
The Historical Background and Constitutional Basis to the Federation

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Introduction

The United Arab Emirates achieved formal independence as a federal state on 2 December 1971, as a result of two distinct, but related, events. One was the signature by the government of the United Kingdom and the rulers of the seven emirates (formerly known as the Trucial States or Trucial Oman) of separate instruments bringing to an end the treaty relationship that had existed between them since the early nineteenth century. The other was the agreement between rulers of six of the emirates, Abu Dhabi, Dubai, Sharjah, Ajman, Umm al-Qaiwain and Fujairah, the previous July, to establish a federation to be known as the United Arab Emirates simultaneously with the ending of the treaty relationship with Britain. The seventh emirate, Ra's al-Khaimah, formally acceded to the new federation on 10 February 1972.

The decision to establish the federation followed the gradual evolving of a consensus that their small population, their small size, (only Abu Dhabi being larger than 1500 square miles), and their poverty (only Abu Dhabi and Dubai being oil producers) did not permit the emirates independently, or in smaller groupings, to establish a viable, independent, political and constitutional entity. This is not to mention those objective factors, whether cultural, religious and social, which the various emirates hold in common.

In January 1968, the government of the United Kingdom had indicated its intention of bringing to an end its treaty relations with the Trucial States, and with two other Gulf sheikhdoms, Bahrain and Qatar, by the end of 1971. During the nearly four years between that British declaration and the establishment of the United Arab Emirates, the ruling families in the seven emirates, along with those of Bahrain and Qatar, together with their advisers, engaged in a lengthy series of meetings and negotiations on the appropriate political and constitutional structure to be adopted upon British withdrawal. These negotiations were initially based upon a search for a nine state federation, including Bahrain and Qatar, and also involved the neighbouring independent Arabian Gulf states of Kuwait and Saudi Arabia, who acted, individually and together, as conciliators and mediators, and, on occasion, as supporters of one or other of the nine intending partners in the federation. The government of the United Kingdom supported the efforts to create a federation and played an important role in the process that led to its eventual establishment.

The creation of the United Arab Emirates in 1971 was the result of the consultations and negotiations in the period since January 1968. The concept of creating some form of constitutional

structure linking together the emirates of the Arabian Gulf, while, at the same time, retaining key elements of their individual and separate identities can, however, be traced back over several decades. An examination of that process is of relevance in analysing the dynamics of the politics of the federation.

The First Proposal for Inter-emirate Cooperation

The first proposal that can be traced for the creation of some kind of association between the sheikhdoms of Bahrain, Qatar and the Trucial States, together with Kuwait, surfaced during 1937, and was put forward by representatives of the colonial power, the United Kingdom. It subsequently created considerable local debate, both within and outwith the ruling families.

At that period, Britain was in treaty relations with all of the nine states as well as Kuwait, under the terms of which, *inter alia*, their rulers could not engage in independent relations with foreign powers, and were obliged to accept the advice of Britain in certain defined areas.

The British presence was centred on the office of the Political Resident, Persian Gulf (PRPG) in Bahrain, although there were other officers and Political Agents in several other states. The PRPG reported to the government of India, then responsible for British interests on the western littoral of the Arabian Gulf, (with the exception of the recently emerged kingdom of Saudi Arabia), while the latter communicated with the Imperial Cabinet in London through the India Office.

The British proposal was presented to the rulers of the states during the course of 1937 (Hamaidan 1967: pp 231–232). According to an interview in the magazine *Al Bahrain* in June 1939 with a member of the ruling Al Maktoum family of Dubai, Sheikh Mana bin Hashar Al Maktoum, it included the following points:

- The establishment of a unified educational system, with a central administrative headquarters in Bahrain, and also a unified postal service.
- The creation of a common nationality, with the abolition of the necessity of passports for travel between the member emirates.
- The unification of the judiciary and legislative systems.

The proposal was also said to include the unification of ground and naval forces under a central command and administration. A federation council was proposed, with each emirate ‘to send a representative according to an approved system’ while indirect taxation could be levied to raise money for federal expenses. According to Sheikh Mana ‘the advice and assistance of Great Britain is to be sought in implementing the project, due to its special relations with these parties, and for being the Arab’s ally in more than one part of the world.’

According to another report (*Al Bahrain*, 6.1939), the creation of an assembly was also proposed, with representatives from each emirate, either to be appointed by the ruler or to be elected by the population, having the power to propose financial regulations and to ratify draft legislation put forward by the Federation Council.

The British proposal came at a time when the PRPG and other British officials were deeply involved in negotiations designed to win oil exploration concessions in the Trucial States for the British-controlled Iraq Petroleum Company (IPC). These negotiations were by no means

always smooth and easy and, as a result, relations between Britain and the rulers were not always cordial. Indeed, some rulers were clearly opposed to any proposal which could lead to a greater degree of British involvement in their emirates. Perceived, by the British at least, as being one of the more difficult rulers was Sheikh Shakhbut bin Sultan Al Nahyan of Abu Dhabi.

By 1938, the government of the United Kingdom was pre-occupied with the looming Second World War, which broke out in Europe the next year, and little energy was expended on promotion of the Gulf federation proposal. The contents of the proposal, however, became widely known throughout the states involved, and provoked considerable political discussion, some of which was reflected in local journals. Abdullah Al Zayed, owner of the magazine *Al Bahrain*, made use of his columns to promote the concept of greater integration. In June 1939, in the front page interview with Sheikh Mana Al Maktoum cited above, he commented: 'We pray that the aspirations of Sheikh Mana (for a federation) are realized, so that we can see this plan going beyond the area of thinking towards action'. He then added:

We are confident that Their Excellencies Sheikh Sultan bin Saqr (Al Qasimi), the Emir of Sharjah, and Sheikh Shakhbut bin Sultan (Al Nahyan), the Emir of Abu Dhabi, welcome the plan. We also believe that His Excellency Sheikh Sultan bin Salem (Al Qasimi), the Emir of Ra's al-Khaimah, does not see otherwise. There will be no need to seek the acceptance of His Excellency Sheikh Ahmed Al Jaber (Al Sabah, of Kuwait), who was the first to think about it (the concept of greater cooperation), and has spent much time working for its sake.

Although no action was taken, either by Britain or by the rulers, to implement the proposal, reports in *Al Bahrain* over the course of the next five years indicated that discussion of the topic continued. On 22 August 1939, for example, the magazine reported: 'We have learned that the Emirs of the Gulf have convened their Councils to discuss (the idea of a federation) and they are happy and keen on their endeavour.'

In the same issue, it published an article described as a summary of reports in other press, including *Arab Association* and *Arab Newsletter*. It reported that:

The general belief in the Arab Emirates overlooking the Gulf is one calling for the need for its citizens to be brought closer together so that they may preserve their national identity. These Emirates have carried out 'national propaganda,' (contacts) in this respect that is soon expected to bear fruit.

