture, Malaya’s diverse peoples are finding it extremely hard to reach agreement on what constitutes the Malayan community.”87 This remark is equally applicable to Brunei, and serves to indicate that the problem of citizenship upon which the structure of the State must rest is (to use Carnell’s adjectives) a socio-political, rather than a legal problem.

111. My own fear is that by giving shape and definition at the present time to the urgent demands of what might not incorrectly be described as Brunei nationalism,88 the development of the three Borneo territories (at least) into a healthy and strong federation capable of taking its place in the international community may well be retarded;89 and for this reason I am reluctant to recommend the taking of such a step without the most serious reflection upon its necessity at this time. To create a separate nationality out of a total population of approximately 55,000 people, of whom perhaps no more than twenty per cent might qualify therefor, appears to me likely to lead to serious difficulties at a later stage.

112. The terms “a natural born subject of the Sultan” and “a natural born citizen of the Sultan” have already been used in Brunei legislation. What those terms may mean at the present time is not clear but, [see the case of Ho Chik Kwan v. Public Prosecutor F.M.S. Law Reports, 1932, at p. 271] and the judgement of Elphinstone, C.J., referred to therein, in which he observed that “the appellant was born in the State of Negri Sembilan, and according to the general principle of international law became a

* International and Comparative Law Quarterly (1952) p. 504.90
natural born subject of the Ruler of that State] it is my view that any person born and resident in Brunei is a natural born subject of the Sultan, and this, notwithstanding the fact that if, for example, he is the son of a Chinese subject he may also have Chinese nationality. In other words, by the _jus soli_ a Chinese born and living in Brunei is at present a natural born subject of the Sultan, although by _jus sanguinis_ he may also be a Chinese subject.

113. On this question of the _jus soli_ I think it is worth quoting again from Carnell’s article, already referred to. He states that “the Chinese in the Federation have consistently maintained that the non-recognition of the _jus soli_ principle in the case of the Chinese born in the states is a breach of a rule of international law, long accepted in the States, and recognised as such in Ho Chik Kwan’s case.” Carnell adds that “since the Malay Rulers….have internal sovereignty…. this view can scarcely be upheld.” He adds, concerning the “delayed _jus soli_” principle of citizenship (apparently sought in Brunei and under which, for example, a second generation Brunei Chinese might qualify for citizenship) that “a less objectionable procedure would have been to continue to recognise the _jus soli_ principle in the case of locally-born Chinese and then, as in the case of citizens of the United Kingdom and Colonies, to define which Chinese subjects of the Rulers should be admitted to the Malayan community. It is true this would have left those locally-born Chinese regarded as undesirable residents with the status of British protected persons. But the Federation Government does not lack powers to deport even citizens of the United Kingdom and the Colonies.”

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* By a Chinese Law of February 7, 1929, the son of a Chinese subject is also a Chinese subject.
114. The use of the term “natural born subject of the Sultan” has not, apparently, occasioned any difficulty to date, although it could well do so in relation to the Land Code, and for these reasons I am most reluctant, as I have indicated earlier, to offer any definition which might interfere with the present position- the old Chinese Ruler, Shun, “did nothing yet governed well” - and the past History of Brunei indicates, I feel, the need for considerable caution in this field. At the present time we can, I think, safely define the following types of status in Brunei-

- a natural-born subject of the Sultan;
- a British protected person; and
- a British subject.

If any citizenship legislation is promulgated, and by subsection (1) of section 12 of the British Protectorates, Protected States and Protected Persons Order in Council, 1949, that legislation effectively define a British protected person; in default of such legislation the provisions of the Order in Council already define such status in Brunei*, and I assume that no definition of a natural-born subject of the Sultan” in the Interpretation and General Clauses Enactment would be said to be a law providing for citizenship or nationality in Brunei, so as to prevent the application of the Imperial Order in Council.

115. The real objects of defining citizenship appear to me to be as follows-

(i) the more effective control of alienation of land;

(ii) the control of benefits relating to social welfare schemes such as old age pensions, etc;

* If local legislation is ever promulgated, it may be necessary to make it retrospective to January 1, 1949, the date of the Order in Council.
(iii) the more effective control of immigration and deportation;

(iv) qualification as an elector and as a member of legislative and executive authorities.

If these purposes can be fulfilled under the particular laws regulating these various subjects, the need for such legislation ceases to exist: and this (see paragraph 111, above) appears to be the better solution of the problem,

116. In relation to the control of the alienation of land, I believe that some interest has already been expressed in relation to the system of land classification in force in Sarawak. Under that system (which, with all its attendant difficulties, appears to work satisfactorily) the rights of the indigenous peoples can be protected, and the development of alienation of State land controlled as an instrument of policy. Such a development would, of course require a definition of the indigenous races of Brunei. It is possible that the following definition might be useful at the present time in the Interpretation and General Clauses Enactment -

“native” means a natural-born subject of the Sultan who is a member of any race now considered to be indigenous to the State, as set out in the Schedule;

if the following Schedule be added to the Enactment-

“Schedule”

Races which are now considered to be indigenous to the State of Brunei, and therefore natives within the meaning of this Enactment-
Belait  
Dusun  
Iban  
Kedayan  
Malay  
Murut  
Tutong

and any admixture of any of the above named races with each other.

117. Such a definition would be useful on any revision of the land law, and in the control of immigration and deportation; and its uses would avoid the establishment of a separate nationality, and the consequent introduction of a further category of travel document. In so far as electoral law is concerned, it seems that the promulgation of any such law (which in any case would take several years to introduce to the people) should for the time being be deferred, until the working of the new Constitution has been tested. Once this has evolved in a satisfactory manner, then the electoral law be introduced only at the local government level: when, with the establishment of competent local authorities taking in the whole of the State each local authority could serve as an electoral college supplying members to the Majlis Meshuarat Negri, as is, I believe, contemplated by the formation of the present District Advisory Councils. Qualification for the franchise could perhaps depend upon registration under the National Registration Enactment, coupled with a prescribed period of residence in the State, and aliens (that is, say, persons who are not natural born subjects of the Sultan), infants, lunatics, etc., would be disqualified from voting. On such a basis I consider that the problem of local citizenship can be shelved for some considerable time; it is in fact covered by existing law, and its immediate objects can be accomplished without further definition.

Recent Proposals for Constitutional Reform

118. On July 16, 1946, in a secret letter addressed by the Secretary-General, Singapore, to the British Resident, Brunei, it was stated that:
“The Secretary of State feels that the Sultan of Brunei....should be invited to conclude a fresh agreement with H.M.G. providing, among other points, a cession to His Majesty of such jurisdiction as will enable him to legislate for the State under the Foreign Jurisdiction Act to the fullest extent. In view of the political difficulties which have arisen in Malaya in regard to the terms of the MacMichael Agreement, it may well be that any further agreement with the State of Brunei would need to be in different terms and probably be more exhaustive than the MacMicheal Agreement...... The Secretary of State attaches considerable importance to the cession of jurisdiction to His Majesty and thereby securing a closer control over the affairs of Brunei for the purpose of ensuring its future political, economic and social progress.”

119. The letter continued by suggesting that:

“for convenience of administration and finance, the State of Brunei might be incorporated as a separate protectorate under the control of either the Governor of Sarawak or the Governor of British North Borneo.....It may be said that there would be no objection on constitutional grounds to the inclusion of a Colony and a Protectorate in a single administration, for which precedents already exist in the Colonial Empire; and that in consequence the adoption of such a policy in the case of Brunei would not necessarily entail any alteration in the status and privileges of the Sultan as Ruler of the State, beyond the cession of jurisdiction to His Majesty”.

120. Of these proposals the Resident observed in a letter of July 18, 1946 that “possibly in a number of ways the cession of jurisdiction to His Majesty might make the Sultan’s position easier provided the status and dignity of his office is preserved.”
On the wider aspects of financial contribution by the State towards the development of its neighbours the Resident advised caution, although he considered that, for a number of reasons, the State had more in common with Sarawak than North Borneo: a view varied in a letter of July 29, 1946, when he expressed a preference for North Borneo.

121. Further comment upon the proposals appears in a telegram from the Governor-General, Malaya, to the Secretary of State, on May 15, 1947, where it is stated that Brunei -

“should be associated with a larger administrative unit which can aid it (in the administrative and technical higher grade of the public services)”, while “at the same time Brunei should remain a separate State with its own Sultan, constitutional arrangements and, at least for some time to come, budget. Any suggestion of cession to the King or absorption in a Colony would, in our opinion, be both impolitic and wrong, since it would be unlikely to be acceptable to either the Sultan or his State Council or his subjects.”

122. That telegram also referred to “the importance of our (that is, His Majesty’s Government’s) ultimate aim being an association between the three British Borneo territories under one effective administration….. The matter should be approached cautiously…. but we think it should be possible to achieve our objective some time in the next five or ten years.”

123. Upon these matters the Secretary of State observed in a telegram of May 29, 1947, that it was not clear “whether you have it in mind to raise with the Sultan the question of jurisdiction for His Majesty in Brunei….. I feel it would be unwise at present to propose any changes in agreement beyond those required to bring it into line
with what is now planned for Protected States in Malaya”: a point of view with which the Governor-General agreed, cabling that “I am advised that we can achieve in practice all that we desire under terms, of existing Treaty with Sultan.”

124. Following these proposals, the Governor of Sarawak became in 1948 the High Commissioner for Brunei, and shortly afterwards the Governor-General’s title was changed to that of Commissioner-General. At the same time, the Sultan emphasised that both he himself and the members of the State Council (who agreed with the changes) attached importance to the fact that the position and authority of the British Resident in Brunei would not be altered. Further, it is worthy of remark that considerable care had to be exercised in the explanation of these changes; and in fact the Resident, accompanied by both the Duli Pengiran Bendahara and the Duli Pengiran Pemancha, toured the State in order to explain the nature of the changes, and also to make it clear that the Governor of Sarawak was not to become the Governor of Brunei.

125. In this way an important intermediate step towards the possible assumption of jurisdiction within the State by the Crown was accomplished, and the way opened for the next phase, that of constitutional reform coupled with (perhaps) a revision of the treaties.

126. On April 21, 1952, in reply to several demi-official letters from the Secretary to the High Commissioner, the Resident (expressing both his own views and those of the Sultan) stated that it was “essential to have one small executive body to deal with policy and day-to-day problems of Government, and to create a separate and larger legislative chamber. Concerning membership of such bodies, the Resident quoted the Sultan’s view that in the latter’s opinion there would probably be no objection to an alien with a requisite period
of residence in Brunei and a knowledge of the Malay language attaining, on
swearing an oath of allegiance to the Sovereign, Brunei citizenship.” In that letter
the Resident also expressed his own personal view that the British Resident
should be replaced by a British Adviser: “a view appreciated by the Sultan, who
nevertheless felt that “for some time to come it would be quite impossible to find
a local man capable of officiating as Chief Executive Officer of Government.”

127. The views of the then Resident concerning the establishment of two
Councils, a legislative and an executive Council, appear to have met with general
agreement; and indeed, I am convinced of the necessity for the early establishment
of such bodies. Following these general proposals, His Highness on May 12, 1953,
issued the following statement -

“For some time it has been my intention and desire to grant
to my people a written Constitution by means of which proper
provision can be made for the Government and well-being of
our State of Brunei. It is my wish to set out in this Constitution,
firstly the laws by which the succession to the Sultanate shall be
assured, and such other matters relating to the Sovereign and
his family as is right and proper: and secondly the composition,
powers and duties of the State Council together with rules for
the conduct of the State business and for the making of laws.”*

* See next page
*Concerning the form of the constitution, Winstedt's comments on Johore (op.cit., p.93) are perhaps worthy of note. He writes -

“The difference between the Malay States that came first under our protection and a State like Johore in 1914 is well illustrated by the written Constitution that was drafted by English lawyers for Johore’s first Sultan, Abubakar, in 1895. That Constitution with one amendment made in 1912 has remained in force and has been taken as a pattern by all Malays of what they would choose for the constitution of all Protected States. Under the original constitution there were to be a Council of Ministers and a Council of State. The Ministers, who were the assistants and advisers to the Ruler, and to be Malays professing the Muhammedan faith. Before the Treaty of 1914 the members of the Council of State had to be Johore subjects, though not necessarily Malays or Muslims, but after 1914 membership was thrown open, as in all the States, to British officials and others not required to be Johore subjects or to take an oath of allegiance to the Sultan. The Council of Ministers had neither executive nor legislative powers; the main function of the Council of State is legislative. By an amendment to the constitution in 1912 a third or Executive Council was created on the model of similar councils in British Colonies, its province including routine matters of administration, the initiation of legislation, advice to the ruler on death sentences, applications for all but small holdings of agricultural land and for all mining rights, all contracts and tenders for public works.”
“The prosperity and progress of the State, the advancement of education and knowledge, the improvement in communications together with the experience I have gained in my travels outside the State persuade me that reforms are required in the Constitution of the State Council. If I, as Sovereign, with my traditional advisers, are to study the needs and aspirations of my people so as to act with wisdom and foresight in their interests as is our duty and privilege, it is essential that my Council should contain those of my subjects who by their calling or their experience or through the confidence that my subjects repose in them are best qualified to advise me for the advancement of my people’s welfare and the better government of the State.”

“It is therefore my intention to establish District Councils in the principal centres of the State, namely, at Brunei, Kuala Belait, Temburong and Tutong, to which District Councils I shall appoint local persons of proved loyalty, integrity and ability from both the urban and rural areas so that these Councils may in due course not only tender advice to me and my State Council in matters of local interest but also assist me in the administration and development of these areas. It is my hope that in due course the people of these areas will assist me to select suitable persons to sit on these Councils.

“Furthermore it is my intention that these Councils shall select from among their number persons of such ability and distinction that I can invite them to sit on my State Council with my traditional advisers and assist me in the government of our State.
“To further these ends I propose to appoint a Committee composed of about six persons who will advise me how best my intentions as set out above can be fulfilled, taking into account the wishes and views of my people of every rank, occupation and standing. I have instructed this Committee to travel to all the principal centres of population, to meet and discuss these proposals with all and sundry of my subjects in order to assure myself of the support and association of my people in this important step forward in our political development. The Committee has been instructed to record in writing the views of my subjects so that I can study them in detail and with the attention they merit.

“Finally it is my wish that the members of the State Council and the Majlis Islam of Brunei and all my subjects should cooperate to the full with this Committee and give them every assistance and information which they may require to carry out my instructions.”

128. As a result of the Sultan’s Proclamation the High Commissioner attended the meeting of the State Council, held on July 5, 1954, at which the formal establishment of District Advisory Councils was agreed. Such Councils are to select certain members to attend State Council meetings as observers and, when the Councils are both “well-established” and “of proved efficiency and value,” it is intended that the elected observers may be appointed to be members of the State Council. It was also agreed that the Chairman of each District Advisory Council would be elected annually, and also that Government servants should be eligible to sit on District Advisory Councils, provided that they supported Government policy “to the full.”

129. District Advisory Councils have been established for each of the four administrative districts of the State, and each District Officer is ex officio a member of the Council for his District. In other respects the Councils constituted as follows:-
### Table: District Advisory Council Membership and Special Qualifications

<table>
<thead>
<tr>
<th>District</th>
<th>Maximum Membership</th>
<th>Special Qualifications, etc.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brunei</td>
<td>40</td>
<td>Not more that twenty members to be Penghulus or Ketua 2 Kampong of the District.</td>
</tr>
<tr>
<td>Belait</td>
<td>24</td>
<td>(a) Not more than ten members to be Penghulus or Ketua 2 Kampong of the District;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(b) Seven members to be “citizens of the Belait District other than Chinese”;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(c) Three members to be nominees of the British Malayan Petroleum Co. Ltd.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(d) Three members to be nominees of “the Chinese Community.”</td>
</tr>
<tr>
<td>Tutong</td>
<td>20</td>
<td>Not more than ten members to be Penghulus or Ketua 2 Kampong of the District.</td>
</tr>
<tr>
<td>Temburong</td>
<td>12</td>
<td>Not more than six members to be Penghulus or Ketua 2 Kampong of the District.</td>
</tr>
</tbody>
</table>

130. From the District Advisory Councils observers to meetings of the State Council are elected as follows:

- from Brunei........... three observers;
- from Belait............two observers;
- from Tutong............one observer;
- from Temburong ...one observer;

131. Of the present functions (1954) of the District Advisory Councils the following points are worthy of note:
(a) The Councils are to be kept informed of all matters on the agenda of meetings of the State Council, and if there is any matter upon which a Council wishes to express an opinion to the State Council, it may do so through its observer, who may also be asked by His Highness to give an opinion upon any matter.