The ruling Emirs have started to view closeness between the Emirates as a factor of (common strength), as long as each Emir maintains his own independence in his own state.

The report again summarized the outlines of the proposal, with more detail on some points. On the unification of posts and telegraphs, for example, it said that fees and salaries should also be defined, and that a single administrative system should be created 'on the basis of the percentage of each emirate in the revenues'. On the creation of a joint military force, it said that the proposal suggested that:

Each military unit in each Emirate has its autonomous unit, but (should be) linked with the units of the other Emirates in an alliance under one general command and staff. According to the rules of this alliance, the units can participate in defensive and offensive

manoeuvres in any part within the border of the federation. Each Emirate will have to spend on its military units according to decisions by the General Command. The rules will apply to the ground, naval and air forces.

On the proposed Federal Assembly or Council, the magazine said that it was to be established with representatives from each emirate, chosen 'either by appointment or election, or both, taking into consideration the population of each Emirate'. It added that the Council 'will have to study all laws and regulations issued by the Judicial Council before endorsing them. Each Emirate has to show absolute subjugation, and is responsible for implementing these laws.'

Kuwait, Bahrain, Qatar, Abu Dhabi, Dubai and Sharjah were said to be involved in the plans. *Al Bahrain*, however, added 'the Emirates which are expected to merge are over 20, and those which have been mentioned are only the larger among them'.

At the time, the British, through the PRPG, also recognized the separate identity of Ra's al-Khaimah, Ajman and Umm al-Qaiwain, as well as Kalba, which had been granted recognition in the mid-1930s and was reintegrated into Sharjah in 1951. The emirate of Fujairah, officially recognized in 1952, was also seeking a British acknowledgement of its separate status. The other 'emirates' considered by the *Al Bahrain* editor were not identified, but may well have included some of the near-autonomous inland tribes or small coastal villages like Hirah in Sharjah, which had earlier unsuccessfully sought independent status. 'Considering Britain's position towards this plan,' the paper wrote, 'it is obvious that it does not propose it, but has not opposed it or obstructed it, if it has been brought to its attention.'

In a subsequent issue of the magazine on 28 September 1939, *Al Bahrain* reproduced a letter it said had come from 'a senior (official) on the Omani Coast (i.e. the Trucial States), who asked not to be named and who swore he was ready to exert his influence, and money and blood for the sake of the (federation of emirates) if need be.' The letter, the identity of whose author has not been determined, said in part that the topic of a possible federation of emirates:

has become the main theme for discussions in councils (majalis) and clubs, and the focus of thinking among those interested in the future of the Arabs in this part of their nation. We do not know what share (of attention) it took in Kuwait, Bahrain and Qatar, although the newspapers which have dwelt on the subject have confirmed the great interest of the inhabitants there.

The federation of the Emirates is beneficial not only for the Emirates. Its main benefit is for the Emirs themselves, because in order to have such unity, there should be a Federation Council, and a constitution, that guarantees the status of the Emirs, and defines a way of succession to the thrones, as well as preventing any aggression from one party against another, from within and from without, as well as against internal revolts. They (the Emirs) would be involved in building their countries for the prosperity of their peoples, and in education of their youth.

The correspondent from the Trucial States went on to refine further some of the suggestions already made on the powers and structure of the federation. These included a proposal that each emirate should be 'called to elect representatives, one to each 4000 inhabitants. The representatives will be from the Emirs or from the people'. He added that he had no objection

to either Kuwait or Bahrain as a base for the Council, but added that he personally preferred Bahrain, because it was an island and in the geographical centre of the region:

Considering the fact that all the Emirates have special links with Britain, and that no possible danger to the area's Arabism and existence can arise from this relationship, the Emirates will have to seek assistance from this country (Britain) in a way that will ensure the growth and steadfastness of the federation.

Finally, the correspondent said that the duties of the federation should include 'the task of working towards cementing the links and alliances with neighbouring Arab countries, particularly the Kingdoms of Saudi Arabia and Iraq.' 'Now', he concluded, 'is it not time to take the first step, and for the Emirs to call each other together for a preparatory meeting to discuss this subject?'

The emirs, however, made no attempt to do so, while the PRPG, with his masters in Bombay and London pre-occupied by the Second World War, took no initiatives on the subject. Abdullah Al Zayed, the campaigning editor of *Al Bahrain*, continued to promote the concept of greater inter-emirate cooperation, and to suggest that there was a degree of support from members of the ruling families. On 7 August 1941, the paper reported a statement by Sheikh Sultan bin Saqr Al Qasimi of Sharjah, said to have been made during a visit to the paper, as follows:

I pray to God that the Arab Emirs in the Gulf succeed in uniting and in eliminating the causes for differences and discord (between them). May He direct them towards forging a unity that brings them together, and puts away hatred.

On 11 September 1941, Abdullah Al Zayed reported a visit to his office by Sheikh Humaid bin Muhammad bin Salem Al Qasimi, nephew and son-in-law of the ruler of Ra's al-Khaimah, and commented:

It is a delight to be able to mention that all the Emirs and dignitaries we have been able to meet from the Coast of Oman (Trucial Oman) expect and support the idea that the Arab Emirates on the Gulf unite in an alliance that would make of them one country, as it is one nation, provided that each Emir maintains the right to run his own internal affairs as he does now.

Al Zayed's continual campaigning and prompting, however, achieved little. Nearly three years later, on 23 March 1944, he wrote an editorial entitled 'Will the Gulf be one state?' It said, in part:

Over and over again, we have written about this subject, which is of particular concern to us. The editor of this newspaper has personally ascertained the views of many Emirs and Sheikhs in the Gulf. He is also confident that Great Britain has no objection to this project, if the sheikhs of the Emirates should express their desire for a Federation. It is even probable that it will take an initiative in giving assistance.

We repeat here what we have often said, that the Federation of Arab Emirates in the Gulf does not mean that any Emir will cede his throne, or lose any of his influence or income. On the contrary, the wars between the Emirates will end, to be replaced by lasting peace and stability.

It is now our hope that the Emirs will convene a conference amongst themselves to complete discussion of the subject, as they have already (discussed it) individually.

The proposal during the 1930s for the creation of some form of greater inter-emirate cooperation in the Gulf came to naught, despite evidence that, at least as individuals, some of the emirs supported it. Moreover, the involvement of Britain in the Second World War pre-occupied the colonial power, while in the years immediately after the War, Britain was primarily concerned at a regional level with her impending withdrawal from India and, to a lesser extent, the impact that would have upon her interests in the Arabian Gulf.

The concept, however, was the first concrete formula to be put forward for a form of regional cooperation between the emirates, and was, moreover, a formula that incorporated all of the basic elements that were to compose the basic structure of succeeding plans and proposals. These included the concept that any viable federal structure should acknowledge the separate identity and authority within his emirate of each sheikh, with particular relation to the armed forces and his authority over his own subjects, even if the latter were members of any Federal Council or Assembly. Also included was the concept that any such entity to be established should have a form of collective leadership in which the individual sheikhs should all participate, as well as some form of popular representation, either through selection or election. Significantly, there was also a recognition that at least a tacit approval for any such structure should be sought from the largest Arab states in the region, Saudi Arabia and Iraq. Indeed, some of the emirs were reported to have visited Riyadh to discuss the 1937 idea with the Saudi monarch, Abdul Aziz Al Saud, and to seek his blessings.

The Trucial States Council

The Political Resident, Persian Gulf (PRPG), and his political superiors, had taken no action to promote the 1937 proposal, but in 1952, in the aftermath of her withdrawal from the Indian sub-continent, Britain took her own initiative, which was confined to the Trucial Coast.

At the time, there were seven states or emirates that were recognized as having independent identities, all of which were in treaty relations with the United Kingdom. These were Abu Dhabi, Dubai, Sharjah, Ra's al-Khaimah, Umm al-Qaiwain, Ajman and Fujairah. In the same year, Fujairah had at last succeeded in winning from Britain the recognition as a separate entity for which it had been struggling intermittently for almost a century, while in the previous year Kalba, just south of Fujairah, had been re-absorbed into the emirate of Sharjah, following the extinction of the adult male line of the local branch of the ruling Al Qasimi family of Sharjah.

The British initiative took the form of the creation of the Trucial States Council, an informal body composed of the sheikhs of the seven emirates and chaired by the British Political Agent in the Trucial States, resident in Dubai. The Council was designed primarily as an informal gathering, with no charter, written code or regulations, and its members were given to understand that it was to act as a consultative institution. Its intended purpose during its bi-annual meetings was to discuss matters of common concern and to prepare recommendations for the Political Agent (Fenelon 1973: p 39). Under the terms of the treaties regulating the British relationship with the emirates, the sheikhs were obliged in certain fields, moreover,

to act upon the advice of the PRPG or the Political Agent. During the subsequent years, covering nearly two decades, discussions in the Council centred upon matters of economic development, on services of general interest, such as education, health, traffic control and the control of locusts and on other items, of concern also to the British, such as the total abolition of the smuggling and sale of slaves, citizenship and travel documents (Hawley 1971: pp 25–27).

In 1958, six years after it was established, and in the wake of major changes in the Arab world such as the republican revolution in Iraq and the tri-partite action by Britain, France and Israel against Egypt, the Council, at the prompting of the Political Agent, established three sub-committees, for agriculture, education and public health. In 1964, another major committee, entitled the Deliberative Committee, was established, with the tasks of undertaking preliminary work on the agendas to be placed before the meetings of the Council itself, of deciding upon the priorities for projects and of drafting recommendations for the Council. The committee had two members from each of the Trucial States and met approximately every two months (Hawley 1971: p 25). In 1965, the British Political Agent vacated the chair of the Council, and the member sheikhs then elected a chairman from amongst their own number, to serve for a one year term. The first so to be elected was the ruler of Ra's al-Khaimah, Sheikh Saqr bin Muhammad Al Qasimi (*Al-Azminah Al-Arabiyyah* no. 84, 15.10.1980: pp 6–7).

During the course of 1965, the administrative structure associated with the Council was further developed, with the creation of the Development Office and the Development Fund. These were given the task of coordinating the modest development projects in the seven emirates until the Fund was dissolved, after the formation of the Federation of the UAE, in early 1972. Its duties were then transferred to the institutions of the new state (*ibid.*). The activities of the Fund were financed by the British, who in 1965 increased the budget for the Council's Five Year Plan from £350,000 to £1,000,000, and also made an annual appropriation of a further £200,000 for current development expenditure. Much to the delight of the British, who believed that some of the oil revenues enjoyed by Abu Dhabi, which had begun production in 1962, should be spent in the poorer emirates, when Sheikh Zayed bin Sultan Al Nahyan became ruler of Abu Dhabi on 6 August 1966 he immediately made a grant of a further £500,000 to the Development Fund, with subsequent substantial grants in 1967 and 1968, by which time he was the largest contributor. Other funds came from Kuwait, which was also providing assistance to the emerging educational sector (Fenelon 1973: pp 39–40).

The purpose of this chapter being to examine the gradual progress of the Trucial States towards the formation of the federation, the achievements of the Trucial States Council need not be analysed in detail. It is apparent, however, that the Council was a joint venture that pointed the way towards a federation, and that its formation, and its acceptance by the rulers, implied a recognition of the essential unity, or at least common interest, of the seven Trucial States.

The Council served as a forum for discussion and exchange of views between the rulers, initially under the watchful eye of the British Political Agent. It also provided a framework for cooperation and for the adoption of a certain degree of collective responsibility for common problems that permitted each individual ruler to operate at a level broader than that of his own individual tribe or sheikhdom. As a result, this first concrete experiment in inter-emirate collaboration played an important function in helping to reduce the degree of competition between the rulers and, at the same time, giving them experience in collaborating for mutual benefit.

The Bi-partite Union

In January 1968, the British government informed the rulers of the Trucial States, and of Qatar and Bahrain, that they intended to bring the treaty relationship between them and Britain to an end by the close of 1971, as part of a process of British withdrawal from east of Suez. The British decision meant, in effect, that the Trucial States were to be granted independence, a development that not only took the rulers by surprise, since they had been informed only a couple of months before that such a withdrawal would not take place, but was also one that was by no means universally welcomed. Indeed, the first reaction of several was to ask the British to stay.

One of the immediate results of the British decision was the additional impetus given to the already expanding cooperation between the rulers within the framework of the Trucial States Council. Looking further ahead, however, Sheikh Zayed of Abu Dhabi promptly recognized the need for discussion with his fellows on the nature of any future relationship.

On 18 February 1968, only a few weeks after the British had informed the rulers of their decision to withdraw, the rulers of the two largest and wealthiest emirates, Sheikh Zayed of Abu Dhabi and Sheikh Rashid bin Saeed Al Maktoum of Dubai, met at As-Sameeh, close to their mutual border. The original purpose of the meeting was to discuss and to settle a disagreement over onshore and offshore borders, this being resolved quickly by a cession of territory by Abu Dhabi to Dubai, including the site of today's Port of Jebel Ali. As both rulers may have suspected, the offshore areas involved in the cession of territory were later discovered to contain substantial oil reserves.

Although both rulers had not abandoned the hope of persuading the British to reverse their decision, they also discussed the likely prospects for the region should withdrawal take place. In order to prepare for such an eventuality, they agreed that they would create a two-emirate union which others would be invited to join. The terms of the agreement provided for foreign affairs, defence, security, immigration and social affairs to be union responsibilities, with each emirate retaining responsibility for judicial and other internal affairs (*Rozal Yousif* 2.8.1971). Article 4 of the Abu Dhabi–Dubai Agreement invited the rulers of the other five Trucial States to discuss the agreement, and to adhere to it. The rulers of Qatar and Bahrain were also invited to confer with the rulers of the Trucial States in order to discuss the future of the region as a whole, with a view to seeing whether a common stance could be adopted between the nine separate political units (*ibid.*).