(b) The functions of the Councils will be purely advisory, until they are established formerly by law.

(c) The Councils may meet as frequently as they consider necessary, provided that they meet at least three times a year.

(d) Members of the Councils may be refunded out-of-pocket expenses. In time it is apparently intended to use the Councils as the nucleus of State-wide local Government, in place of the present sanitary, or municipal boards, at present functioning in urban areas.

132. The establishment of District Councils has been contemporaneous with the promulgation of the recommendations of the Constitution Committee, and since their recommendations constitute the final point of departure, it will be useful if, at this point, they are summarised and analysed.

133. The recommendations of the Constitutions Committee, which consisted of the following persons-

Pengiran Maharaja Laila (Chairman);
Pengiran Haji Mohd Salleh;
Pehin Orang Kaya di-Gadong Haji Md. Yusof;
Pehin Orang Kaya Shahbandar Haji Ahmad;
Pengiran Mohd Yusof A.R. (Secretary)
Pengiran Ali bin P. Haji Md. Daud;
Inche Abu Bakar bin Jambol;
could be summarised under the various Parts of the report but, for the purpose of the report, I am extracting such of the subject matter as I consider relevant, under headings of my own: since in this way a clearer picture of the various bodies and relationships envisaged by the members of that Committee is perhaps presented.

A. **Status of High Commissioner**

The Report recommends that the present powers of the High Commissioner should be transferred to the Sultan in Council, but that the High Commissioner shall retain the right to advise the Sultan in Council “in any matters which he sees fit and necessary for the welfare and safety of the State of Brunei, except matters concerning religion and the customs of the Brunei Malays.” The Sultan shall also have the power of pardon (“Pengampunan Hukum”).

B. **Status of British Resident**

It is recommended that the British Resident become British Adviser (‘Penasehat British’), and that the appointment be approved by the Sultan in Council. All the powers at present vested in the Resident are to be transferred to the office of the Mentri Besar, “who will be the head and the most senior Government Officer of the State”.

C. **Formation of Executive Council**

The establishment of a Majlis Meshuarat Kerajaan is recommended, with two official and not less than five unofficial members, who will be chosen and approved by the District Advisory Councils and the State Council- although (presumably) the appointments will be made in the name of the Sultan. In addition, the Executive Council shall consist of the following *ex-officio* members-
The Sultan (as President);
The Mentri Besar;
The British Adviser;
The Setiauasha Kerajaan-
(Secretary of State);
The Legal Adviser-
(Penasehat Undang-undang);
The State Treasurer-
(Pegawai Wang)

The constitution therefore, gives a minimum membership of thirteen, eight of whom will be official members.

D. Constitution of new State Council

It is recommended that the new State Council, of Majlis Meshuarat Negri, shall consist of twenty-eight members, presided over by the Mentri Besar. Of these, it is apparently intended that at least eleven, and possibly fourteen members, shall be official members, and fourteen members shall be unofficial members. If this equal balance is intended, then no doubt the Mentri Besar will have an additional casting vote upon any division. The following is the proposed constitution of the Majlis-

The Mentri Besar (President)

<table>
<thead>
<tr>
<th>(Official Members)</th>
<th>(Unofficial members)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duli Pengiran Bendahara;</td>
<td>Seven members representing</td>
</tr>
<tr>
<td>Duli Pengiran Pemancha</td>
<td>Brunei and Muara;</td>
</tr>
<tr>
<td>Setiausaha Kerajaan;</td>
<td>four members</td>
</tr>
<tr>
<td>Pengiran Maharaja Laila-representing</td>
<td>representing Belait;</td>
</tr>
<tr>
<td>(Head of the Cheteria)</td>
<td>two members</td>
</tr>
<tr>
<td>Dato Perdana Mentri-(Head of the Mentri)</td>
<td>Tutong; and one member</td>
</tr>
<tr>
<td>The Chief Kathi;</td>
<td>representing Temburong.</td>
</tr>
<tr>
<td>The British Adviser;</td>
<td></td>
</tr>
<tr>
<td>The Legal Adviser;</td>
<td></td>
</tr>
<tr>
<td>The State Treasurer;</td>
<td></td>
</tr>
<tr>
<td>President, Majlis Bandarah;</td>
<td></td>
</tr>
<tr>
<td>Three members appointed by His Highness.</td>
<td></td>
</tr>
</tbody>
</table>

Members of the Council will hold office for a period of three years.
E. Constitution of District Councils
It is recommended that four Majlis Meshuarat Daerah be formed for each of the four districts of the State, sending representatives to the new State Council in the proportions indicated in the preceding paragraph. Meetings of each Council will be held monthly; members will draw special allowances from one hundred to two hundred dollars a month; absence from three successive meetings will entail disqualification; and qualifications for membership are prescribed, requiring each Councillor to be-

(i) a Brunei Citizen (ra’ayat Brunei);
(ii) over twenty-one years of age;
(iii) knowledgeable in Malay, and
(iv) elected by the people.

All new legislation must be approved by a majority of members of each Majlis Meshuarat Daerah, before being considered by the Majlis Meshuarat Negri, and if their views are subsequently not accepted by the latter Council, reasons must be recorded for such non-acceptance.

F. Formation of Municipal Councils
It is recommended that two Majlis Bandaran be established, one for Brunei, Muara, Tutong and Temburong, and one for Kuala Belait, Belait District and Seria. These councils would apparently constitute local authorities, and would each consist of nineteen members (including a President) of whom seven members would be official members appointed by the Sultan on the advice of the Majlis Meshuarat Negri (or, more probably, the Majlis Meshuarat Keraja’an).

It is intended that the twelve unofficials should be elected in the following proportions -

<table>
<thead>
<tr>
<th>Majlis Bendaran Brunei</th>
<th>Majlis Bandaran Belait</th>
</tr>
</thead>
<tbody>
<tr>
<td>From Brunei eight members</td>
<td>From Kuala Belait, six members</td>
</tr>
<tr>
<td>Tutong, two members</td>
<td>Seria, six members</td>
</tr>
<tr>
<td>Muara, one member, and</td>
<td></td>
</tr>
<tr>
<td>Temburong, one member.</td>
<td></td>
</tr>
</tbody>
</table>
Members of these two Councils would be subject to the same qualifications as members of the Majlis Meshuarat Da’erah, and would hold office for three years.

G. **Appointment of Wazirs and Cheterias**

It is recommended that the following appointments be made:

**Wazirs**
- Duli Pengiran Bendahara;
- Duli Pengiran di Gadong (at present vacant);
- Duli Pengiran Pemancha;
- Duli Pengeran Temonggong (at present vacant).

**Cheterias**
- (Yang Amat Mulia) Pengiran Maharaja Laila;
- Pengiran Shahbandar (at present vacant);
- Pengiran Paduka Tuan (at present vacant);
- Pengiran Maharaja Dinda (at present vacant).

Appointments would be made by the Sultan, * on the recommendation of the Majlis Meshuarat Daerah, the Jumaah Pemangku Negri and the Majlis Meshuarat Negri, and Wazirs and Cheterias would receive such allowances as the Majlis Meshuarat Negri might prescribe.

H. **Constitution of Jumaah Pemangku Negri**

The establishment of a Jumaah Pemangku Negri (“Supporters of the Country”), whose functions would be to nominate the Sultan and the heir apparent, is recommended. These Jumaah would consist of:

- the four Wazirs,
- the four Cheteria;
- six Mentris ((Pehins);
- two religious leaders;

All Malay members of the Majlis Meshuarat Negri (or, perhaps, the Majlis Meshuarat Kerajaan); Four Mentri Darat, one of each district; Two or three “suitable persons” of the blood royal.

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* I understand that His Highness is not anxious to revive all these ancient appointments.
Regents would be appointed and dismissed by the Jumaah, with the approval of the Majlis Meshuarat Daerah and the Majlis Meshuarat Negri.

I. Franchise
It is recommended that when a law relating to elections is passed (“Undang 2 Pilihan Raya”), each voter must be-
(i) a Malay or a member of a race indigenous to Brunei
(ii) a subject of His Highness;
(iii) over twenty-one years of age; and
(iv) resident in the State for at least fifteen years preceding the date of election.

J. Citizenship
It is recommended that the following persons shall be (presumably by operation of law) be subjects of His Highness-
(i) Indigenous Bruneis;
(ii) Malays born in Brunei of Malay parents from Malaya, Sarawak, North Borneo and Indonesia;
(iii) Foreigners born in Brunei, after two generations.

K. Naturalisation
It is recommended that naturalisation be open to any foreigner who-
(i) resides in Brunei;
(ii) was born in Brunei;
(iii) has resided in Brunei for fifteen years;
(iv) has renounced his allegiance to his own mother land;
(v) has acknowledged and sworn allegiance to the Sultan and the State;
(vi) is of good character;
(vii) is approved by the Majlis Meshuarat Daerah; and
(viii) is eloquent in the Malay language.

L. **Ketua Kampong**
It is recommended that a Ketua Kampong be elected for every kampong with at least sixty residents or ten houses (“except Iban”). Each Ketua Kampong must be twenty-one years of age, and will hold office for a period of three years; during which time he will draw a monthly salary of from twenty to sixty-five dollars, depending upon the number of inhabitants of his district. Each kampong will be under the direct control of a Penghulu.

M. **Penghulu**
Each Penghulu shall be a salaried officer of the Government, elected for a five year term- election on three occasions qualifying for pension. Every Penghulu must-

(i) be a Brunei subject;
(ii) be at least twenty-one years of age;
(iii) be able to read and write Malay;
(iv) have attained a higher standard in Malay school;
(v) know religion and adat;
(vi) understand agriculture;
(vii) be conversant with the land laws.

N. **Dato Penghulu**
In each District it is intended that there should be one Dato Penghulu, with qualifications similar to those required of a Penghulu. He will be appointed by the Majlis Meshuarat Da’erah, and will be ex officio a member thereof; his office will be permanent and salaried, and he will have the same powers as a Third Class Magistrate.
O. Regency
Regency shall arise whenever the Sultan is under the age of twenty-one years, or absent from the State for over twelve months. If the Sultan is absent from the state for more than twelve months without the approval of the Majlis Meshuarat Daerah, the Jumaah Pemangku Negri and the Majlis Meshuarat Kerajaan, he shall cease to be Sultan.

P. Religion
The State religion shall be that of Islam, and a Majlis Tinggi Ugama Islam, and the office of Sheikul Islam Brunei or Mufti shall be created.

The Status of Brunei

134. “The Commonwealth”, observes Jennings and Young in their classic case-book, Constitutional Laws of the Commonwealth,97 “contains as many Constitutions as it contains political units.” In order to study the present Government of Brunei, and to produce a draft constitution, it is necessary to establish beyond doubt exactly what form of political unit is constituted by the State of Brunei.

135. In all the textbooks and authorities I have consulted I have found that Brunei is, by virtue of the Agreement of September 17, 1888, which defines Brunei “as an independent State, under the protection of Great Britain,” described as a protected State, that is (to use Wight’s words) “a country that has ceded control of its international relations to the British Crown.” * Of these states Wight adds**98 “the degree of British control ...has varied between Zanzibar, which is governed in many

* See, for example, Article III of the Agreement of 1888.
** British Colonial Constitutions, 1951, p.9.
respects like a crown colony, and Sarawak, formerly the most independent. Zanzibar is the only protected State with executive and legislative councils of the normal crown colony type..... but Zanzibar retains its sultan, and instead of a governor there is a British Resident. In the Malay States and Brunei, though in law the Sultans remain independent sovereigns, international affairs have hitherto been under the control of the Residents; and with the creation of a Federation of Malaya on crown colony lines, the Malay states have acquired a position similar to Zanzibar’s.”

136. Of protected states generally Wight adds that “the constitutional relationship between British and protected states rests primarily upon treaties between their rulers and the British Crown, though it is probable that such treaties are domestic matters and have validity in international law only in that they are internationally recognised as establishing a dependent relationship between the protected states and the British Crown which precludes other states from interfering. The Foreign Jurisdiction Act, if it is applied, is confined to jurisdiction in the narrow sense. The Crown claims jurisdiction over British subjects under the Foreign Jurisdiction Act in.... Brunei.”

137. As Wade and Phillips observe *, “the Crown legislates for colonial protectorates by Order in Council under the Foreign Jurisdiction Acts;” but the authors continue by distinguishing protected states from colonial protectorates by pointing out that the former “are internally autonomous, only their foreign relations being controlled by the United Kingdom.” If this were the sole test, it is clear that Brunei was a protected state only during the period 1888-1906.

138. Halsbury’s Law of England* divides protectorates, that is, “territories which are not parts of the British dominions, but whose foreign relations are under the control of the Crown”, into two categories:
(a) Protected States, that is, “those protectorates in which the administration is conducted in the name of the local sovereign, and is not subject to regulation by Orders of the King in Council”; and

(b) Colonial Protectorates, that is, “protectorates assimilated to colonies”, in which the Crown “regularly” exercises jurisdiction.

Into category (a), Halsbury puts Brunei, together with the Malay States and Zanzibar.

139. Since it seems clear that a protected State may be said to be a species of “protectorate” it is worth quoting Oppenheim** on the conception of protectorate. “A protectorate arises when a weak State surrenders itself by treaty for the protection of a strong State in such a way that it transfers the management of all its more important international affairs to the protecting State. Through such a treaty an international union is called into existence between the two States, and the relation between them is called protectorate. The protecting State is internationally the superior of the protected State; the latter has, with the loss of the management of its more important international affairs lost its full Sovereignty, and is henceforth only a half Sovereign State. Protectorate is, however, a conception which, like suzerainty, lacks exact juristic precision, as its real meaning depends very much upon the special case. Generally

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speaking, protectorate may, again like suzerainity, be called a kind of international guardianship.” Later in his book Oppenheim emphasises (page 873) that treaties of protectorate are quite different from treaties of protection, which are “treaties by which strong States simply engage to protect weaker States without any guarantee whatever,” or treaties by which “one or more strong States promise to protect a weak State without absorbing the international relations of the latter.”

140. As will be observed, Wight and Oppenheim are not exactly ad idem upon the international nature of a treaty of protectorate, but they do appear to be in agreement in suggesting (to quote Oppenheim) that “whatever may be the degree of civilisation or actual independence in the territories in question (a list including the Malay States and Brunei) these protectorates are exercised over real States. For this reason they must not be compared in every way with the so-called colonial protectorates**.... which European States acquire through a treaty with the chiefs of (African) tribes, and by which the territory in question is usually preserved for future occupation on the part of the so-called protector.”

141. In spite of his view that such a State as Brunei is a subject to a Treaty of protectorate that constitutes it a “protected State,” the exact constitutional position of Brunei within the Commonwealth system is in my view far from clear: for the Agreement of 1888 relating to protection has undoubtedly been carried further by the Supplementary Agreement of 1905 and 1906. A definition of protectorate was adopted by Viscount Haldane in 1926** and, since that decision relates to the operation of the Foreign Jurisdiction Act, 1890, it is worth quoting here:

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* Which Oppenheim describes as, for example, “the British Colonial protectorates which probably are covered by a British declaration of war. They are primarily administered under the Foreign Jurisdiction Act, 1890, but their constitutional position is not always free from doubt.”

** Sobhuza II v. Miller and others 1926) A.C. 518.
“In the general case of a British Protectorate, although the protected country is not a British Dominion, its foreign relations are under the exclusive control of the Crown, so that its government cannot hold direct communication with any other foreign power, nor a foreign power with its Government. This is the substance of the definition given by Sir Henry Jenkyns at p.165 of his book on British Rule and Protection beyond the Seas. Their Lordships think that it is accurate, and that it carries with it certain consequences. The protected State becomes only semi-sovereign, for the protector may have to interfere, at least to a limited extent, with its administration in order to fulfil the obligations which international law imposes on him to protect within it the subjects of foreign powers. A restricted form of extra-territorial sovereignty may have its exercise called for, really involving division of sovereignty in the hands of protector and protected. But beyond this, it may happen that the protecting power thinks itself called on to interfere to an extent which may render it difficult to draw the line between a protectorate and a possession.”