This agreement was short-lived, for the rulers of the other Trucial States, along with those of Qatar and Bahrain, signified their immediate acceptance of the offer to join the new union. On 25 February 1968, the nine rulers met in Dubai, signing an agreement on 27 February to establish the 'Federation of the Arab Emirates'. This agreement was to come into effect on 30 March 1968 (Al Rayyes 1973: p 75). The agreement stipulated that the purpose of the federation was:

to cement ties between them (the members) in all fields, to co-ordinate plans for their development and prosperity, to reinforce the respect of each one of them for the independence and sovereignty of the others, to unify their foreign policies and representation, and its higher policy in international, political, defence, economic, cultural and other matters.

It further stipulated that the highest body, the Supreme Council (comprising the nine rulers), 'shall be responsible for issuing the necessary federal laws and that it is the supreme authority in deciding on issues of reference, and shall take its decisions by a unanimous vote.' The chairmanship of the Council was to be 'rotated annually among its members,' with the chairman representing the federation 'internally and before foreign states'.

Under the terms of the Dubai Agreement, executive authority was delegated to a Federal Council which was to act as an executive arm of the Supreme Council. Article 8 of the agreement, however, made it clear that the Federal Council:

would carry out its functions to strengthen the collective defence of their countries, with a view to safeguarding their security, safety and mutual interests in such matters as to ensure the fulfilment of their aspirations and realize the hopes of the greater Arab homeland.

The second chapter of the Agreement defined the top federal, political and executive authorities and the financial structure of the federation, while the third dealt with defence, justice and the site of the capital of the federation. Ultimate political authority was vested in the Supreme Council. This body was assigned the task of drawing up:

a permanent and comprehensive charter for the Federation, and the formulation of its overall policies on international, political, defence, economic, cultural and other affairs that are in accordance with the aims of the Federation.

There was a notable lack of precision on matters of defence, justice and the capital. Article 12 provided that:

The contracting Emirates shall co-operate in strengthening their military capabilities in accordance with the right of legitimate defence, both individual and collective, of their existence, and their common duty to repel any armed aggression to which any one of them may be subjected. The Emirates shall also co-operate, according to their resources and needs, in developing their individual or collective means of defence to meet their obligation.

Article 13, on justice, called for the establishment of a Supreme Court, and for its formation, organization and functions to be defined by law, while the relationship between the Supreme Council and the Federal Council was clarified by Article 10, which stated that 'decisions of the Federal Council shall not be deemed final unless approved by the Supreme Council'. The permanent headquarters of the federation was left to be determined by the Supreme Council at a later stage. Finances were covered, in general terms, in Article 6, which said that 'the general budget of the Federation shall be issued by a decision from the Supreme Council. The law shall fix the budget revenues and the share to be paid by each member Emirate'.

The agreement also stated that local affairs were to remain within the jurisdiction of each member emirate, with precise details to be determined by the Supreme Council at a later date.

The agreement between the nine rulers to form the Federation of Arab Emirates was made at speed, and, in consequence, the terms of the charter agreed upon were loosely worded in legal terms and thus subject to differing interpretations. Although the Supreme Council was to meet on four occasions over the subsequent 18 months, it was unable to reach lasting agreement on any point, except that the federation itself was not viable.

The Failure of the Federation of Arab Emirates

A detailed examination of the various deliberations between leaders of the emirates and of the contacts that took place between them is outside the purview of this chapter. The underlying obstacles that gave rise to the differences between the nine members are, however, of importance in understanding the reasons for its eventual collapse, effectively from the date of the last meeting of the Supreme Council, on 21 October 1969.

One obstacle of considerable importance was inherent in the Charter of the Federation itself. Although the new entity was named the 'Federation of Arab Emirates,' the Charter itself stipulated that its purpose was, in part, 'to reinforce the respect of each one of them for the independence and sovereignty of the others' (*ibid.*).

The agreement, as mentioned earlier, required the Supreme Council to take decisions only on the basis of unanimity, and single rulers could, and often did, prevent such unanimity being reached. Moreover, the agreement was silent on questions relating to the organization and composition of the Federal Council, including the manner in which its members were to be selected. This again, according to one observer, 'handicapped the process of implementation as the Supreme Council was not able to reach an agreement on these matters' (*Al-Azminah* 26. 11. 1980: pp 6–7). The agreement also lacked precision on questions such as the sources of federal revenues and the contribution to be made by each emirate to the federal budget, while an examination of the deliberations of Supreme Council meetings indicates that the Council also failed to reach agreement on these two points (*ibid.*). In addition, there was no clear indication in the agreement as to whether or not the member emirates had agreed to the establishment of a joint defence force. As a result, some rulers supported the unification of the various military and para-military forces, while others insisted on maintaining their own independent armed units (*ibid.*).

Rivalry over the respective status of the rulers and their emirates was also clear during the life of the Supreme Council, with competition for leadership and for positions. This was particularly evident between Bahrain and Qatar, neither of which had participated in the work of the Trucial States Council that had brought the other seven emirates, and their rulers, closer together in the previous decade and a half. Both eventually decided to withdraw from efforts to create a viable federation, and became separately independent, on 14 August 1971 and 1 September 1971 respectively, although by that stage the Federation of Arab Emirates itself had long since ceased to exist.

The competition between the two emirates, however, permitted Abu Dhabi to emerge as a mediator. Though with a smaller population than Bahrain, and at a lower level of development than either Dubai or Qatar, Abu Dhabi was largest of the nine emirates in terms of size. It was also the wealthiest, with its rapidly expanding oil production far outstripping not only that of Bahrain and Qatar, but also that of Dubai (which did not commence exports until 1968), the only other oil producer in the Trucial States. This, coupled with the generosity of Abu Dhabi's Sheikh Zayed towards the other emirates, helped to make him the person most likely to be acceptable to his colleagues as leader of the federation of the seven Trucial States that was to emerge after the collapse of the federation of nine.

Qatar and Bahrain also disagreed over the site of the proposed federal capital. At the fourth and final Supreme Council meeting it was agreed that Abu Dhabi should be the temporary capital, with a permanent site to be built later between Abu Dhabi and Dubai. When a year later the deputy rulers met in Abu Dhabi to attempt to revive the moribund federation, the question of the capital was again raised and Bahrain withdrew its previous acceptance, rendering the agreement on Abu Dhabi null and void.