142. It will be observed, therefore, that the distinction between the status of protected State and that of protectorate is not an easy one to determine; but in my view the status of Brunei approximates more closely to that of a colonial protectorate than to that of a protected State. As I have indicated earlier, the Supplementary Agreement of 1905 and 1906 encroaches upon the sovereignty of the Sultan in internal (other than religious) affairs to such an extent that he is required to act upon the advice of a representative of Her Majesty: a state of affairs which would indicate that sovereignty in relation to Brunei is, except in relation to “those [questions] affecting the Mohammedan religion”, vested in the Crown.100
143. It might also be added here that by the Application of Laws Enactment of 1951 Cap.2 in the Revised Edition), which applies “the common law of England and the doctrines of equity, together with statutes of general application, as administered or in force in England” on April 25, 1951, it is possible that the application of the Foreign Jurisdiction Act (of which Viscount Haldane observed “it (is) impossible to limit its a[p]plication to British subjects in the foreign country”) has been confirmed: for the common law of England, etc., is applied “so far only as the circumstances of the State and of its inhabitants permit, and subject to such qualifications as local circumstances and native customs render necessary.” The application of the Act, which by its preamble refers to those foreign countries within which “by treaty, capitulation, grant, usage, sufferance, and other lawful means, Her Majesty the Queen has jurisdiction” would not, in my view, be inconsistent with the series of Brunei treaties, ending in 1906, nor with the qualifications affecting the operation of the Application of Laws Enactment itself.

144. It seems to me possible that a constitution could, therefore, be conferred upon Brunei by means of an Order in Council made under the Foreign Jurisdiction Acts; but, however neat and secure such a method of promulgation might be, it does not appear to offer the correct solution. The foregoing paragraphs (paras. 134 et seq.) are therefore included merely for their interest in relation to the possible exercise of jurisdiction in Brunei by Her Majesty: a matter which may well assume clearer definition in any revised Treaty.

XXV: Sultan Hashim Jamil-ul-Alam
d.1906

Pengiran Muda Omar Ali

XXV: Sultan Mohamed Jemal-ul-Alam
d.1924

Duli Pengiran Bendahara Abdul Rahman

Four Females (anak gundek)
Pengiran Omar Ali

Pengiran Radiah

Pengiran Haji Mohamet (anak gundek)
Pengiran anak Damit (Raja Istri)

XXVIII: Sultan Omar Ali Saifuddin III

XXVII: Sultan Ahmed Tajudin
d.1950

Pengiran Besar Bagol
d.1945

About forty anak gundek

Pengiran Mohamet Salleh

Duli Pengiran Pemancha

(Anak gundek: see Memorandum, paragraph 32. According to the Brunei interpretation, an anak gundek is a son or daughter of royal blood by a commoner, whether or not the marriage is with or without nikah.)
THE SULTANS OF BRUNEI

I: Sultan Mohamad
daughter m. II: Sultan Ahmed
III: Sultan Berkat
IV: Sultan Suleiman
V: Sultan Bolkiah
(Nahkoda Ragam)
VI: Sultan Abdul Kahar
VII: Sultan Saif-ul-Rejal

IX: Sultan Hassan
VIII: Sultan Shah Brunei

Pengiran Tuah

XIII: Sultan Abdul Momin

XI: Sultan Jalil-ul-Jebar

XIV: Sultan Muaddin
Pengiran di-Gadong Shah Budin
Pengiran Besar Abdul

XV: Sultan Mohamed Ali Udin

XVII: Sultan Mohamed Ali Saifuddin I
d.1795

XXI: Sultan Mohamed Khanzul-Alam

XXII: Sultan Mohamed Alam (Raja Api) d.1828

XXV: Sultan Hashim Jalil-ul-Alam Akamudin,
d. 1906
XXVI: Sultan Mohamed Jemal-ul-Alam
d. 1924

XXVIII: Sultan Omar Ali Saifuddin III

XIX: Sultan Mohamed Tajudin, d. 1807
XX: Sultan Mohamed Jemal-ul-Alam, d. 1796
XXIII: Sultan Omar Ali Saifuddin II
d. 1852

XII: Sultan Mohamed Ali

X: Sultan Abdul Jalil-ul-akbar

XVI: Sultan Jemal-Addin

Pengiran Shahbandar
(illegitimate)

XIII: Sultan Abdul Mumin, d.1885

XXVII: Sultan Ahmad Tajudin Akhzul Khairi Wadin
d.1950
END NOTES


3 The original census report of 1947 is specific about various nationality groups listed. However, the Melanaus referred to in the census are certainly different from the Tutungs. The former are enumerated at 86 persons and the latter at 2431. See Table 1.


6 The British Malayan Petroleum Company was founded in 1923 as a subsidiary of Royal Dutch Shell which bought the oil prospecting rights from Brunei Borneo Petroleum Syndicate Limited to form a new Company which later became Brunei Shell Petroleum Company. See G.C. Harper, op.cit.

7 Hickling refers here to the influence of the Malay nationalists who were oriented towards Indonesian struggle for independence and those who were staunchly anti-British. The British administration tried by various repressive means to curtail their influence from Brunei as well as Malaya. The chief proponents of Indonesian-oriented nationalists formed themselves into an organization that was styled as Kesatuan Melayu Muda (KMM), It was founded in 1937 through the efforts of Ibrahim Ya’acob and Ishak bin Haji Mohammad. The Kesatuan Melayu Muda or Union of Malay Youth preached a militant Malay Nationalism, which held the promise of political salvation for the Malays by means of expulsion of the British and the union of Malaya with a yet to be formed independent Indonesia. Zaini Haji, Ahmad, Pertumbuhan Nasionalisme, (1939-1962), Kuala Lumpur:ZR Publications, 1989. The nationalists in Brunei were influenced by Che’ Harun al Rashid, a Malay teacher who served in Brunei in the 1930s who had sympathies towards the KMM.

8 The role of Malay teachers, especially those who had attended the Sultan Idris Teachers College at Kuala Kangsar, has often been emphasized in the study of Brunei nationalism. See, B. A. Hussainmiya, Sultan Omar Ali Saifuddin III and Britain: The Making of Brunei Darussalam, Kuala Lumpur, Oxford University Press, pp. 83-88, 94, 105 and 158.

Table 1

Nomenclature of ethnic categories in Brunei twentieth century censuses.

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Sir Spenser St. John (1825-1910), British diplomat. Consul-General in Borneo, 1855-61, having previously been Private Secretary to Sir James Brooke, 1848-55. His works include *Life in the Forests of the Far East* (1863) and two biographies of Sir James Brooke (1879, 1899). Subsequently, he served as Minister Plenipotentiary to Peru and Consul General in Lima, October 1874 until 1883 (Low was referring to Sultan Omar Ali Saifuddin II (reigning from 1828-1852) 1881), Envoy Extraordinary and Minister Plenipotentiary to Mexico, 23 November 1884 until 1893, Minister Plenipotentiary to Sweden, 1 July 1893 to January 1896 (GCMG 1894). He retired in 1896 and died on 2 January 1910.


*Hukum Kanun*, originally supposed to have been codified in the Melaka Kingdom during the 15th century. For a detailed study of the *Undang-Undang Melaka*, see Liaw Yock Fang, *Undang-Undang Melaka*, The Hague: Martinus Nijhoff, 1976. The formal legal text of traditional Melaka consisted of the *Undang-Undang Melaka* (Laws of Melaka), variously called the *Hukum Kanun Melaka* and *Risalat Hukum Kanun*, and the *Undang-Undang Laut Melaka* (the Maritime Laws of Melaka). The laws laid down in the legal digests underwent a long evolutionary process. The legal rules that eventually evolved were shaped by three main influences, namely the early non-indigenous Hindu/Buddhist tradition, Islamic law and the indigenous "*adat*" (customary law). The Brunei variant was derived from a much corrupted version of the Melakan laws and exists in two manuscripts. The first manuscript was called the *Hukum Kanun Brunei* which contained 96 pages and is kept at the Language and Literature Bureau; a copy for reference can be found at the Brunei Museum reference no. A/BM/98/90. The second manuscript was known as *Undang-Undang dan Adat Brunei Lama* (Old Brunei Law and Custom) and consists of 68 pages and is now reserved in the Sarawak Museum. This is also discussed by Prof. Dato’ Dr. Hj Mahmud Saedon bin Awang Othman, *Undang-Undang Islam Dalam Kesultanan Melayu Brunei hingga Tahun 1959*, International Seminar on Brunei Malay Sultanate in Nusantara, 1999. R.O. Winstedt, "Old Malay Legal Digests and Malay Customary Law", *JRAS*, Pts 1 & 2, 1931, pp. 17-29, lists several variants of the *Melakan Hukum Kanun*, including the one from Brunei, which he says was used as authoritative (in civil suits) in Brunei.

Humphrey Raymond Hughes-Hallett (1909- ), Assistant Resident, Brunei, March 1936 to May 1938. He was educated at Taunton School and Queen Elizabeth’s School, Crediton and graduated from Hertford College, Oxford; he served as Officer, Royal Air Force; cadet, Malayans Civil Service, 1934; elected a member of the Malayan Branch of the Royal Asiatic Society, 1936. He wrote a number of papers about Brunei for *JM/BRAS* in 1938-40. By 1941 he had reached Class V of the MCS. He became a Japanese Prisoner of War in 1942. His later career is obscure and his fate unknown; today he would be 101. Note also that the spelling ‘Hallet’, found in many secondary sources, is incorrect.

Copies of the confidential prints must have been available in the British Resident’s Office in Brunei. The originals were filed in the British Public Records Office (now British National Archives) under the F(oreign) O(ffice) Series 572 and/or FO 881. Thus this particular reference can be cited as FO 572/39.


Brunei official histories, i.e. the versions promoted by the Brunei History Centre in Bandar Seri Begawan emphasise the role of Shaikh Syarif Ali, the third Sultan of Brunei who hailed from Taif in the Arabian Peninsula and a descendant of the Caliph Ali, the fourth Caliph in Islamic History. Sultan Syarif Ali is credited with having strengthened the practice of Islam in Brunei by building mosques and introducing Islamic laws. See Pehin (Jawatan Dalam Seri Maharaja Dato Seri...
This refers to various versions of the Silsilah Raja-Raja Barunai. An edited version of this manuscript is available, Amin Sweeney, P.L. (ed.), ‘Silsilah Raja-raja Berunai’, JMBRAS, Vol.41, Pt.2, 1968.

The story is related in the old Javanese chronicle the Nagarakretagama or Nagarakrtagama dedicated to Hayam Wuruk, the ruler of the Majapahit Kingdom. It was written as a kakawin, a Javanese epic poetic form, by Mpu Prapanca in 1365 (or 1287 Saka Year) and Brunei is known to have been referred to as Buruneng, one the many countries that sent tribute to the Majapahit kingdom.

Yang di-Pertuan Negara, meaning "Head of State" in Malay and ceremonial crowned, was used as an official title at various times in the Sultanates of Malaya, and Brunei. In Malaysia, the chief Ruler is known additionally as Yang di-Pertuan Agong. It must also be noted that in the Malaysian state of Sabah, the Governor of Sabah was known by the formal title of Yang di-Pertuan Negara from 1963 until 1976 when the office was retitled Yang Di-Pertua Negeri.

Low was referring to Sultan Omar Ali Saifuddin II (reigning from 1828-1852).

Godfrey Hewett (1859-1932) served with the British North Borneo Company, 1881-3, 1889-92, and 1895-8; spent five years (1883-8) 'farming in America'; became British Consul for the Borneo Territories, 1900-4; British consular service successively at Rio Grande (1904-8), Pernambuco (1908-9), Antofagusta (1909-11), and Paramaribo (1911-14). He retired in 1914.

Abdul Mumin ibni Pengiran Shahbandar Pengiran Anak Abdul Wahab, His Highness Sultan (d 1885), Sultan of Brunei, 1852-85, during one of the most difficult stages in the country's history, marked by territorial decline, internal dissension, and impoverishment (Saunders 1994: 77-8, 80, 82-91, 105). Allegedly aged one hundred at the time of his death on 29 May 1885, he was certainly not a young man when he succeeded to the throne.

Stayed in the capital at the time of Admiral Cochrane's attack in July 1846. He opposed his double brother-in-law, Muda Hassim (James Brooke's ally), but did not support the regime installed by the latter's enemies either. He was brought to Labuan by Mundy to witness the secession of Labuan to the British Crown, December 1846.

Faced throughout his reign with territorial expansion by the Brookes of Sarawak from the south-west of his realm. In 1853 the Lupar and Lower Rajang rivers were lost; and in August 1861 the coast as far north as Kidurong Point (Mukah and Oya).

Resisted attempts by the new Raja, Charles Brooke, to annex further Brunei territories. In fact, he did so rather successfully; but in his last years, the Baram fell in 1882, and the Trusan in 1884.

In 1865-8 he sought to use US influence as a counter-balance to that of the Brookes; but this attempt failed.

From 1877 onwards, a new threat appeared on the scene, the British North Borneo Company (f. 1882) and its forerunners, which took over most of the territory between the Kimanis Bay on the west to the Sebuko River on the east of northern Borneo.

In February 1885, however, Sultan Abdul Mumin persuaded the pengirans to join with him in swearing a solemn oath, or amanah, not to cede any further territory. In his dotage, it is difficult to know how far he was really still responsible.


Before the land enactments were introduced by the British Residents in 1907 and 1909, the Sultan and his pengirans (nobles) held all the land under three forms of tenure: kerajaan (crown lands); kuripan (lands held by the wazirs-

26 Sir Frank Athelstane Swettenham (1850-1946), Governor of the Straits Settlements and High Commissioner for Brunei, 1901-04. Joined SS service, 1872 and became British Resident, Selangor, 1882 and Perak, 1889-95; Resident-General, FMS, 1896-1901. GCMG 1909, CH 1917.

27 See note 23 above.

28 Sir Charles Lees (1837-1898) was Governor of Labuan (appointed 1879). Subsequently Governor successively of the Leeward Islands (appointed 1883), Barbados (appointed 1885) and Mauritius (appointed 1889). KCMG 1883. Joined the British Army, 1854. Joined the Colonial Service, 1869. Son of Sir John Campbell Lees, who was a Chief Justice of the Bahamas.

29 FO 572/37

30 FO 572/26


33 FO 572/36

34 FO 573/31


36 i.e. Aceh-if so, there is a serious problem in the dating of the events. According to accepted Brunei traditions, Sultan Hassan, the 9th Sultan reigned during the early 15th century C.E., whereas the Sultanate of Aceh came into existence during the 16th century C.E. For an insightful exposition of the Kingdom of Aceh in Northern Sumatra, see Leonard Andaya, “Ache’s Contributions to Standards of Malayness”, *Archipel*, Vol. 61, 2001, pp. 29-68.


38 Noel Penrose Trevenen (d 1901), Consul for Borneo, March 1890 to November 1898. Died in Shepperton, Surrey, 26 July 1901. Cadet, 1874. Various appointments, especially in Malacca, 1875-80. Inspector of Schools and Hospitals, Straits Settlements, 1880. Private Secretary to Governor Sir Cecil Smith, 1885 and 1887-89.


41 For these events, see *Shaer Yang Di-Pertuan Sultan Jamalul Alam*.

42 For details see, B. A. Hussainmiya, *Sultan Omar Ali Saifuddin III and Britain*.


Alfred Hart Everett (d 1898), Consul for Sarawak in Brunei, from October 1884. Resident of the Fourth Division, Sarawak, 1884-90. Retired 1890 and died in 1898 aged forty-nine. He was reported to have led the unit responsible for the annexation of Limbang District in March 1890 and to have hoisted the Sarawak flag there (FO 572/39, McArthur, “Report on Brunei in 1904”, paragraph 78).

i.e, Assistant Resident Hughes-Hallett.

Casting the Anchor’, ‘Cukai Bongkal Sauh’. was one of the taxes imposed on Brunei people by the ruler. For details, see P. Leys, ‘Observations on the Brunei Political System, 1883-1885’ in *JMBRAS*, Vol. 41, Pt. 2, 1968, pp 126-129.

FO 572/30

FO 572/33

FO 572/33

FO 572/36


See note 26 above

Copies of the Brunei State Council Minutes from 1907 until 1949 can be accessed in a bound volume preserved in the Brunei National Archives, BA/FC/RBM/77, *Minutes of the Brunei State Council, 1907-1949*.


For the pre-colonial legal system in Brunei, see B. A. Hussainmiya, “Some Observations on pre-colonial legal system and practices in Brunei”, *Journal of Southeast Asian Studies*, Selected papers in Economic and Social History, FASS, UBD, Brunei, Vol.7., No. 1, pp. 27-37.

i.e., Brunei Residents Office, Circular No 1/46

Abdul Razak bin Hassanuddin, Pehin Siraja Khatib [cr 1919] Awang (1879-1941), author of *Sya’ir Yang Di-Pertuan Sultan Muhammad Jamalul Alam*. Born in 1879. Studied the Islamic religion under the ulama of Burong Pingai, one of the wards of Kampong Ayer. Imam, Kampong Sibuti mosque. Returned to Brunei and appointed Khatib, 4 Muharram 1337/10 October 1918; promoted Pehin Siraja Khatib, 14 Safar 1338 / 8 November 1919. Prolific author of *sya’ir*. Commenced work on the *Sya’ir Yang Di-Pertuan*, 4 December 1922. Died in 1941, aged sixty-two. Shortly after his death a fire ripped through his house destroying all his manuscripts (*Shaer Yang Di-Pertuan*, Monograph of the Brunei Museum Journal, 1979: unnumbered pages [vii-viii]). Tuan Kathi, 1913; Khatib, 1918; Pehin Siraja Khatib, 1919.

This refers to the appointment of Duli Pengiran Bendahara Pangiran Muda Tengah (Later Sultan Haji Omar Ali Saifuddin III) whose appointment to the post was made simultaneously with his appointment as a member of the Brunei State Council.


Henniker-Heaton, RJ, Acting State Finance Officer, Brunei, for brief periods in 1950 and 1952.


We have not traced this particular correspondence, but it appears that the British Resident’s Office instructed by the High Commissioner based in Sarawak wrote to the Sultan to reconstitute the State Council to bring it in line with modern requirements of the division of legislative and executive branches of government. CO 1022 series, however, contains correspondence on this subject written by the High Commissioner/Governor, Sir Anthony Abell. See B. A. Hussainmiya, *Sultan Omar Ali Saifuddin III and Britain*, Chapter 4.

Hickling is referring to a brief but unpleasant diplomatic confrontation in late 1951, a few months after Sultan Omar Ali Saifuddin III was declared the Sultan. The incident occurred when the Sultan and the local appointees of the State Council tried to block a special piece of legislation introduced by the British Resident’s administration. The Council dragged its feet, to the annoyance of the Resident. Until the eleventh hour the Council tried to postpone the approval of Enactment No. 11, known as the Superior Courts (Authorisation) Enactment (‘which provides for the replacement of the present superior courts by such court or courts as Her Majesty may by Order in Council establish and provides for the hearing of appeals from such Court or Courts by Her Majesty in Council’). The Resident, who kept himself out of the State Council proceedings on 14 November 1951, sent a stern written message to the members of the Council on the need to approve the said Enactment on that day, as the Order in Council to be passed by the British Parliament giving effect to the establishment of Her Majesty’s Privy Council as the highest Court of Appeal was to be passed within a few hours in London. There had already been some correspondence between the Secretary of State and the Brunei Government on the matter, and it appears that the Sultan had agreed to the change. But sensing the deliberate delay on the part of the Sultan’s Council, the Resident indirectly threatened it with unforeseen consequences. This episode serves again to demonstrate that the Brunei State Council was developing teeth, and that the Resident was soon to lose control over it. In this paragraph Hickling is trying to soften the issue while being aware of the need to reform the State Council in the proposed Constitution. See B. A. Hussainmiya, *Sultan Omar Ali Saifuddin III and Britain*, p. 132. Also see BAR, 1951, p. 45.
It is interesting to note that the Federation of Malayan States (FMS) provided the first bridging loan of about $439,750 to Brunei in 1906-1911 to tide over financial bankruptcy at the beginning of the Residency rule. Thanks to this loan, the kingdom’s existing debts could be redeemed. BAR, 1914, p. 3. Now it was Brunei’s turn to lend money the Federation of Malaya, ostensibly for development purposes, to the tune of $40 million. This was made possible because of the swelling coffers of Brunei from the export of oil. By contrast, when the Brunei Sultan HRH Omar Ali Saifuddin approved a similar $100 million loan in 1958, the British administration was annoyed as prior permission was not obtained from the British Colonial Secretary. A legal officer representing the Colonial Office argued that it was a breach of contract of the 1888 British–Brunei Protectorate Treaty which stipulated that Brunei could deal with other foreign governments only with the authority of Her Majesty’s Government. DO 35/9950. See minute by G. Gordon Smith, 28 November 1958.

One must note here that such ‘reforms’ of the State Council activities were in fact initiated by the Sultan, HRH Ahmad Tajuddin, who was also responsible for some other changes in the proceedings that would favour the local people. It appears that the British Residents only grudgingly agreed to the changes to the status quo which diluted their powers of advice to the Sultan in the State Council. For details, see B. A. Hussainmiya, “Manufacturing Consensus: The Role of State Council in Brunei Darussalam,” Journal of Southeast Asian Studies, Vol. 31, No 2, 2000, Pp. 321-350.

This is also another instance that proves that it was the Sultan’s direct order that brought Government appointments, which were previously made always on the British Resident’s initiative, albeit under the purview of the Sultan-in-Council. The Resident was not very pleased with this development, and even threatened the Sultan that this request undermined the letter and spirit of the 1905-06 Treaty which stipulated that the Resident’s advice should be followed by the Sultan. B. A. Hussainmiya, op.cit. The Resident expressed ‘much sympathy’, with ‘the desire of the Council to take more active part in the administration of the State.’ BA/FC/RBM/57, Minutes of Brunei State Council Meeting, 2 December 1940.

Hickling highlights the inherent problems and conflicts within Brunei Royal circles regarding the succession issue which did not follow any specific rules of primogeniture. The traditions were, to say the least, in a state of flux. In pursuance of the British Brunei Supplementary Treaty of 1905-06, it became obligatory for Britain to ensure proper rules of succession to the Brunei throne. In other words, the proposed constitutional reforms were laced with encouraging features for the Brunei Royal family to the effect that Britain would ensure a smooth succession to the descendants of Sultan Hashim Jalilul Alam. At this time the British Administration gave equal importance to the drafting of both the Constitution and a Succession and Regency Enactment designed to regularise future succession issues in Brunei. Hence, Hickling was obliged to underscore the problematic areas to justify the passing of a new enactment on Regency and Succession.


See infra, The Introduction.

These terms in Malay are reserved for royal prerogatives, i.e., Santapan is literally (partaking a meal), means here the privileges of emoluments due to the royals.


S.W. Jones, Public Administration in Malaya, London: Royal Institute for International Affairs, 1953.

Though originally more confined in its intention, the FJA 1890 had come to be seen as enabling the Crown to exercise jurisdiction as if it had acquired the right to legislate by conquest or cession, and to proceed by Order-in-Council. It had been intended to use it to introduce the Malayan Union, but the Sultans successfully opposed that. Simon C. Smith, *British relations with the Malay rulers from decentralization to Malayan independence, 1930-1957*, Kaula Lumpur; New York: Oxford University Press, 1995. P.77.


Hickling refers here to some inherently conflicting issues that had been overlooked in various pieces of legislation passed since 1950. These are matters related to the colonial powers vested in the High Commissioner as the representative of His Majesty’s Government vis-a-vis His Highness the Sultan of Brunei. Where grave conflicts occur which derogated from the sovereignty of the Sultan, Hickling tends to leave the powers of the Sultan untouched, as in the case the power of reprieve to criminal offenders which the Brunei Sultans had been exercising since historical times.

The term "British Protected Person" came into existence in the second half of the 19th century when Britain extended its protection to people and places outside the British Empire when its overseas territories were divided into protectorates, protected states, mandated territories and trust territories. People born in these countries which were under British protection were known as British Protected Persons. The British Protectorates, Protected States and Protected Persons Order came into force on 28 January 1949, establishing for the first time a statutory basis for British Protected Person status (BPP). As protectorates and protected states were 'foreign' soil, birth in such a place could not in general confer British subject status before 1949, or citizenship of the U.K. and colonies (CUKC) from that date. BPP status was normally held by persons born in a protectorate or protected state (with no nationality law), or with a father born there, and/or where a protected state had a nationality law, citizens or nationals of that state.

It is doubtful that the ‘Tujuh Serangkai’, the Malay Constitutional Committee, appointed by HRH Sultan Omar Ali Saifuddin III, was really not aware of this Act or similar legislation passed by the British as regards citizenship matters. They were unmindful to say the least and were not to be restrained by laws passed outside their land especially when in conflict with their national interest. The Committee was guided in the main by strong nationalistic feelings whereby the Brunei Malays wished to retain their pre-eminent position as the *Rakyat Kebawah Duli*, i.e., the Sultan’s subjects in their land of birth. The granting of citizenship privileges to the alien arrivals despite their long association with the State was the last thing in the Committee’s mind. Moreover, they resisted granting many privileges to the alien arrivals, especially the Chinese, because of the experiences and struggles that preceded the nationality acts in the Federation of Malaya. Apparently the Malayan Royalty that visited Brunei in the early 1960s advised the Brunei Sultan not to repeat the mistakes the Malays made in the Federation in terms of widening the citizenship qualification for non-Malays. For details, see B. A. Hussainmiya, *Sultan Omar Ali Saifuddin III and Britain*, pp. 151, 166, and 285. In fact, at the beginning of the constitutional negotiations it seems that the British High Commissioner, Anthony Abell, failed to disclose the implications of a Nationality Enactment so as to that would enfranchise British Protected Persons in Brunei. When the details were known, the High Commissioner’s attempt to bypass the Sultan on such important matters permanently damaged their relationship, especially their dealings on constitutional matters. Ibid., p.151.

Since the passing of the Brunei Nationality Act of 1961, this language provision, especially knowledge of Malay for the prospective citizens, has been implemented rather strictly. As a result many do not meet the stringent requirements of this test. Criticisms are often heard from among the affected parties.

Correspondence relating to the formulation of a Brunei Nationality Enactment can be seen in Nationality enactment, Brunei CO 1030/1403, 1960, and in CO 1030/1402, 1960.
This issue of Malay ethnicity is a perennially contentious issue. As Shamsul Amri puts it ‘These social categories [Malayness]… I believe they are very fluid and continuously open to contestation and redefinition, both in the dialectical and dialogical sense, not only from within but also without. Seen from such a perspective, state policies, such as the Bumiputera policy (also officially known as New Economic Policy or NEP) has to the [sic] understood beyond its immediate and contemporary meanings and circumstances.’ Shamsul A.B., “The Construction and Transformation of Social Identity”, in Shamsul, A. B., Two Recent Essays on Identity Formation in Malaysia, reprinted from Tona Ajia Kenkyu, (Southeast Asian Studies), Vol. 34, No. 3, 1996, p 17. For recent literature on defining Malayness, see P. Timothy Barnard., Contesting Malayness: Malay Identity Across Boundaries, Singapore: Singapore University Press, 2004, p.17.

This is the crux of the issue. Despite all the legal jargon of Hickling’s proposal, he was quite aware of the underlying political and nationalist feelings current in Brunei. Hickling’s own position became tenuous when he was putting forward both sides of the argument trying to override the conflicting perspectives between colonial demands and local aspirations.

Concurrent with the Brunei Constitution proposals, the British were trying to promote a kind of Federation of Brunei, Sarawak and the British North Borneo territory. Federalism continued to be a cardinal policy of the British Government which sought to weld together territories for which Britain ‘as an interested party has power of persuasion, direction, control or even force at its disposal’. B. Simandjuntak., Malayan Federalism 1945-1963, Kuala Lumpur/Singapore: Oxford University Press, 1969, p. 292. The first British Commissioner-General for South-East Asia, Rt.Hon. Malcolm MacDonald, was given the task of promoting the Federation idea. CO 1022/63, the UK Commissioner General in Southeast Asia to CO, 10 June 1952. The Commissioner General was in a position to do so, because he also functioned as Chairman of the Joint Cooperation Committee between Singapore and the Federation of Malaya and as Chairman of the Borneo Governors’ Conference. In keeping with the new colonial policy, he marshalled the efforts of the Borneo Governors to promote the long-term aim of a ‘self-governing Dominion of all these territories (the Federation of Malaya, the colonies of Singapore, Sarawak and North Borneo and the protectorate of Brunei) within the Commonwealth’. He also made a measured public pronouncement that ‘whether this can develop into a political federation of Borneo territories, leading ultimately to the creation with Malaya, of a Southeast Asian Dominion Government, is another matter, but a Borneo Federation is both logical and achievable in the not distant future,’ Straits Times, 24 April 1953. Once the proposal was mooted it became clear that the Brunei Sultan was not favourable to the idea, while the Colonial Office had forewarned the conference promoters to respect Brunei’s sensitivities. Taking note of MacDonald’s proposition that ‘some sort of Confederation’ is envisaged for all the British territories in South-East Asia, the Commissioner-General was advised ‘to proceed slowly in these matters and to give the Brunei Government ample time to settle down’. After all, ‘there could be no question of a federation of the Borneo territories being imposed on the people of Brunei from without’. CO 1030/164, Secret, No. 77, Alan Lennox Boyd (The Secretary of State for Colonies) to the Commissioner-General for the UK in S.E. Asia, 25 March 1955, para 2. There was general frustration, especially in Sarawak-British circles, that the proposal was not making headway due to the intransigence of the Brunei Sultan. Hickling therefore exercised caution and warned his colleagues not to mix up the issues. For a full discussion of the three Borneo Federation issue, see B. A. Hussainmiya, Sultan Omar Ali Saifuddin III and Britain, Chapter 8.


Jus soli, Latin for ‘right of the sun’, refers to citizenship rights in the country of birth.

Jus sanguinis, Latin for ‘right of blood’, refers to citizenship acquired by descent, i.e. by having a parent(s) who is/are citizen(s) of the nation.

It appears that Hickling gives credence to an English legal authority’s views rather than giving weight to the rabid opposition to enfranchising non-Malay Bruneians through a Nationality Act or through electoral lists.

This is a wishful thinking on the part of Hickling, who was perhaps hopeful that Brunei would continue to be ruled under some sort of British tutelage since the Orders in Council applied to Brunei, as in other Protected States, would be in operation for years to come.
For the formation and operation of Brunei District (Advisory) Councils, see B. A. Hussainmiya, *Sultan Omar Ali Saifuddin III and Britain*, pp. 147, 151-156 and passim.

During the autumn of 1944, Sir Harold MacMichael, the British government’s plenipotentiary, was invited by the Colonial Office to proceed to Malaya in order to secure new treaty arrangements with the Malay Sultans incorporating the ideas of the Malayan Union. The Malayan Sultans easily signed off their rights and “the pretence that the British were merely assisting the Malay rulers to govern was finally removed”. B.W. and L.Y. Andaya., *A History of Malaysia*, London: MacMillan, 1982, p. 255. These events are better described in S. C. Smith, *British relations with the Malay rulers from decentralization to Malayan independence, 1930-1957*.


See Infra, the introduction chapter for a full discussion. Whether the local rajas or Sultans lost their internal sovereignty due to the advice clause in similar treaties is open to question. It is a matter of interpretation only without a clear legal basis. In later years, especially during the constitutional negotiations between the British Government and the Brunei delegation in the 1950s, the problem of the legality of the 1905/6 Treaty was often brought up in the correspondence series of the Colonial Office. The general opinion was that the Treaty could not stand in a court of law in England, if challenged. For details, see B. A. Hussainmiya, *Sultan Omar Ali Saifuddin III and Britain*, pp. 127, 129, 149 and 188-9. It was partly because of the ambiguities created by the Treaty in respect of the exercise of power by the British agents in Brunei that the need to introduce a proper legal instrument, namely a Constitution, was mooted by the British Government.
Part 3

APPENDICES
His Highness Maulana Sultan
Sir Umar Ali Saifuddin K.C.M.G.,
Sultan and Ruler of the State of Brunei.

His Highness,

We feel sure that whatever we state in the reports attached herewith may be applied and directed as basic principles for the purpose of making a Undang: Tuboh Kerajaan Brunei’in fulfillment of your order.

2. We are very glad of being able to carry out the order imposed on us and, in reviewing some cases which have been stated in the reports, we give our support to the following:-

(a) ‘Majlis Mashuarat Daerah’(District Councils): According to your proclamation, the Majlis Mashuarat Daerah is to be established separately from the Majlis Mashuarat Negeri (State Council) and this suggestion is greatly supported by the people. We appreciate and support that the Majlis will be established as soon as possible, thus you and the Majlis Mashuarat Negeri are greatly assisted in governing and administering the country, because in the Majlis Mashuarat Daerah the demands and the opinions of your people are to be heard and known.