Subsequently the federation of the Trucial States that became the United Arab Emirates adopted the same compromise in its provisional Constitution in 1971, naming Abu Dhabi as temporary capital pending construction of a permanent capital, to be named Al-Karamah, on the Abu Dhabi–Dubai border. Both Dubai and Ra's al-Khaimah raised the question of a permanent capital on a number of occasions during the 1970s, demanding that it should be built. The Abu Dhabi Ruler and UAE President, Sheikh Zayed, however, embarked on a process of turning Abu Dhabi into a *de facto* capital. Only financial considerations, plus the rapid creation of established facts in terms of construction on the ground, led the two emirates to drop their demand after 1979. It was to take a further 17 years, until May 1996, before the Supreme Council of the UAE, adopting the provisional Constitution as permanent, finally endorsed Abu Dhabi as the permanent capital.

Another major point of contention between members of the Supreme Council of the Federation of Arab Emirates was the method to be followed in determining the composition of the proposed Federal Council or Parliament. Bahrain, with the largest population, proposed a ratio based on population. Qatar and the others, with much smaller populations, refused (Heard-Bey 1984: p 359). Subsequently, at the October 1969 Supreme Council meeting, Bahrain agreed to the principle of equal representation, with four members from each emirate. At the October 1970 meeting of deputy rulers, however, it retracted its previous agreement, and again demanded a form of proportional representation (*Al-Azminah* no. 95, 14. 1. 1981: pp 6–7). The opposition of the remaining eight deputy rulers led Bahrain's representative to announce his intention of refraining from taking any further part in subsequent discussions 'before ensuring that the Constitution ensures the rights of the people of the Union, particularly in so far as the representation of the people in the Union Council is concerned.' (*ibid.*)

A further unresolved point was the question of voting within the Supreme Council itself. The 1968 Dubai Agreement had originally called for unanimity. The draft constitution subsequently prepared stipulated that decisions on 'substantial' matters should be taken by unanimous vote, but that decisions on other, less important, matters should be taken on the basis of a simple majority. Bahrain rejected this for reasons related to its opposition to other related articles, while, when the subject was raised at the deputy rulers' meeting in Abu Dhabi in October 1970, there were several differing viewpoints (*ibid.*).

Following the collapse of the deputy rulers' meeting in October 1970, it became clear by early 1971 that Bahrain and Qatar had chosen to follow an independent course, and the rulers of the seven Trucial States were obliged to re-consider their plans to deal with the approaching British withdrawal, not least because any remaining hopes that the Conservative government, elected in June 1970, would reverse the decision to withdraw taken by its Labour predecessor had finally been dashed. The British government, too, was eager to ensure that a viable structure of government would exist upon its departure, not least because of the collapse in 1967 of the superficially similar South Arabian Federation. The British government had

sponsored the federation in the area that became independent as the People's Republic of Southern Yemen, with a Marxist government that in 1971 was actively supporting subversion of the existing order both in Oman and in the Trucial States. Equally keen to have a satisfactory agreement worked out, again partly because of the fear of a spread of the virus of revolution from South Yemen, were the governments of the other Arabian Gulf states, Kuwait and Saudi Arabia, both of whom had been actively engaged in promoting the federation of nine concept.

The Bahraini and Qatari decisions represented, at one level, a terminal blow to the embryo federal structure, because both emirates had a substantially higher level of education, and, hence, more qualified local personnel. At the same time, however, their departure, which left Abu Dhabi and Dubai far outweighing their five colleagues in terms of area, population and wealth, made it easier for the Trucial States to move towards agreement amongst themselves.

On 10 July 1971, the seven Trucial States' rulers met in Dubai. Eight days later, six of them announced the formation of the United Arab Emirates. Ra's al-Khaimah declined to join, although not ruling out the possibility of doing so in the future. The discussions leading to the creation of the Federation of the UAE, which centred, in part, on amendments being proposed to the draft constitution for the Federation of Arab Emirates, indicated that substantial differences existed.

The rulers of the small five, excluding Abu Dhabi and Dubai, proposed three key amendments. As far as a federal capital was concerned, they suggested that the plan to build a new capital between Abu Dhabi and Dubai should be abandoned and that, instead, a headquarters for the new federal government should be built somewhere between Dubai and Sharjah, saying that the funds for a new capital would be better spent on development schemes in the emirates that were not oil producers. The five further stressed that there should be full equality between the seven in all respects, including the composition of the national assembly and the voting process within the Supreme Council (Heard-Bey 1984: p 359). Neither Abu Dhabi nor Dubai were prepared to accept these points, the last of which, in particular, was in direct contradiction to the powers they themselves sought.

On the second day of the meeting, four of the five withdrew their support for the proposals they had put forward the day before. Only Sheikh Saqr bin Muhammad Al Qasimi, ruler of Ra's al-Khaimah, continued to press them. In the subsequent days of talks, the remaining six rulers agreed to adopt a revised version of the draft constitution for the defunct Federation of Arab Emirates, the key difference being that decisions by the Supreme Council of Rulers were to be taken by a majority vote, but both Abu Dhabi and Dubai had to be part of the majority. Abu Dhabi was approved as provisional capital.

Sheikh Zayed of Abu Dhabi was elected as the first President of the United Arab Emirates, while Sheikh Rashid of Dubai was elected Vice-President, both terms to run for five years from 2 December 1971, the date on which the treaties with Britain were to come to an end, and to be renewable.

The national assembly, which was given the name of Federal National Council, was to be comprised of 34 members, eight each from Abu Dhabi and Dubai, six from Sharjah, and four each for the three smaller emirates of Ajman, Umm al-Qaiwain and Fujairah. Six places were to be allocated to Ra's al-Khaimah, should it eventually decide to join the federation. It was also agreed that the Constitution should have a provisional status for five years, after which it was to be replaced by a permanent Constitution.

Examination of the provisional Constitution makes it clear that the views of Abu Dhabi and Dubai carried the day, with the four smaller, and poorer, emirates feeling themselves obliged to accept the demands of their more powerful neighbours. They were encouraged to do so by scarcely veiled suggestions being made by advisers to the Abu Dhabi and Dubai rulers that the two had already reached agreement on a contingency plan to press ahead with a bi-partite federation should the others fail to accede to their terms. The smaller emirates were also encouraged to join, however, by the pledge from Sheikh Zayed of Abu Dhabi that his emirate's oil resources would be used for the benefit of all of the federation's members. 'Abu Dhabi's oil and all its resources and potential are at the service of all the Emirates,' (Heard-Bey 1984: p 349). The rulers already had the evidence of Sheikh Zayed's generosity before them, Abu Dhabi having been the largest single contributor to the Trucial States Development Fund since 1968, as noted earlier.

In the discussions leading up to the agreement, as during the previous attempt to create the Federation of Arab Emirates, neighbouring states and the British played an important role. While Kuwait proffered advice and assistance as a mediator, Saudi Arabia made it clear that it would not recognize any federation unless it obtained a satisfactory answer to its territorial claims on Abu Dhabi. The Shah of Iran, for his part, having agreed in 1970 to drop his claim to Bahrain following the results of a test of opinion supervised by the United Nations, made it clear that there could be no possibility of him accepting the formation of a federation among the Trucial States unless he obtained the islands of Greater and Lesser Tunb, belonging to Ra's al-Khaimah, and Abu Musa, belonging to Sharjah.