(b) ‘Majlis Mashuarat Negeri’ (State Council): Although the Majlis Mashuarat Negeri is in existence now, the number of its members is unsufficient and therefore, strongly recommend the
number of the Majlis Mashuarat Negeri to be increased according to the number prescribed in Part ‘C’. Regarding its privilege and powers, the Majlis’ decision on any matter is to be deemed to be valid and final.

(c) Concerning Treaty: In order to make it expedient to carry out your and the State Council’s wish of establishing and providing a Undang² Tuboh Kerajaan Brunei, we suggest that all the treaties which have been made between the Government of Her Majesty the Queen and His Highness the Sultan of Brunei shall have to be renewed and amended, before the object of making the Undang² Tuboh Kerajaan Brunei can properly be achieved.

The treaties which will be made in accordance with the aims and desire as have been made in the beginning should be made in a friendly atmosphere which leads to sincere and better understanding.

To guide, to encourage and to respect the right of the Brunei Malays shall be compulsory and observed in exercise of the provisions of the treaties. All the treaties shall be written in Malay as the original.

(d) Citizenship: This matter is of vital importance and must be regulated and an Ordinance concerning it must also be made, because if it is still inefficiently regulated it may hinder the progress of general election which will be held for the election of members of the Majlis² Mashuarat Negeri and Daerah and Majlis² Bandaran (Town Councils) and the election of Headmen and Penghulu Kampong.

(e) Government Seal: A Government Seal shall be kept by the Menteri Besar Brunei.

(f) Standing Orders and Rules: A book of Standing Orders and Rules should be made for every Majlis Mashuarat Negeri, every Majlis Mahsuarat Daerah and every Majlis Bandaran.

(g) Headmen and Penghulu: Since the offices of the Headmen and Penghulu are in many ways connected with the Government, we strongly recommend such offices to be given to those who have at least passed their higher standard from Malay Schools by general election voted secretly. The Government have to consider their pay and allowance sympathetically and reasonably.

3. The reports attached herewith were made accordingly to opinions and demands of your subjects who thought that it is necessary to make the Undang² Tuboh Kerajaan Brunei as soon as possible according to the demands of the people and according to the current circumstances. We give them our support.

In the part ‘Other Reports’ (Part ‘H’) are the reports in general but they are necessary for the development of Brunei which the Brunei Government should turn its attention to and investigate.

That is all we have to say, in submitting the reports.
Your faithful subjects

(Sgd) Peng. Mahraja Laila Muda Kahar.


“ Peng. Md. Yusof A. R.

“ Abu Bakar bin Jambol.

Brunei Darus-salam.
23rd March, 1954.
Full Report of the Brunei Constitution Advisory Committee

To:

His Highness the Sultan and the Ruler of the State of Brunei.

His Highness the Sultan Sir Umar Ali Saifuddin Saádul-Khairi Waddin, a Sultan who rules the State of Brunei and her territories, in his proclamation issued at the ‘Lapau’ (Court) of Brunei on 1st May, 1953, and letter ref: (25) in BRO/S/1/1946 dates 15th May, 1953, form the British Resident, and with a view of forming a Constitution of the State of Brunei, in writing, appointed the following persons as The Brunei Constitution Advisory Committee:

- Pengiran Maharaja Laila
- Pengiran Haji Md. Salleh
- Pehin Orangkaya Di-Gadong Hj. Md. Yusof
- Pehin Orangkaya Shahbandar Haji Ahmad
- Pengiran Mohd. Yusof A. R.
- Pengiran Ali b. P. Haji Md. Daud
- Enche Abu Bakar bin Jambol

At its first meeting at the Court House [Lapau], Brunei, it was agreed that:

- Pengiran Maharaja Laila to be the Chairman.
- Pengiran Mohd. Yusof A. R. to be the Secretary.

II. We, the Committee, take this opportunity of expressing our many thanks to the whole people of Brunei for their help and views which enabled us to prepare the reports for the formation of the written Constitution of the State of Brunei, and we shall always remember the helpful opinions and books rendered by the leading men of Johore, Selangor, Negeri Sambilan and Kelantan.

III. We admit that, as the general public know, we have no experience and qualification to carry out the burden of this duty, and we are ready to receive any constructive criticism for the betterment of this noble aim from those who are more competent and have more experience.

IV. In compliance with your order we, after visiting all places in Brunei, met and discussed and listened to the wishes, demands and desire of your people, and after studying in Malaya the ways how a Constitution is to be carried out, and with the results of our visits and discussions, we made these reports as a guidance to make the Undang² Tuboh Kerajaan Brunei.
V. All the treaties made between the Great Britain and the Sultan of Brunei in 1888 and 190[6] shall have to be changed and amended to fit in with the object of The Undang\textsuperscript{2} Tuboh Kerajaan Brunei, and with the objects agreeable between Great Britain and the Sultan of Brunei and his subjects, before the object of the Undang\textsuperscript{2} Tuboh Kerajaan Brunei can be fully achieved.

VI. (1) It should be remembered since we were appointed with the object of Making the Undang\textsuperscript{2} Tuboh Kerajaan Brunei which shall be made as soon as possible, these reports were made for such purpose.

(2) We arrange the contents of the reports in Parts as follow:-

PART’A’. Government and matters affecting it.
PART’B’. The Sultan, His Heir, Minister of ‘cheteria’
(a member of the Princely or warrior caste).
PART’C’. Majlis Mashuarat Negeri (Council of State).
PART’D’. Majlis Mashuarat Daerah (District Council).
PART’E’. Majlis Bandaran (Town Council).
PART’F’. Brunei Citizenship.
PART’G’. Chief Penghulu, Penghulu and Headmen.
PART’H’. Other Reports.

VII. We feel sorry that the completion of this report was delayed by several circumstances which forced us to do work in and visit all the places in Brunei and at the same time we had to do the duties already imposed on us. Furthermore, we had to call for a meeting to discuss all the matters brought forward by the people and to apply experienced gained in Malaya to fit in with the object which is necessary for the good of the people and the State of Brunei.

PART’A’

GOVERNMENT AND MATTERS AFFECTING IT

I. With regard to religion, inhabitants and language common in Brunei, the policy of the Government should be that of Islam Democracy and the Government shall always have a sovereign Sultan who has full authority in the country.

II. The relationship between the Brunei Government and the Great Britain has been created in sincere and friendly atmosphere and thus the state of Brunei shall always be known as a ‘Country friendly with the United Kingdom’ and in other words The State of Brunei is an Independent Malay State under a Malay Sovereign Sultan and is under the protection of Britain in terms of friendship.
III. The Malay language must be accepted and used as the Official Language of The Brunei Government.

IV. Islam must be the official religion of The State. There is, however, a freedom of worship of other religions.

V. (1) According to the statement to the Treaty between Brunei Government and Britain made in 1906, Britain will send to Brunei a British official to represent her Government and to be appointed to be the British Resident who will advise the Sultan of Brunei. Since the Resident will advise the Sultan only the title must be substituted by the name ‘British Advisor’ or in the Malay term as ‘Penesehat British’, after this Undang² Tuboh Kerajaan Brunei has been made as it has been made in Malaya. This change of title is necessary because of the current circumstances and the suggestions and wishes of the people of Brunei.

   (2) The Sultan, according to the to-be-made treaty may receive a British Advisor who will be responsible to advise the Sultan in Government and in political matters but not [to] interfere with the religion (Islam) and customs of Brunei Malays and the Sultan may listen to his advices which he considers good and beneficial for the progress of the State of Brunei.

   (3) Any British Advisor who will be sent to Brunei to take up such appointment must first be approved by the Sultan in Council. Every such advisor must:-

   (i) be a senior officer
   (ii) be experienced and eloquent in Malay Language
   (iii) understand and have been accustomed with the Malay customs.

   The above conditions (ii) and (iii) must also be applied to any other Government Officials working for The Sultan[’s] Government (Kerajaan Sultan Brunei).

VI. The appointment of the High Commissioner for Brunei is confirmed as usual but any matter which, in the opinion of the Sultan only and with the consent of the State Council which will advise the Sultan, is reasonable and necessary and all the powers which the High Commissioner has now and which are conferred on him in the Laws should be given to the Sultan in State Council, if it is suitable. Provided that the High Commissioner has still the right to advise His Highness the Sultan and the State Council in any matters which he sees fit and necessary for the welfare and safety of the State of Brunei except in matters concerning Religion and the Customs of the Brunei Malays.

VII. (1) To provide the Government of the Sultan of Brunei with the Undang² Tuboh Kerajaan Brunei which will be made with all possible speed, the Sultan should provide and appoint a Menteri Besar (Prime Minister) who will be the Head and most Senior Government Officer in the State and it is he who will exercise and hold the powers of the British Resident in force at present.
(2) Any person to fill up the appointment of the Menteri Besar should be selected from the Government Senior Officers and should be pure Brunei Malay and Muslim.

(3) This selection must have the advice and consent of the Jamaah Pemangku Negeri and the approval of the Sultan in State Council.

(4) The so appointed Menteri Besar must swear before the Sultan in State Council.

(5) The Menteri Besar should hold office for the period of five years and there is no reason why the period may not be extended if the Sultan wishes to extend it with the consent of the Jamaah Pemangku Negeri and the approval of the State Council.

VIII. A vice Menteri Besar may be appointed according to the conditions prescribed in paragraphs 2, 3, 4 and 5 of section VII of this Part, if the Sultan sees it necessary to do so.

IX. (1) It is also necessary that His Highness the Sultan should provide and appoint a Setiausaha Kerajaan (Secretary of State) who will be responsible for the administration of the country and will be the highest official over the administrative matters of H.H. the Sultan’s Government.

(2) And the person to fill the appointment of the Setiausaha Kerajaan should be selected from the Brunei Government officers and no person is allowed to hold such post unless he is a pure Bruneian Malay and Muslim.

(3) The person appointed for such post should be approved by the Jamaah Pemangku Negeri and also by the State Council.

X. (1) H.H. The Sultan should appoint Assistants Setiausaha Kerajaan to assist the Setiausaha Kerajaan.

(2) The Assistants Setiausaha Kerajaan should be Pure Malays who are Muslim.

XI. (1) H.H. the Sultan should appoint a State Financial Officer who will be the chief of all the officers administering the State Finance.

(2) The person to be appointed as the State Finance Officer should be a Malay who is a Muslim.

XII. H.H. the Sultan should appoint a Pengawal Penasehat Undang\(^2\) (Legislative Advisor) for the State of Brunei.

XIII. (1) It is requested that, in addition to the Majlis Mashuarat Kerajaan Negeri and four Majlis\(^2\) Mashuarat Daerah, a Majlis Mashuarat Kerajaan (State Executive Council) should be established.

(2) The members of the Majlis Mashuarat Kerajaan should include:-

(i) H.H. the Sultan to be the Chairman.

(ii) Five ex-officio members- Menteri Besar, British Advisor, Setiausaha Kerajaan, Penasehat Undang\(^2\) (Legislative Advisor) and Pegawai Wang (Finance Officer).
(iii) Two official members.
(iv) Unofficial members - not less than five

(3) All these members should be chosen and approved by the District Councils and the State Councils.

XIV. (1) With regard to the present conditions (Note: this may refer to education) of the State of Brunei and the Malays who are still unable to appreciate fully the present way of life, it is requested henceforth that it should be the duty of the Government of the Sultan and H.H. the Sultan himself to provide, encourage and give preference to education and training of the Brunei Malays so that the Malays will be able to take full part in administration, politic[s], economy, public welfare and several other government activities of the State of Brunei.

(2) Appointments in the Brunei Administrative Service usually given to the Government Officers, should be given to Malays only and since most of them will be Judges also it will be a necessary condition that the would-be administrative officers must thoroughly know Islam and the Laws of Islam (Hukum Shara).

(3) To fit in with the progress of the State and the demands of people over the policy of giving the priority to the rights of the Malays the Government of the Sultan should send abroad officers form from any departments to gain more experience in the work which they are engaged.

XV. (1) H.H. the Sultan in ruling the country, should comply with the policy and Provisions (peratoran) of the Undang² Tuboh Kerajaan Brunei and Undang² Negeri Brunei (The State of Brunei Laws) which, from time to time, are always in force.

(2) The whole people who reside in the State of Brunei no matter what race (bangsa) they may be, should have good and fair protection under the Government of the Sultan of Brunei in accordance with the Laws. That is to say no person shall lose his freedom, be detained or imprisoned unless in accordance with the Laws.

(3) Every subject of Brunei should, to fit in the policy of the democratic world, be given the freedom of speech and expression of one’s ideas, freedom of assembly in organization, freedom of religion, freedom from poverty and fear and the H.H. Government should encourage the people of all classes, social standing, status and walks of life to participate in politic[s] even though they are Government Servants.

(4) No person is allowed to be apprehended, detained or banished, if he has not done any act which is wrong according to the Laws. No person shall be deemed to be guilty unless it has been investigated and ascertained that he is guilty of the offence and no punishment shall be imposed on
APPENDICES

any person if he has not committed any act which, at the time the act committed, was an offence according to the Laws.

(5) Any person, no matter what nationality and race he may be, must comply with the Laws in force in Brunei without any exceptions.

XVI. All matters relating to the Brunei Government should be made in the name of His Highness the Sultan.

‘Brunei Government ‘which may appear anywhere must be understood as the ‘Government of the Sultan of Brunei’ (Kerajaan Sultan Brunei).

XVII. To strengthen our support to the views forwarded by the people and the object of section III of this Part, we suggest that every Undang Negeri Brunei and regulations issued in connection with affairs of the people and the State of Brunei must be written in Malay Language as an original; Provided that they may be translated into English or any other languages.

XVIII. We suggest and give our support thereto, that in drafting (Note: the original word is ‘Menggubal’) and making the Undang Tuboh Kerajaan Brunei which will be made with possible speed the Malay Language should be used in the original and interpretation, comments and explanation to any sentence or word used in the Undang Tuboh Kerajaan must also be done in Malay Language:
Provided that at the same time the Undang Tuboh Kerajaan Brunei may be translated into English for the sake of those who do not understand Malay.

XIX. Considering and looking far ahead into the progress of and changes in Brunei and the security of the State which becomes an important factor of the country, we support fully the formation of an army composed of Malays only and we consider the appropriate name for such army is ‘Askar Brunei’ or Brunei Regiment.

XX. To preserve the good name of the Government of the Sultan of Brunei and to maintain the security of the State of Brunei, it is not desired that the Sultan’s Government should ask or allow to enter or allow to be posted in Brunei any description of foreign military, except when there is reason to believe that such foreign military is need in the country, the Sultan, may, with the consent and approval of the State Council and District Councils and subject to conditions and circumstances existing at that moment, permit the entry to and stay in Brunei of foreign military.

XXI. According to the views given by the people of Brunei and to what has happened in Malaya, especially Johore, we think that let Brunei always be separated from Sarawak and North Borneo, even though her territory is small and narrow. Should there be suggestions of uniting Brunei, Sarawak
and North Borneo to a Federation of Borneo Malay States (Persakutuan Negeri² Melayu Borneo), let Brunei always be Brunei and if they do unite, the two neighbouring countries should be restored to Brunei historically for they were the property of the State and the Sultan of Brunei.

XXII.  (1) It is not a wise step to allow and permit foreigners to settle (Note: the original is ‘masok’) in Brunei, because of what has happened in Malaya resulting from the excessive flow of foreigners into the country, though at first it was considered useful for the development of the country. Anyway, the migration of foreigners to Brunei must be restricted.

(2) Foreigners (who are not Malays) who will enter Brunei without sufficient conditions for doing so, shall not be permitted at all to stay in Brunei for more than one year than the date of their arrival in Brunei and after that period has elapsed they must leave, to be sent back or deported from Brunei.

(3) Only those foreigners (Chinese, Indians, Pakistan, European, Japanese, etc.) who have been residing in Brunei for over 15 years, have the right to stay permanently in Brunei and let their number remain as it is.

(4) Foreigners working on contracts for the Brunei Government should leave the country at the expiry date of such contracts and are not allowed to prolong the duration of their contracts.

(5) Only six persons (foreigners) are allowed to enter Brunei in one year.

XXIII. Without meddling with or mitigating the powers of the Judge, H.H. the Sultan is empowered, when he sees fit, to give the ‘Pengampunan Hukum’ (Exculpatory) to any convict who has served or is serving a sentence for an offence he committed.

XXIV.  (1) Without touching the good and genuine friendship between the Government of H.H. the Sultan of Brunei and the Government of Her Majesty The Queen of England and her Territories and without touching the powers of the Sultan of Brunei who rules with full authority over the Government and Administration of the Country and her Territories, the treaties (made between Brunei and the United Kingdom) made in 1888 with the supplement made in 1906, should be changed and renewed to fit in with the demands of His Highness the Sultan and the people of Brunei to fit in with the object of the Undang² Tuboh Kerajaan Brunei which will be made.

(2) Any agreement to be made by the Sultan should be agreed to and approved by the members of the State and District Councils.

(3) Any agreement to be made by the Sultan should be written in Malay and English and the explanation to the agreement must be made in Malay only.

XXV.  (1) In the provisions of the Undang² Tuboh Kerajaan Brunei, H.H. the Sultan and his successors may, with the suggestion, consent and approval of the State and District Councils, add
and extend, from time to time, the jurisdiction of the Undang\textsuperscript{2} when it is fit or vitally necessary to do so provided that the change and the supplement or amendment will not prejudice the ground and aim and object of the principal Undang\textsuperscript{2}.

(2) Only H.H. the Sultan is empowered to and may, with the consent of the State Council, fix and explain the reading and meaning of all matters included in the Undang\textsuperscript{2} Tuboh Kerajaan Brunei.

PART ‘B’

SULTAN AND HIS HEIR

(1) From a historical point of view, Brunei is a Muslim Malay State and we feel sure that she shall always remain under a Sovereign Sultan who has full authority over the country’s internal and external affairs; in other words, the Sultan, with the assistance and advice and consent of the State Council and District Council, is the Supreme Ruler of the State of Brunei.

(2) Considering what we observed in Malaya, we suggest that, in addition to the State of Council and District Councils, H.E. the Sultan should appoint a Jamaah Pemangku Negeri (The Supporters of the Country) composed of those who are eligible and may have the voice in approving, selecting and appointing the Sultan and Pengiran Muda Mahkota Brunei and in nominating persons to be appointed as “Orang\textsuperscript{2} Besar Negara” by the H.H. The Sultan.

We suggest that the members of the Supporters of the Country shall be elected and appointed among:-

1. All the Ministers (Wazirs)
2. All the Cheterias (members of the princely or warrior caste)
3. Six Menteris (Pehins)
4. Two Religious Leaders (Islam)
5. All the Malay members of the State Council
6. One Menteri Darat for every district
7. Two or three suitable persons from the Royal Blood.

- The Sultan on the throne and his heir who will succeed him must be Malay and of Brunei Royal Blood and no-one shall be the Sultan, even though he is a Malay, unless he is a male and Muslim.
- The decision made in respect of governing the country, the security and peace of the country, expenditure and revenue and expenditure in connection with “Pegawai Negeri” and the Royal Family, resolution and powers to rule, by the Sultan with the consent and approval of the State Council and District Council, is final and cannot be appealed (digugat 2).
IV. (1) The heirs to the Sultanship (the heirs who come after the present Sultan) should be from the “Zuriat”, i.e., the descendants who are acknowledged as lawful and are from the blood of His Highness Sultan Sir Umar Ali Saifuddin Sa’adul Khairi Waddin Ibnu Almarhum Sultan Mohammad Jamalul Alam.

(2) Descendants who may become Sultan should be the son, grandson, great-grandson and so on of the Sultan Sir Umar Ali Saifuddin Sa’adul Khairi Waddin on the father’s side who are Muslims and it is illegal to select and appoint a Sultan other than the descendants of the said Sultan as long as such descendant is available:

Except that after discussion and through investigation, the Jamaah Pemangku Negeri find that the rightful heir is not fit to be a Sultan, because he is either mad, blind, dumb or possesses any base qualities which according to “Shara” jeopardise the right of such heir to become a Sultan.

V. (1) If there is no rightful heir to the Sultanship as prescribed in paragraph (2) of Section IV in this Part or, if any, is not eligible according to Section IV of this Part, the heir to the Sultanship must then be selected from the descendants of Almarhum Sultan Mohamad Jamalul Alam on the father’s side.

(2) If there is also no rightful heir descended on the father’s side from the Sultan Mohamad Jamalul Alam or, if any, is not eligible according to Section IV of this part the heir to the Sultanship is then to be chosen from descendants on the father’s side, of Almarhum Sultan Hashim Jalilul Alam Aqamaddin.

It should be remembered that no one may be elected and be appointed as a rightful Sultan if he is not the descendant of any of the aforesaid ancestors and is not a male Malay Muslim.

VI. (1) If there is also no rightful heir to the Sultanship as prescribed in section V of this part, it will be the responsibility of the Jamaah Pemangku Negeri to select a suitable Sultan with the Consent of the State and District Councils.

The person to be the Sultan must be a male Brunei Malay embracing Islam and not less than 21 years of age. He should be a subject of the Sultan of Brunei, of the rightful royal blood and eloquent in Malay language. He should possess outstanding qualities and abilities which prove him worthy to be a Sultan. If this incidence occurs the provisions of Section II in this part may be waived.

VII. (1) When a Sultan who is under 21 years of age according to Islamic year comes to the throne of Brunei, two Pemangku Sultan(Regents) must henceforth to be appointed or a Council of Regency composed of not less than three members, must henceforth be established, until the Sultan is 21 years old.

(2) When the Sultan reaches the age of 21, if it considers the right time has come, the Supporters of the Country, with the consent of the State Council, shall install the Sultan as “Yang Di-Pertuan Negeri Brunei” (The Ruler of Brunei)"
APPENDICES

(3) No person shall be appointed as the Pemangku Sultan or a member of the Jamaah Pemangku Sultan unless that person is a male Muslim Brunei Malay and subject of the Sultan, but not necessarily of Royal Blood.

(4) The election and appointment of the Regents and Council of Regency shall be carried out by the Jamaah Pemangku Negeri with the consent of the State Council and District Council.

(5) The appointment should be made with a written order from the Menteri Besar and Duli Pengiran Bendahara or Duli Pengiran Pemancha or Duli Pengiran Digadong or (if any) Duli Pengiran Temenggong, with the Government Seal and should be published in the Official Government Gazette (Warta Rasmi Kerjaan).

(6) The Jamaah Pemangku Negeri may, with the consent of the State Council and District Council, dismiss the Regent or Council of Regency if he/they allows/allow the Sultan who is under 21 years of age to break any undang² Tuboh Kerajaan or the customs of the people or Religion (Islam) and the Jamaah may appoint another person or persons to take his/their place/places.

VIII. The Jamaah Pemangku Negeri or State Council or District Council or any Pembesar Negeri shall not be allowed to attempt or to make any agreement with any foreign Government with the intention of committing treason against the State of Brunei and H.H. the Sultan Government. Upon committing such offence, they will be penalised according to the seriousness of the offence committed.

IX. (1) The Sultan and his heirs and relatives shall not be allowed at all to cede or speculate or wish to cede the State of Brunei or part of her dependencies to any other authority or Government for whatever reason or cause. If the Sultan is found going against this provision or attempting to do so, he is deemed to be guilty in the eyes of the Undang² Tuboh Kerajaan Brunei and in the eyes of Allah by committing a breach of the promises he has made with Allah and under such circumstances the people are no longer obliged to pay their allegiance to the betraying Sultan.

(2) Nevertheless, the Jamaah Pemangku Negeri, State Council and District Council shall not be allowed to make any agreement or transaction with any authority or Government without the consent of H.H. the Sultan.

X. (1) When a ruling Sultan decides to leave Brunei for a period or more than one month from the date before his departure, two Regents or three members of the Council of Regency shall be elected to exercise, during his absence, the powers conferred upon the Sultan.

(2) When the Sultan admits that he is sick and unable to carry out his duties, thereupon shall be appointed two Regents or three members of the Council of Regency who will exercise the powers of
the Sultan until the Menteri Besar, with the Government Seal, declares the provocation of the powers thus conferred on them.

XI. The Sultan is not allowed to leave Brunei for a period of over twelve months from the date of his departure and if he contravened this condition the Sultan loses his right to the Sultanship and is considered as an ex-Rajah and then the Jamaah Pemangku Negeri may, with the consent of the State Council and District Council, elect another Sultan in his place: provided that the Sultan may leave the country for such a longer period if the Jamaah Pemangku Negeri considers that, with the consent of the State Council and the District Council, there is a justifying reason to permit the Sultan to do so.

XII. If a Sultan of Brunei has thus abdicated the throne in accordance with the Section XI of this Part, thereupon another Sultan should be appointed to take his place in compliance with Section IV, V and VI of this Part, after proclaiming the abdication.

XII. If the ex-Sultan returns to the country even one day after the accession of the new Sultan his return shall not jeopardise the right of the new Sultan to the Sultanship.

XIV. Any ex-Sultan whether residing in Brunei or elsewhere shall be entitled to receive for his maintenance the sum of not more than ¼ of his income when ruling as Sultan. This sum shall be paid from the country's revenue. If the ex-Sultan resides in Brunei, he is entitled to get a suitable residence built at the expense of the Brunei Government, until he breathes his last. After his death his residence shall be handed down to his heirs.

XV. It shall be the duty of the Sultan to know and maintain the livelihood of the Royal Family and he may, with the consent of the State Council, suggest that everyone of the family receives subsistence allowance as approved. The recipients are:-

1. The Sultan’s wife who is proclaimed as "Raja Isteri"
2. The sons, daughters and grandchildren of the Sultan
3. The brothers and sisters of the Sultan
4. The uncles and aunts of the Sultan

Provided that this allowance is given only during their life-time.

"Sultan" means the Sultan who is on the throne, has died, and who has been ruling.
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THE HEIR

XVI. (1) The Government of Brunei must provide a title to be given to the heir apparent and the title to be given to the heir apparent and the title we suggest is “Duli Pengiran Muda Mahkota” of Brunei. This title is given only to an heir who is to receive it according to Sections IV, V and VI in this Part and cannot be conferred on other than the heir apparent; provided that the Pengiran Muda Mahkota may be abdicated, after consideration and through investigation carried out by the Jamaah Pemangku Negeri, with the consent of the Majlis Mashuarat Negeri and Majlis Mashuarat Daerah if the Pengiran Muda Mahkota has committed a breach of the customs of the State, the Undang Tuboh Kerajaan Brunei, and has done any act which might be dangerous to the State and the people and thereupon the Jamaah Pemangku Negeri is empowered, with the consent of the Majlis Mashuarat Negeri to select and appoint a new Pengiran Muda Mahkota in his stead and the Pengiran Muda Mahkota thus abdicated becomes an ex Pengiran Muda Mahkota.

(2) The selection and appointment of an heir to be Duli Pengiran Muda Mahkota shall be carried out only by the Jamaah Pemangku Negeri with the consent of the State Council and the appointment must be proclaimed to the public and be carried out according to the customs of the country and the ceremony of appointing the Pengiran Muda Mahkota shall not be carried out until he attains the age of 21 years reckoning on the Islamic year.

XVII. After the proclamation of the Pengiran Muda Mahkota it shall be the obligation of the Government to give subsistence allowance to the Pengiran Muda Mahkota because of the title, and provide him with a residence and staff and other necessary things to which the title entitles him.

Nevertheless, he may carry out his own duties or if he is appointed to be a Government Officer, there is no reason why he may not carry out such office.

XIX. The Pengiran Muda Mahkota shall not be allowed to leave the country for more than twelve months from the date of his departure and if such case occurs the Pengiran Muda Mahkota shall lose his title and becomes an ex Pengiran Muda Mahkota and the Jamaah Pemangku Negeri is empowered to select and appoint another Pengiran Muda Mahkota in his place, but his stay outside Brunei may be prolonged on condition that there is sufficient reason to convince the Jamaah Pemangku Negeri, with the consent of the Majlis Mashuarat Negeri, that such a longer period is necessary.

XX. (1) The Pengiran Muda Mahkota may, at his own free will, abdicate such title, if he wishes so to do.

(2) The Pengiran Muda Mahkota, whether he is in or outside Brunei, if he wishes to give up such title, should conduct the abdication according to the regulation there for and thus he becomes an ex Pengiran Muda Mahkota. His abdication must be proclaimed and the Jamaah Pemangku Negeri is empowered with the consent of the State Council, to select and appoint another Pengiran Muda Mahkota according to Sections IV, V and VI of this Part and the new Pengiran Muda Mahkota should be appointed according to paragraph (2) of Section XVI in this Part.
XXI. Any ex Duli Pengiran Muda Mahkota, whether residing in Brunei or elsewhere, is entitled to receive during his lifetime subsistence allowance paid from the Brunei revenue and amounting to not more than ¼ of the income which he received as a Pengiran Muda Mahkota and if he resides in Brunei, he is entitled to get a suitable residence built at the Government expense and after his death and the residence shall be handed down to his heirs.

XXII. (1) We suggest that, since the Government of Brunei will provide “Bintang Kebesaran Kerajaan Brunei” it is the Sultan only who may present any titles and “Kebesaran” and provide all “Darjat” and “Pingat Kemuliaan” and “Kebesaran” except in the case of any person who has not been awarded with any title such as “Orang Besar Negara” and other titles which are usually used in Brunei, then it shall be the Jamaah Pemangku Negeri to select suitable recipients and seek the Sultan’s consent.

(2) The Sultan may, with the advice of the Jamaah Pemangku Negeri, abrogate all the “Pangkat” or titles or “Darjat Tanda Kemuliaan” conferred on any person.

Provided that if the person dismissed from the “Pangkat” or title has been holding “Pangkat” or “Keturunan” the Sultan shall elect another person in his place.

XXIII. We suggest that the Sultan shall from time to time make regulations for the officers who will work in His Lapau and Istana, so as to equip them with regulations governing their work, customs of the Country and also the Lapau and Istana.

XXIV. We would suggest that the motto “Al Qaimu Bi-Amanillah” which has been in common use by the Sultan shall be introduced as a special Motto of the State (Uchapan Khas Negeri) which is not in existence in the country. The Special Motto of the State should be featured in standing Brunei Flags or mark of “Kebesaran Kerajaan”, “Kebesaran Sultan”, “Panji Kerajaan and Sultan” and State’s Flags (Bendera Negeri).

The word “Brunei” should be featured in all “Panji Kerajaan”.

WAZIR AND CHETERIA

XXV. (1) According to the “Sejarah Negeri Brunei” (History of Brunei), the “Pemerentahan Pembesar Negeri Brunei” was equipped with four Wazirs and four Kepala Cheteria who were the assistants to the Sultan at that time, and here we suggest that, giving our support to the people’s demands, the Sultan should provide and appoint “Wazir” and “Cheteria” to fill up the existing vacancies.

(2) The “Wazir” and “Cheteria” of old each being given duties to perform, we suggest that, giving our support to the peoples’ wishes, all the “Wazirs” and “Cheteria” after being conferred with the titles, shall be given duties and responsibilities in “Pemerentahan Negeri Brunei” (Governing the State of Brunei).
APPENDICES

(3) The “Wazirs” and “Cheterias” are:-

i. The Wazirs are:-

<table>
<thead>
<tr>
<th>Name</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duli Pengiran Bendahara</td>
<td>Occupied</td>
</tr>
<tr>
<td>Di Gadong</td>
<td>Vacant</td>
</tr>
<tr>
<td>Pemancha</td>
<td>Occupied</td>
</tr>
<tr>
<td>Temenggong</td>
<td>Vacant</td>
</tr>
</tbody>
</table>

ii. The Cheterias are :-

<table>
<thead>
<tr>
<th>Name</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yang Amat Mulia Pengiran Maharaja Laila</td>
<td>Occupied</td>
</tr>
<tr>
<td>Shahbandar</td>
<td>Vacant</td>
</tr>
<tr>
<td>Paduka Tuan</td>
<td></td>
</tr>
<tr>
<td>Maharaja Dinda</td>
<td></td>
</tr>
</tbody>
</table>

XXVII. (1) The election of the “Wazirs” and “Cheterias” shall rest, with the advice of the Jamaah Pemangku Negeri and the consent of the Majlis Mashuarat Negeri and the Majlis Mashuarat Daerah, with H.H the Sultan himself. There is no hinderance for the Sultan to appoint any other title if he wishes to do so.