The British were left with the sometimes difficult task of cajoling and encouraging the rulers of the emirates to proceed to agreement. With the collapse of efforts to create the Federation of Arab Emirates, the rapid approach of the self-created deadline of December 1971 for a final British withdrawal from the Gulf meant that British policy was, at times, a mixture both of carrot and stick. This was particularly true where the smaller emirates were concerned, whose rulers continued to show a reluctance to accept the inevitability of a British departure until almost the date of the actual establishment of the United Arab Emirates.

When intransigence threatened to complicate future acceptance of the federation by Iran, British tactics echoed past imperial attitudes. Thus Sharjah's ruler was informed that he must make an agreement with Iran on sharing authority on Abu Musa, while the ruler of Ra's al-Khaimah, who completely rejected the suggestion that he should cede the Tunbs, found simply that Iran was given to understand by Britain that it would not oppose a military seizure of the islands, particularly if this could take place just before Britain formally relinquished its authority.

At the end of November 1971, with the establishment of the UAE a matter of days away, Sharjah signed a Memorandum of Understanding with Iran on the sharing of authority over Abu Musa without either of the two parties relinquishing its claims of sovereignty. This was followed by a night attack by Iranian forces on the Tunbs, during which a number of Ra's al-Khaimah policemen were killed. The Iranian occupation has continued to complicate relations between the UAE and Iran throughout the course of the subsequent 30 years.

Ra's al-Khaimah's application for membership of the Federation was accepted unconditionally on 10 February 1972, without any changes in the provisional Constitution.

The Federal System

The new state which came into existence on 2 December 1971 had its basis in the provisional Constitution. Adopted by the rulers on behalf of their emirates, it represented a consensus on the form of the state which they agreed to establish, and on the concessions that they agreed to make with relation to a surrender of part of their sovereign powers to the new federal bodies. (In July 1996 the Supreme Council of the Federation decided unanimously to drop the word 'Provisional'. The Constitution thus became permanent.) The Constitution represented, therefore, an expression of the political status quo at the end of the 1960s in the southern Arabian Gulf, including Qatar and Bahrain, in the light of the impending British withdrawal. Both Qatar and Bahrain had taken part in the earlier negotiations that preceded the formation of the UAE, when the Federation of Arab Emirates, grouping all nine emirates, was under discussion. Indeed, one observer has suggested that, had they not been involved in the early stages of the negotiations, 'many compromises which now form part of the constitution would have been settled very differently'. The relationship between Qatar and Bahrain was marked by strong rivalry and competition, encouraging both to introduce a variety of legal formulations into the draft of the Constitution which they believed would either safeguard their own position, or counter the position or influence of the other.

The preamble to the Constitution stipulates that the rulers of the emirates agreed to the Constitution for the sake of, among other matters:

Desiring also to lay the foundation for federal rule in the coming years on a sound basis, corresponding to the realities and the capacities of the Emirates at the present time, enabling the Union, so far as possible, freely to achieve its goals, sustaining the identity of its members providing that this is not inconsistent with those goals and preparing the people of the Union at the same time for a dignified and free constitutional life, and progressing by steps towards a comprehensive, representative, democratic regime in an Islamic and Arab society free from fear and anxiety.

The Supreme Council

The Supreme Council of the Federation (FSC) is the federation's highest authority, and is composed of the rulers or of those designated to represent them. According to the Constitution, the Supreme Council has exclusive executive powers, powers of ratification, and legislative powers. The executive powers lie in the following spheres:

- Acceptance of a new member of the federation. Such acceptance should be unanimous (Article 1).
- Election of the President and the Vice-President from among its members.
- Formulation of the general state policy, in all matters conferred by the Constitution upon the federation, and consideration of all matters that could help to achieve the objectives of the federation, and the common interests of its members (Article 47, clause 1).
- Maintaining supreme control over the affairs of the federation (Article 47, clause 7).
- Drafting its own Rules and Procedures Bill, in which the Council may define those matters to be considered procedural (Article 48).

The Supreme Council also enjoys limited, but decisive, powers of ratification in the following, on which initial decisions may be taken by the individual emirates, the President or the Council of Ministers:

- Approval of any decision taken by two or more emirates on some form of merger.
- Article 143 of the Constitution stipulates that ‘any emirate shall have the right to request the assistance of the Armed Forces or the Security Forces of the Union in order to maintain security and order within its territories whenever it is exposed to danger. Such a request shall be submitted immediately to the Supreme Council of the Union for decision.’ (While the President and the Council of Ministers may collectively take immediate action if the Supreme Council is not in session, they are obliged to call the Supreme Council into immediate session in order to sanction the move.)
- The Council has the power to endorse or reject any administrative agreements that may be concluded between individual emirates and neighbouring countries.
- It approves the resignation or dismissal of the Prime Minister, upon recommendation from the President.
- It endorses declaration of defensive war upon a proposal from the President.
- It has the power to endorse any decrees from the Council of Ministers on the appointment, resignation and dismissal of judges of the Supreme Court.
- It endorses international treaties and agreements concluded by the Council of Ministers.
- It approves any declaration of martial law by the President provided it has the approval of the Council of Ministers.

The Supreme Council also has an absolute legislative prerogative, retaining the final say on federal legislation. According to the Constitution, the Council of Ministers may propose legislation, which, after discussion in the Federal National Council, is then submitted to the Supreme Council for approval or rejection. The Supreme Council may thus issue any law, with or without consent of the Council of Ministers and the Federal National Council. In view of the dual roles of Supreme Council members as rulers as well as members of the highest federal body, the Council may, according to the Constitution, delegate some of its powers while it is not in session to the President and the Council of Ministers jointly. However:

The ratification of international treaties and agreements, enforcement and lifting of martial law, declaration of war, and the appointment of the President and judges of the Supreme Court under no circumstances can be delegated. (Article 115)

An important aspect of the Supreme Council’s structure is the fact that, although each member emirate has a single vote, the votes are not themselves of equal significance. On substantive issues, such as those related to general policy, ratification of agreements, treaties and draft laws, appointment of the Prime Minister, declaration of war, or the imposition of martial law, a majority decision may be taken, but the representatives on the Council of Abu Dhabi and Dubai must be counted among the majority. The principle of a simple majority applies only to procedural matters.

The Supreme Council is, therefore, the supreme authority of the state holding the ultimate strings of executive and legislative powers, whether exclusively or in nominal partnership with other federal organs. The fact that it is composed of the rulers of the emirates, or their

delegated representatives, adds to its powers, since it was the rulers (or their predecessors) who agreed voluntarily to establish the state. The Council, therefore, reflects the independent status of each emirate, while each member derives his legitimacy from his status as a ruler rather than from being a Council member.