(2) No person shall be appointed a Wazir or Cheteria unless he is the descendant of (on the father’s side) and already possessing the title of a Pengiran and must be a Muslim, but it is not necessary that the person to be appointed is the descendant of a Wazir or a Cheteria. It is, however, important to select such persons from among “anak² raja” (Princess) who have experience and qualification and are above 21 years of age.

Provided that there is no hinderance for the Sultan to bestow the titles of “Wazirs” and “Cheterias” upon Kerabat² Sultan “(Sultan’s Relatives) in accordance with paragraph (1) of Section XXVII of this Part.

(3) The installation shall be carried out at the “Lapau” in accordance with the “Adat Istiadat Negeri Brunei” (the customs of the State of Brunei).

XXVIII. (1) If any person is appointed to be a “Wazir” or “Cheteria” he is entitled to receive a sum of money for his maintenance at the discretion of the Majlis Mashuarat Negeri and is entitled to get a suitable residence and other accessories, only as long as he lives.

Provided that there is no objection for those who have been conferred with such titles, to take up any appointments in any departments of the Government of the State of Brunei.

XXIX. The allowance (Note: the original word is “pendapatan” meaning income) for the wives or widows of the Wazirs shall rest at the discretion of the State Council.
PART ‘‘F’’

BRUNEI CITIZENSHIP

• Through the medium of this Report we suggest something about the citizenship of the subjects of His Highness the Sultan of Brunei.
• At a time to be fixed according to the “Undang² Tuboh Kerajaan Brunei”, the people mentioned hereunder shall be the subjects of His Highness the Sultan.
• Indigenous Brunei is, i.e. Brunei Malay, Dusun, Kedayan, Murut and Dayak who are generations of the residents of the Brunei State.
• Any Malays (Malaya, Sarawak, Sabah [North Borneo], Labuan and Indonesia) born in Brunei.

   (c) Any foreigners born in Brunei after two generations, i.e. foreigners whose grandparents have been residing in Brunei, own children born in Brunei and have sworn and applied for Brunei Citizenship after 15 years continuous residence in Brunei, when the letter give birth to a child in Brunei, the child by itself becomes the Brunei Citizenship without swearing and applying for it.

III. Foreigners residing in Brunei may apply for the Brunei Citizenship (Naturalisation), subject to the Laws therefore on condition that they:-
   i. Were born in Brunei and have been residing continuously in Brunei for more than 15 years.
   ii. Have renounced their allegiance to their own mother land.
   iii. Have acknowledged and sworn their allegiance to the Sultan and the State of Brunei.

IV. (1) Foreigners, though residing in Brunei for more than 15 years continuously, shall not be given the Brunei Citizenship (Naturalisation), except with special consideration by the authority concerned on condition that they:-

   • Are certified by the Head/Penghulu that they are of good conduct;
   • Never committed any offence and breach of the “Undang² Negeri Brunei” and never been imprisoned by any court of Brunei;
   • Are approved by the “Majlis Mashuarat Daerah”;
   • Have renounced their rights and allegiance to their motherland;
   • Have confessed and sworn their allegiance to the Sultan and the State of Brunei;
   • Are eloquent in Malay language.

   (2) No foreigner shall obtain the Brunei Citizenship, unless the conditions prescribed in Section IV (1)of this Part, have been fully complied with.
PART ‘H’

OTHER REPORTS

I. The Government is requested to investigate further the question of wages of Government and Company’s employees and to consider the matter fairly, according to the current circumstances and conditions in Brunei. It is hoped that the Government will especially consider as usual the cost of living allowance, which has been reduced to 33 1/3. Although the salary has been increased by 20%, the increment benefits only the high officers especially Europeans and Heads of Department. Most of the people receive small wages and the total allowances paid to European officers are greater than the total amount of wages paid to local officers. Although the Government knows that the price of commodities are increasing daily yet why was the cost of living allowance reduced? Probably this was in accordance with the regulations governing the allowance in force in Sarawak. Why must Brunei follow the Sarawak regulations? Is not the Brunei Government free to arrange for the State expenditure? The Government should consider this matter wisely and fairly.

II. Rents for the Government houses occupied by the Government officers should be abolished and charges (Note: the original word is ‘Chukai’) for electric light should be reduced.

III. Government officers who are Bruneian people, intending to spend their leave outside Brunei should be provided with return free passage as is given to the foreign officers, when they return to their homes.

IV. (1) Return passages should also be given to officers who intend to proceed to Mecca on Pilgrimage, for this is undertaken once only.

(2) The Government should be lenient about the length of service where such opportunity is dependent upon. A single free return passage should be given after completing seven years’ service to an officer proceeding to Mecca on Pilgrimage and such free return passages should be given to officers and their families after 15 years’ service. Passages for their families should also be borne by the Government as are granted to foreigners on furlough, so that fairness and justice is felt by all. This matter should be considered.

V. LABOURERS AND B.M.P. CO., LIMITED
Labourers who are either employed by the Government of other Companies, especially the unskilled ones, should be protected so that their livelihood is secured from falling into misery.

VI. (1) Laws, and satisfactory regulations to protect the labourers should be enacted. Their wages should be improved and raised according to the nature of their work and to current circumstances.

(2) Much attention should be paid to their housing, safety and health.

VII. The excessive flow of unskilled labourers from outside Brunei especially at Seria, should be stopped from entering Brunei, because many Brunei people ‘menganggor’ (this may mean ‘grumble’) about them.

VIII. Malay contractors should be encouraged and given priority of opportunity. They should be given assistance in order to make progress in the various occupations of the people.

IX. (1) All agreements entered into with the B.M.P. CO., Ltd. should be reviewed and renewed. Brunei Government and H.H. the Sultan should have equal shares.

(2) At the expiry date (this may refer to aforesaid agreement) oil wells at Seria and Belait should be restored to the Government for management.

X. (1) Seria oil should not be refined at Lutong for this causes a loss to the Brunei State and her people. This undertaking should taken back and a refinery plant should be built within the Brunei Territory.

(2) The Government should convert the wasted gas at Seria for supply to the Government Quarters at Tutong and Brunei.

XI. All the present and future plans of work carried out by the B.M.P. Co., should be made known to the Government. The Government should form a permanent committee to supervise the affairs in connection with oil production, embarkation and other activities of the B.M.P. Co., and should train one or more persons experienced in oil to be cognisant of all such matters.

XII. (1) The B.M.P. Co., should train its Malay employees properly in the methods of extraction of oil.

(2) All big business firms should employ Malays in preference to any other races in their business and such concerns should train them properly and teach them their various duties to enable them to perform such work satisfactorily.

XIII. SOCIAL, GENERAL WELFARE, HOSPITALS
A Board similar to the Rural Industrial and Development Authority (RIDA) which exists in Malaya, should be established in Brunei, as it is very essential for the advancement of the Kampongs and the industry of the state.

XIV. A social Welfare Body must also be formed in Brunei and there should be established a body
to investigate the living conditions of the people so that Brunei’s wealth may be utilised for the benefit of the subjects throughout the State.

XV. (1) To facilitate travelling for the people, main road leading to villages should forthwith be constructed not only around the capital but also in every village.

(2) Every kampong and town should be provided with public telephone booths for the use of the general public.

(3) Water being essential, it is requested that pipe lines be laid in the villages especially in areas where water is scarcely obtainable such as at Sengkurong, Telanai, Burut, Pulau Baru², Berhumut, etc.

XVI. (1) Dispensaries and their equipments and staff to look after the health and safety of all classes of people, especially those living in Kampongs far from dispensaries should be provided and systematically organised. In every kampong a dispensary with a sufficient complement of staff should be provided.

(2) A committee to look into the affairs of, and to visit patients should be formed so that their welfare can be ascertained and adequately guarded, and so that they can put forward any complaints they wish to make either in respect of treatment or medicine administered to them.

(3) Government Officers and their families (wives and children) should receive medical treatment and admittance to the Hospital free of charge as they are government servants and the Hospital belongs to the Government and it is not a private hospital.

XVII. SUBJECT, CITIZEN AND RIGHT
The races such as Muruts, Bisayas, Kedayans, Dusuns, Tutongs, and Belaits residing in the State of Brunei shall be officially recognised as, and given equal rights to ‘Bangsa Melayu’.

XVIII. The true Brunei people outside Brunei, if they wish to return to the State, should be recognised and free to enter the State without any surety.

XIX. The Government should give the rights of the Malay subjects priority over other matters, as they are the owners of the State; the Government should in all seriousness take steps to improve the fate of the Malay subjects so that they can live as a useful citizen of the State.

XX. At present people find it difficult to get wood, mangrove, leaves and other things in the forests (Reserved Forests), or permission from the Forest Department can be obtained only after a long interval of, sometimes, about two or three days. Then there is yet another difficulty: all the forests, mangrove, and the leaves in the forests are already reserved by licensed wood dealers, and, therefore, the people cannot take them despite the permission already obtained from the Forest Department. The Government is requested to look into this matter for the sake of the public benefit, especially of the poor class of Malays. It is required that no person should be allowed to reserve all such forests, which are being utilised by the licencees to oppress and cause difficulties
to the livelihood of the poor. Although the Government may gain by this but the people suffer.

XXI. The Government should assist the silversmiths, coppersmiths, and send them to observe and to study overseas to broaden their knowledge.

Whenever the Government wishes to buy anything, it should purchase local made articles, unless they are not obtainable locally.

XXII. Sufficiently big plantations, e.g. tea, coffee, sugar cane, cotton, etc., should be opened up by Government in order to derive a good income for the country. The estates will also provide employment to those who wish to work as labourers in the Government estates. They will serve as good examples and as a means of encouraging the people of the country to take an interest in Agriculture.

XXIII. CONCERNING RELIGION

Muslim laws should be enacted and enforced in Brunei. Any question touching Muslim law should be settled and adjudicated by the Muslim Department which should be independent of the Government.

XXIV. ‘Majlis Tinggi Ugama Islam' (High Muslim Religious Council) should be established with fully staffed Department. A post of ‘Sheikul Islam Brunei’ or ‘Mufti’ should be created. All Religious Officers including Chief Kathi must be selected from among the pure Bruneis.

XXV. It is requested that on every Friday the Government Offices will be closed and they may be opened full day or even half day, on Sundays.

XXVI. EDUCATION AND TRAINING

The Government's policy with regard to Education should be improved to a better standard. A body to be known as the ‘Juatan Kuasa Pelajar[an]' (Education Committee) must be formed to consider improvements and methods of improving education in Schools in Brunei and to guide education authority.

XXVII. In every kampong and up-river country where there are a good number of children to be taught, the Governments must build schools at the Government’s expense, and not at the expense of the Kampong people as has been the policy adopted by the Education Department. At present the schools, especially the Malay schools, are not amply equipped, whereas it is important that they should be provided with all the requirements. The Government should take measures.

XXVIII. (1) The Government should endeavour to give suitable employment to students who have completed their education in the Malay schools. Suitable students should be helped to continue their studies in the fields in which they are interested so that their ambition and education will not be interrupted and impeded half-way.

(2) Besides those who can be placed in the Government English schools or Arabic Schools, and in order that the students who cannot enter such schools may have the opportunity to further
their education, the Government educational policy should include the necessary provisions for the erection of fully equipped buildings and for education in the following:-

(a) Malay Secondary Schools, having the highest standard equivalent to School Certificate;
(b) English Secondary Schools;
(c) Agricultural Secondary Schools;
(d) Technical Secondary Schools;
(e) Malay College.

With the existence of these facilities, the Government will be enabled to implement its objective of sending Brunei youths to any University overseas to further their studies in Medicine, Engineering, Law, etc.

(3) Besides the above-mentioned schools and college, and that so that every class of Brunei people may gain the value of education, the Government should provide for Orphans and poor children special free schools, all matters in connection with which shall rest with the Government. Apart from these Government should also build schools to fight against illiteracy for the benefit of those who have regretted and for the benefit and advancement of the State.

XXIX. While awaiting the fruits and success of the schemes, which are now or will be implemented, and so that progress in all the fields can forthwith be made, it is necessary for the Government to endeavour to find means to send suitable Malay youths for training overseas.

XXX. English schools should be established not only in Brunei, Seria and Belait but also in every district such as Tutong, Temburong, and Muara. The number of prospective students should be increased and there should be no age limit.

XXXI. Scholarship to study overseas should be awarded yearly and the number awarded should be double the present, whether it be for the Arabic, English or any other schools.

Constitution Advisory Committee Brunei, Darus-salam.

(Sgd) P. Maharaja Laila Muda Kahar (Chairman).
(Sgd) P. Orang Kaya Di Gadong Haji Mohd. Yusof.
(Sgd) P. Ali bin P. Hj. Md. Daud.
(Sgd) P. Haji Md. Salleh.
(Sgd) P. rang Kaya Shahbandar Haji Ahmad.
(Sgd) Abu Bakar bin Jambol.
(Sgd) Pangeran Md. Yusof A. R. (Secretary).

Source: CO 1030/113, Secret, No.46, Anthony Abell to CO, 23 March 1955, Annex I.
‘GENTLEMEN,
On behalf of the Members of the State Council and myself, I am glad to welcome this morning the Honourable Mr. D. C. White as British Resident, succeeding Mr. J. O. Gilbert who recently left Brunei on retirement.

I am indeed very happy because Mr. White has long been known to us, that is with the majority of Members of this Council, with Government officials and with members of the public, for in 1956, Mr. White acted as British Resident, Brunei for about 6-7 months.

During that short period he showed his wide experience and ability in the performance of his high and important office and his dealings with Government officials and the public alike were pleasant.

As British Resident for this his second tenure, the Council Members and I, and also the people of Brunei, sincerely hope that he will endeavour his utmost to co-operate with my Government, and to offer us his sincere advise for the welfare and prosperity of this State and its people.

On my part and on the part of the State Council Members, please believe me when I say that you can count on our co-operation in all matters and in the administration, for the welfare, betterment and prosperity of the State of Brunei.

In this morning’s meeting, I also desire to take this opportunity of offering a little advice to the Honourable Members of the State Council.

I believe the duties and responsibilities of every Member of the State Council at present, are not easy or light, but are heavy and difficult.

The fate of the people of this State depends, for good or ill on the decision of this Council.

Do not liken our Council to a “Chess Board” and to its members as “Chessmen”. Therefore, I appeal to all Honourable Members not to be reluctant or afraid to express their views fully or to make comments, to ask for fuller information and to seek explanations and reasons, thereby benefiting the State and its people.

I feel happy that in this Council a few Members never hesitate in offering their sincere advice to give and speak out their views on matters of importance and value, but I regret to say that a number of other members are still reluctant and not as eager and willing to take part in discussions.

The present Members of the State Council, are chosen for their intelligence, acumen and wisdom. Such assets are greatly in need in this Council. If all Members of the State Council were to give their faithful advice to the Council, it would be a great help to me as Chairman of the State Council, to
consider matters brought up for decision.

I hope that all Honourable Members as proverb goes-will first argue in solving the problem, and not quarrel later on.

As there are two types of responsibilities in our Council, such as stated in a previous meeting, it is advisable that during discussions on subjects tabled at this meeting, we should argue and discuss and go into detail thoroughly before deciding on such matters, as the old Malay saying goes-repentance in time is profit, but of what use is repentance when too late.

I appeal to every Council Member that we should in this Council not do as the Malay Proverb says-“When pestles fall together onto the mortar’, but as in Another saying “Union is Strength”.

Custom sometimes may be changed or disregarded, but unity is firm.

I also request Honourable Members not to adopt the Malay saying “If it cannot be repaired do not break or cut into two”, or as in another saying “If you cannot dance do not say the floor is uneven”. With pleasure then this is my advice to Honourable Members-HAVING FAITH OUTWARDLY WITHOUT FAITH INTERNALLY SOMETIMES LEAD TO HELL-HAVING FAITH INTERNALLY WITHOUT FAITH OUTWARDLY, ALWAYS LEAD TO HEAVEN.

The most important thing that is required when we are discussing certain matters in our Council, is to exercise and render justice to the citizens of the State of Brunei. What we want and ask for is justice, not only because the State of Brunei is a Muslim Malay State.

Therefore, when we exercise justice, do not forget their rights as provided for in Muslim Law.

From the Religious point of view, the proverb says ‘A few people value reputation more than wealth”.

Human being will not live forever in this world. Another proverb says “What is the value of the pride of an elephant because of his trunk, or the pride of a tiger because of his stripes?”.