Constitutionally, the Supreme Council is a form of collective leadership. The special powers allocated to the rulers of Abu Dhabi and Dubai give them additional weight in the Council, and hence in the federation as a whole, a recognition of the fact that they are the two largest emirates in terms of population, area and resources. This represents a force for a consensus among Council members, since Abu Dhabi and Dubai can determine whether or not a decision is taken on non-procedural matters.

The President

The President and Vice-President are elected by the Supreme Council for a term of five years, which may be renewed, under the terms of Articles 51 and 52 of the Constitution. In the absence of the President, the Vice-President assumes his responsibilities. The President is accorded a wide range of legislative and executive powers under the terms of the Constitution, that can be divided into three categories:

- Powers derived from his position as President, discharged by him alone.
- Powers exercised either through the Supreme Council or through the Council of Ministers.
- Powers exercised through the Council of Ministers.

As chief executive of the state, the President also enjoys other powers that include, *inter alia*, the right to convene and preside over meetings of the Supreme Council. He may also, if the need arises, call a joint meeting of the Supreme Council and the Council of Ministers in his capacity as Commander-in-Chief of the Armed Forces. The stipulation in the Constitution that the President represents the Union externally and internally provides him with real authority in the direction of foreign policy.

The President is also entrusted with signing laws, decrees and decisions sanctioned by the Supreme Council and with supervising implementation through the Council of Ministers, under the terms of Article 54, clause 4.8. Presidential powers include the ratification of treaties and international agreements after approval by both the Supreme Council and the Council of Ministers (Article 47, clause 4, 96, 115, 140, 146) and the declaration of defensive war and of martial law. The President also has the power to nominate the Prime Minister, accept his resignation and terminate his appointment and to appoint the President and members of the Federal Supreme Court, although the latter two must be approved by the Supreme Council.

Under that category of power exercised through the Council of Ministers, the President is responsible for supervising the execution of all federal laws, decrees and decisions, through the Council of Ministers as a whole, and through its members (Article 60). He also appoints all senior officials, both military and civilian, after such appointments are approved by the Council of Ministers.

The President has additional significant powers exercised together with the Supreme Council and the Council of Ministers. He may overrule the rejection by the Federal National Council of draft legislation, or may delete any amendments introduced into such legislation, and may then promulgate it after its ratification by the Supreme Council (Article 110, clause 3 A).

Together with the Council of Ministers, the President also has the power, should the need arise between meetings of the Supreme Council:

to promulgate the necessary laws in the form of decrees which shall have the force of law. Such decree-laws must be referred to the Supreme Council within a week. If they are approved, they shall have the force of law, and the Federal National Council shall be notified at its next meeting. (Article 113)

Legislative powers of the President also include the authority to promulgate decrees, together with the Council of Ministers, provided that these shall not pertain to ratification of international agreements or treaties, or to declaration or lifting of martial law, or to declaration of a defensive war, or to appointment of the President and judges of the Supreme Court (Article 115).

The Council of Ministers

The Constitution describes the Council of Ministers as ‘The Executive authority of the Union,’ and states that it is responsible, under the control of the President and the Supreme Council, ‘for carrying out all the internal and external affairs entrusted to the Union’ (Article 60).

The Council of Ministers is, in particular, charged with the following functions:

- Following up the implementation of the general policy of the Union, both internally and externally.
- Initiating draft federal laws, and submitting them to the Federal National Council prior to submission to the President and the Supreme Council for ratification and promulgation.
- Issuing regulations necessary for the implementation of federal legislation.
- Supervising implementation of Union laws, decrees, decisions and regulations by all concerned authorities whether in the Union as a whole, or in the individual emirates (Article 60, clauses 1, 2, 5, 6).

It is not, however, entrusted with the task of formulating the general policy of the federation, but only with the responsibility of following up the implementation of policy laid down by the Supreme Council.

Ministers are officially nominated by the Prime Minister. In practice, an unofficial quota distributes the number of portfolios, and the portfolios themselves, among the individual emirates, rendering the Ministers partially dependent upon the ruler who nominates them.

The Federal National Council

The Federal National Council is essentially consultative, although it is a legislative organ in terms of forms and procedures. It comprises 40 members, distributed according to a fixed pattern. Abu Dhabi and Dubai have eight seats each, Sharjah and Ra’s al-Khaimah have six seats each, and Ajman, Fujairah and Umm al-Qaiwain have four seats each (Article 68). Members from each emirate are chosen by their ruler who is free under the terms of the Constitution to choose how to select them and to renew their term, which lasts for two years. Since the inception of the UAE, members have been nominated. However, Article 77 of the Constitution states that a member of the FNC represents the people of the federation as a whole, and not those of his emirate.

The FNC has no ability to propose legislation, this falling within the jurisdiction of the Council of Ministers (Articles 60 and 100). It may only produce recommendations and observations on draft legislation referred to it by the Council of Ministers. The FNC may, however, discuss the draft legislation, and approve, amend or reject it before the Council of Ministers presents it to the President and the Supreme Council. If amendments are suggested by the Federal National Council, the draft legislation, as amended, may be referred back to the FNC by the President. If the Federal National Council continues to uphold such amendments, contrary to the wishes of the Supreme Council, the President may promulgate the legislation after it has been ratified by the Supreme Council (Article 92).

The Federal National Council is empowered to ‘discuss any general subject pertaining to the affairs of the Union, unless the Council of Ministers informs the FNC that such discussion is contrary to the highest interests of the Union’ (Article 92). The Federal National Council may question Ministers or the Prime Minister on matters within their jurisdiction (Article 93). It may not, however, call for a vote of confidence either in the Council of Ministers as a whole, or in any of its members, since they, individually and collectively, are responsible to the President and the Supreme Council (Article 64).

The Federal Judiciary

A further component of the federal system is the judiciary, of which the highest authority is the Supreme Court, which is entrusted with the following functions:

- It may adjudicate in disputes between member emirates, or between one or more emirates and the federal government, ‘whenever such disputes are submitted to the Court upon the request of any of the interested parties’ (Article 99, clause 1).
- It has the power to examine the constitutionality of federal laws, if contested by any emirate, and also the constitutionality of any legislation promulgated by one of the emirates.
- It may interpret the provisions of the Constitution upon request from the federal or an emirate government.

The Court’s interpretations or judgements are final and are binding upon all parties (Article 99).

Relationship between the legislature and the executive

The Constitution clearly favours the executive rather than the legislature.

The executive, in the persons of the President and other individual members of the Supreme Council, appoint the members of the legislature, the Federal National Council, while the President has the power both to postpone its meetings and to dissolve it. Either the President or the Council of Ministers may initiate legislation, and may veto any amendments put forward by the FNC. Furthermore, under Article 110, clause 4, the Constitution gives the executive power to issue legislation when the FNC is not in session, provided the FNC is notified when next in session. When the Supreme Council is in recess, the Constitution gives the President and the Council of Ministers the authority jointly to issue federal decrees equivalent to federal law, whenever urgent need arises. Thus power ultimately resides with the executive and the legislature participates in decision making only in a consultative capacity.