Human manners are in speech backed by sincerity. An elephant when dead leaves his bones behind him, a man’s reputation lives after him. A reasonable speech is like a medicine and is an antidote.

To end my speech once again I appeal to Honourable Members of the State Council not to be reluctant to offer their advice and opinions which the Honourable Members think good, and likely to bring benefit to the State and its people.

Once again I welcome the new British Resident Mr. D. C. White to Brunei.’

Source: BA/2017/1983 (SUK Series 3, Box 158), Minutes of the Special State Council Meeting held at the Lapau, 21 July 1958, 9.30 a.m.

Note: The Sultan’s original speech was in Malay but was translated into English in the Minutes.
APPENDIX 3

British Residents, Brunei, 1906-1959

<table>
<thead>
<tr>
<th>Name</th>
<th>Period</th>
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<tbody>
<tr>
<td>M. S. H. McArthur</td>
<td>January 1906-May 1907</td>
</tr>
<tr>
<td>H. Chevalier</td>
<td>May 1907-December 1907</td>
</tr>
<tr>
<td>M. S. H. McArthur</td>
<td>January 1908-April 1908</td>
</tr>
<tr>
<td>J. F. Owen</td>
<td>April 1908-September 1909</td>
</tr>
<tr>
<td>B. O. Stoney*</td>
<td>September 1909-November 1909</td>
</tr>
<tr>
<td>H. Chevalier</td>
<td>November 1909-November 1913</td>
</tr>
<tr>
<td>F. W. Douglas</td>
<td>November 1913-January 1915</td>
</tr>
<tr>
<td>E. B. Maundrell</td>
<td>January 1915-May 1916</td>
</tr>
<tr>
<td>G. E. Cator</td>
<td>May 1916-March 1921</td>
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<tr>
<td>L. A. Allen</td>
<td>March 1921-February 1923</td>
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<tr>
<td>E. E. F. Pretty</td>
<td>March 1923-May 1928</td>
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<td>O. E. Veneables*</td>
<td>February 1926-May 1927</td>
</tr>
<tr>
<td>P. A. B. McKerron</td>
<td>May 1928-September 1931</td>
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<td>R. J. F. Curtis*</td>
<td>January 1929-August 1929</td>
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<td>T. F. Carey</td>
<td>September 1931-October 1934</td>
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<td>R. E. Turnbull</td>
<td>October 1934-January 1937</td>
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<td>J. G. Black</td>
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<td>E. E Penggiley</td>
<td>January 1940-December 1941</td>
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Japanese Interregnum

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<td>W. I. J. Peel</td>
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<td>L. H. N. Davis</td>
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<td>E. E. F. Pretty</td>
<td>August 1948-June 1951</td>
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<td>J. C. H. Barcroft</td>
<td>June 1951-July 1953</td>
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<td>J. O. Gilbert</td>
<td>June 1953-July 1958</td>
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<td>D. H. Trumble*</td>
<td>July 1954-October 1954</td>
</tr>
<tr>
<td>D. C. White*</td>
<td>June 1956-December 1956</td>
</tr>
<tr>
<td>D. C. White</td>
<td>July 1958-September 1959</td>
</tr>
</tbody>
</table>

*Acting Residents.
APPENDIX 4

LEGACY OF THE WAYWARD LAWYER

R.H. Hickling, the authority on public law at the birth of nations, leaves behind a wealth of knowledge and experiences collected and explained in definitive legal tomes, delightful novels and short stories. This is his legacy.

By SOO EWE JIN and SUHAINI AZNAM
Sunday@thestar.com.my

He was most probably best known for drafting the now the infamous Internal Security Act (ISA). But to focus on only that aspect of his life is to do him a grave injustice. The late Prof Reginald Hugh Hickling was so very much more than that, said lawyer, former colleague and personal friend, Phillip Koh. His friends remember him as a warm conscientious man with a wonderful sense of humour and greater humility. He loved music- Mozart was a favourite, the strains of which could be heard wafting from his office at Universiti Malaya’s Law Faculty where he strove to teach students not just the better but also the spirit of the law they would one day apply.

His students, in turn, worshipped him. “He had a fantastic sense of humour.” Recalled Dr. Mehrum Siraj, his student at the London School of Oriental and African Studies and later colleague during the Law Faculty’s founding years here in the early 1970s. “He would tell these wonderful stories and then give you a hearty laugh, sort of a guffaw. Hickling was able to laugh at himself.

“He had tremendous energy and at that advanced age was still so full of wit and life.” Hickling was one of the few British civil servants who stayed after independence to help in the early years of Malaysia’s nationhood. He serves as a state legal adviser to the previous and present Sultan of Johor. As Lord President before ascending the Perak throne, Sultan Azlan Muhibuddin Shah knew Hickling well.

He has had friends in high places but never lost the common touch.” said Koh. A conservative, Hickling believed that constitutional monarchy was not a bad thing, recalled Koh. He owed this perhaps to his family background. Born in Derby, England, in 1920, Hickling’s father was a police officer so respect for the law was deeply ingrained. This sense of duty came early to him. When World War II broke out, Hickling signed up for the Royal Navy Volunteer Reserves.

The Malvern Gazette chronicles the story of his convoy’s severe beating. “It really upset him,” recounted his wife, Beryl, “that they couldn’t stop to pick up the survivors in the water.” By the time of the D-Day invasion of Normandy, Hickling was commanding a Landing Craft Tanks
at Sword Beach. Yet he was reticent about his early years and we were too embarrassed to ask him knowing he had authored the ISA, which we so strongly opposed, said Dr. Mehrun.

Having already obtained an LL.B from the Nottingham University – the youngest then to have qualified- Hickling returned to practise in London. 1950, he was posted to Sarawak as Assistant Attorney-General. By the time independence came, Hickling, as Malaya’s first Parliamentary Draftsman and Commissioner of Law Revision, had helped draft the Malayan Constitution, the Merdeka declaration and the National Land Code, were he drew upon his Sarawak year for his sensitivity to native land issues. There was little time for soliloquy – but he managed.

“He had so many anecdotes and stories to share,” recalled former High Court Judge Datuk Seri Visu Sinnadurai. Prof Dr. Shad Saleem Faruqi of Universiti Teknology Mara, who shared his love of constitutional law, described Hickling as more than just a legal scholar. “He was a philosopher and a very good man”, he said. “In our discussions on the law, he would always bring his majestic view of life into the picture. He was always open about his role in drafting the ISA and just as open about its original purpose to act against organized violence was compromised.”

As to the now much maligned ISA, “perhaps being an expatriate, he could not refuse,” suggested Lawyer Datuk Param Cumaraswamy. Sinnadurai, his friend and colleague, described Hickling as a very passionate man. The Dean of the Law Faculty at Universiti Malaya, Sinnadurai paid tribute to the visiting professor as “a great teacher who inspired many students” wherever he taught- as much by his words as his deeds.

He led a simple life. He lived at the Crescent Court apartments in Brickfields, left behind by the late historian Tan Sri Mubin Shepard. Friends remember him strolling out with a little knapsack on his back with whatever novel was his favoured reading at the time. From there he would stop for a Tsingtao beer before wending his way to the Spotted Dog, the nickname for the Selangor Club, to meet his family of friends.

His former student Sazlin Suhaila Daud recalled how at Universiti Kebangsaan Malaysia in the 1990s, he would drive up in a “decrepit light-metallic green 1970s-80s Peugeot and after a few years, resorted instead to travelling by public transport, which 99% of the time meant rickety, overcrowded public buses and not taxis.”

He taught them humility, said Sazlin, recalling that in 2001, she and other former students took him out to dinner at Bon Ton, a rather swish restaurant. In thanking them, she said, Hickling commented that “he never thought the day would come when his former students would be entertaining him with a lavish meal in a posh restaurant”.

In retrospect, said Sazlin, it was a reminder “not to forget our humble back grounds”. In his legal writings, concurred both Dr. Shad and Sinnadurai, Hickling had the gift of being able to bring out the colour of the people and the mood of the time and how the law interacted in their
lives. “His books make delightful reading. He was a man who readily shared his vast knowledge with great humility.” concurred Sinnadurai.

“Law was not a dry subject but one which involved people. His writings were always lucid and reflected an understanding of someone who had been there from the very beginning,” said Dr. Shad. Hickling’s warmth extended to journalists. He was always helpful and available to clarify difficult issues and made them understandable to the layperson.

In an interview in 1986 in the face of great public debate, Hickling commented that constitutional amendments per se were not such a bad thing as the Constitution is meant to be a living document. In an introduction to the Constitution of Malaysia, he wrote: “There will always be a need to amend the Constitution from time to time, because in its origin the Constitution is the product of a series of compromises, accepted by people and communities with conflicting interests.”

In the Malaysian context, Hickling also noted that the Constitution “is coloured by the rules of alien system of law... the product of hurried drafting”. In subsequent essays, Hickling dwelt much on this point of an alien system, saying “the adversarial system that Malaysia has inherited from the British may not be suitable from the Asian context.”

The confrontation system, he reflected in his usual food-humoured style, may be good for the British “because we are barbarians” but Asians do not like the humiliation that attends public confrontation. He was a prolific writer, having numerous titles to his name. Some were, naturally books on law, while other were novels including Crimson Sun over Borneo, about the Japanese invasion of South–East Asia, Festival of Hungry Ghosts, about the lives of British expatriates engaged in Singapore, and The Lotus-eaters, which is set in a fictitious law faculty in Malaysia.

Obviously he loved the law, in Memoirs of A Wayward Lawyer, his autobiography published by University Kebangsaan Malaysia in 2000. Hickling defined law as a man’s efforts to live harmoniously in society. He was well-travelled and had tried to sort out administrative legalities in various corners where the British had interests: Yemen, Saudi Arabia, Thailand, Sri Lanka, Gibraltar as its Attorney-General (1970-72), and Fiji.

Throughout, he was a poet at heart. In his own words, he described his life as an expatriate in Sarawak, “sitting across river” in Kuching and drawing in “the scent of wood fires in the dusk, the occasional drums in the kampong, the bunga raya breaking open into a white globe in the darkness, its scent heavy and languorous, to die before dawn”.

Hickling passed away on Feb 11 in Worcestershire, Britain, leaving behind his wife and three children. He celebrated his 86th birthday last August in Kuala Lumpur. While he may have been an Englishman by birth and citizenship, he loved this land. In spirit and at heart, he was Malaysian.

Bibliography

Primary Sources

The British National Archives
CO 531    Brunei (1907-1926).
CO 943    Brunei (1946-1951), Original Correspondence.
CO 1022   South-East Asia Department, Original Correspondence.
CO 1030   Far-Eastern Department, Original Correspondence.
DO 35     Dominion Office, Original Correspondence.
FO 12     Borneo and Sulu, Original Correspondence.
FO 572    Borneo and Sulu, Prints of Correspondence.

Manuscripts:


(Ms.) Brunei Museum, Hukum Kanun Brunei, Reference no. A/BM/98/90.

(Ms.), Brunei National Archives, BA/FC/RBM/57, Minutes of the Brunei State Council, 1907-1949.

Printed Sources:
Brunei Annual Reports. 1911-
Brunei Government Gazettes. 1951-
Sarawak Gazette.
Straits Times
Times
Books and Articles


Jones, S.W., Public Administration in Malaya, London: Royal Institute for International Affairs, 1953.

BIBLIOGRAPHY

Low, Hugh., *Sarawak: Its Inhabitants and Productions: Being Notes during residence in that country with His Excellency, Mr. Brooke*, Richard Bentley: London, 1848.


Wright, L.R., The Origins of British Borneo. Hong Kong: Hong Kong University Press; distributed outside Hong Kong by Oxford University Press, 1970.

1. HH Sultan Haji Omar Ali Saifuddien III, c. 1954
2. Sultan Hashim Jalilul Alam, c. 1900

3. Sultan Muhammad Jamalul Alam II, c. 1920
4. HRH Sultan Ahmad Tajuddin, c. 1940
5. M. S. H. McArthur, A Student at Oxford University, c. 1890
REPORT ON BRUNEI
IN 1904

M. S. H. McArthur

Introduced and Annotated by

A. V. M. Horton

Ohio University
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Southeast Asia Series, No. 74

Minutes of a meeting of the State Council
held in the Council Chamber, Brunei, on Saturday
the 23rd November 1907

Present
H. H. the Sultan
The Ag. Pres., President
The Ag. Ass. President
Reg'ner, Penan and
Reg'ner, Seri Penan
Reg'ner, Sheikeddor
Reg'ner, Kamal
Sultan, Orang Menteri
Jean Dume

Absent
James Abdullah
O. C. Tanman

1. Minute of previous meeting read and confirmed.
2. John Ong and Tengku Dato. Council asked to say which one would judge.
As the Council have spent over an hour in,
Claim No. 1 cannot arrive at any opinion as to
its validity, the Ag. President decides to have
the entire line of claims in the Council Chamber
for a week in the custody of Reg'ner, Treasure.
Claims for a week,
As the Ag. President seems as soon as they,
has considered all the claims is decided in the

Minister confirmed by Council

British Resident
3rd March 1907
8. R. H. Hickling, c. 1955
9. Pengiran Maharaja Laila Pengiran Muda Abdul Kahar, c. 1954
10. Pehin Penyurat Abu Bakar bin Haji Jambol, c. 1954
11. HH Sultan Muhammad Jamalul Alam taken in procession, c. 1920s

12. H.H Sultan Ahmad Tajuddin posing with the Japanese Military Officials, c. 1943
13. Sultan Ahmad Tajuddin and his wife is seen here with the Australian soldiers after the expulsion of the Japanese occupiers, 1945.

14. Rt. Hon’ble Malcolm MacDonald, the UK Commissioner-General in Southeast Asia felicitates Sultan Ahmad Tajuddin during his Silver Jubilee celebrations in 1949.
15. Court of the Sultan of Brunei, c. 1846

16. An artist’s impression of the Brunei town in mid-17th century
17. A State Council meeting (Chair-HRH Sultan Ahmad Tajuddin) in progress in the Kajang, temporary premises erected after Allied bombings of the Brunei Town, 1948

18. A group photograph of the members of the Brunei State Council (Chair-HRH Sultan Ahmad Tajuddin) outside the Kajang, temporary premises erected after Allied bombings of the Brunei Town, 1948

20. The Australian soldiers visiting a dilapidated Chinese temple in Brunei in 1945 at the end of the Japanese occupation
21. The British officials are entertained for a sitdown banquet at the Istana Darul Hana in 1954. On the right is Rt. Hon’ble Malcolm, MacDonald, and in the left are HRH Sultan Haji Omar Ali Saifuddien, and Governor Anthony Abell

22. HH Sultan Haji Omar Ali Saifuddien with Sir Anthony Abell, Istana Darul Hana, 1954
23. HH Sultan Omar Ali Saifuddien and the decorated Bruneians with the British Officials after a State Ceremony, c. 1955

24. The itinerant Chinese Trader Peddlers selling their wares in Kampung Ayer, c. 1930s
25. The Brunei royal family with the British royal family during HM Queen Elizabeth II’s visit to Brunei, 29 February 1972

26. Members of the Brunei delegation (HH Sultan Haji Omar Ali Saifuddien in the centre) bound for London to participate during the Constitutional talks with Great Britain, March, 1959
27. Former British Residency Building, Later the British High Commissioner’s Residence

28. Sultan Haji Omar Ali Saifuddien with some leading subjects during his birthday celebrations, c. 1956
29. HH Sultan Haji Omar Ali Saifuddien addressing the Brunei Legislative Council, 1961

30. The Paduka Seri Begawan Sultan chanting ‘Allahu Akbar’ (God is Great) at the declaration of Brunei’s independence, 1 January 1984
31. The Brunei State Council Chambers

32. HH Sultan Haji Omar Ali Saifuddien at the Brunei State Council meeting. Seated next to him are the Resident, C. H. Barcroft, and the State Treasurer, D. H. Trumble, c. 1952
33. The Lapau Building where the Brunei State Council meetings were held in Brunei Town. (Now part of Brunei Historical Centre building)

34. HH Sultan Haji Omar Ali Saifuddien with decorated Bruneians, c. 1958
35. Sir Robert Scott, the UK Commissioner-General in Southeast Asia and HH Sultan Haji Omar Ali Saifuddien at Lapau, Brunei Town, 29 September, 1959 during the signing ceremony of the British-Brunei Agreement
36. Coronation of HM Sultan Haji Hassanal Bolkiah as the 29th Sultan of Brunei, August 1968
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