The Basic Features of the Federation

The formation of the UAE represented a voluntary cession of powers by the rulers of the individual emirates to the new state. This decision was clearly spelt out in the provisional Constitution, adopted as a permanent Constitution in 1996, which stated, *inter alia*, their ‘desire to establish an independent and sovereign federal state’. Article 1 of the Constitution depicted the UAE as a ‘federal state’. Article 6 emphasized that ‘the people of the Federation are one people’ and they therefore enjoy, according to Article 8, ‘one nationality’. To underline the supremacy of the new state over the emirates, the Constitution granted to the federation exclusive jurisdiction over foreign affairs and the declaration of war, as explained above.

The five federal bodies, the Supreme Council of Rulers, the office of the President, the Cabinet, the Federal National Council and the Federal Judiciary, began operating before mature local authorities had been created. They had, furthermore, the constitutional power, under Articles 60 and 125 of the Constitution, to implement policies, and to exercise jurisdiction directly, without any interference from a local authority.

Paragraph 1 of Article 60 allotted to the Cabinet ‘the duty of following up the implementation of the general policy of the federation, both internally and externally’. Paragraph 6 of the same Article stipulates that the Council of Ministers may ‘supervise the implementation of the laws, decrees, regulations, and decisions through all relevant parties in the Federation of the Emirates’.

Article 125 commits the governments of each emirate to take all necessary measures ‘to ensure the implementation of the laws promulgated by the federation and the international treaties and agreements it concludes, and to issue the necessary local laws, regulations, decisions, and orders to put this into effect’. The same Article bestows on the federal bodies ‘the power to supervise the implementation by the local Governments of the federal laws, decisions, international agreements and treaties, and the federal justice verdicts’. The administrative and judicial authorities in the individual emirates are also called upon ‘to offer all possible assistance to the Federal authority in this respect’.

While the Constitution emphasizes the individual entity of each member emirate, making the Supreme Council more of a body for the emirates and their rulers than for the people of the federation, at another level it clearly lays down in Article 151 its supremacy, and that of any federal law, decree or decision over those promulgated by individual emirates. Article 99 also gives additional weight to federal legislation, stipulating that the Supreme Court may examine ‘the constitutionality of legislations promulgated by one of the emirates, if they are challenged by one of the Emirates on the grounds of violation of the Constitution of the Union or the Union laws’. However, the Constitution imposes no restriction upon any emirate that may wish to withdraw from the federation.

Although the Constitution enumerates the legislative and executive powers of the federation, it also stipulates that all residual powers fall within the jurisdiction of the individual emirates, thus recognizing their status with relation to the federal institutions. The separation of powers between the federation and its constituent emirates is, thus, of considerable importance. While Article 2 of the Constitution stipulates that ‘the Union shall exercise sovereignty in matters assigned to it, in accordance with this Constitution, over all territory and territorial

waters laying within the international boundaries of the individual Emirates', Article 3 emphasizes that 'the member Emirates shall exercise sovereignty over their own territories and territorial waters in all matters which are not within the jurisdiction of the Union as assigned in this Constitution'.

The Manifestations of Unity in the Constitution

The Constitution charges federal authorities with virtually all the functions of a unitary state. The Federal Government has thereby been given exclusive legislative and executive jurisdiction in foreign affairs, along with a virtual monopoly over the conclusion of treaties and implementation of international agreements.

Two restrictions with relation to foreign affairs were specified. The first, in Article 124, said that:

Before the conclusion of any treaty or international agreement which may affect the states of any of the Emirates, the competent Union authorities shall consult this Emirate in advance. In the event of a dispute, the matter shall be referred to the Supreme Court for a ruling.

The second, in Article 123, stipulates that individual emirates:

may conclude limited agreements of a local and administrative nature with the neighbouring states or regions, save that such agreements must not be inconsistent with the interests of the Union, or with Union Laws, and provided that the Supreme Council of the Union is informed in advance. If the Council objects to the conclusion of such agreements, it shall be obligatory to suspend the matter until the Union Court has ruled on that objection as early as possible.

Such exceptions do not in themselves bestow an autonomous identity upon the emirates at an international level, since the prerogatives specified are also restricted in several ways, while they are within the rules of the Constitution, and are not absolute rights as with wholly sovereign states.

Internally, the federation, according to the Constitution, was also to have exclusive legislative and executive powers over a wide range of functions. Article 120 lists 19 subjects for which the federal authorities have the sole responsibility, both in legislation and in implementation of laws, regulations and orders pertaining to these matters. Some are directly linked to the nature of the federation, while others represent a surrendering of authority by individual emirates.

The first category includes matters related to the federal armed forces and to defence and security of the federation against all threats, internal or external. The list also includes the following: order in the federal capital; federal employees and the judiciary; federal finances, taxes, royalties and general loans; construction and maintenance of roads deemed to be major highways; federal property; the national census, nationality and immigration; and federal information.

The second category of powers assigned to the federation includes matters that touch upon, and are related to, the sovereignty of each emirate, but which have been transferred by the

rulers to the federal authorities. Two types of powers are incorporated in this category. The first gives federal authorities exclusive legislative jurisdiction over communications, social services and economic matters. The second type allows the sharing of authority between federal and local authorities, whereby the first legislates, and the second uses, the powers under such legislation to issue the necessary regulations to ensure implementation. The areas covered are enumerated in Article 121 of the Constitution, and include labour relations and social security; estates ownership and expropriation for public interests; extradition of criminals; banks; insurance; the protection of animal and agricultural resources; major legislation; courts; protection of copyrights; publications; importation of weapons and ammunition unless for the use of the armed and security forces of any emirate; other aviation matters not within the domain of the Union's executive prerogatives; defining territorial waters and regulating navigation.

The third major formal aspect of unity is the existence of a federal executive authority, whose jurisdiction covers all emirates. This authority implements general policy of the federation, executes federal laws and administers public utilities and services.

Even where individual emirates are assigned power to implement certain matters (Article 121), the Council of Ministers is given authority to supervise implementation of federal laws, whether undertaken by federal or by local authorities.

The Constitution also incorporates other matters within the jurisdiction of the federation. These include the declaration of martial law (Article 146), the elimination of taxes and internal tariffs (Article 11), allocations from the federal budget to finance and implement projects in individual emirates (Article 132), the formation of unified armed forces, and the right to form federal security forces (Article 138).

The existence of a federal judicial authority, including the Federal Supreme Court, is a further feature of the unifying powers incorporated in the Constitution. Article 125 obliges individual member emirates to implement the rulings of the federal courts.

The Jurisdiction of the Individual Emirates

The Constitution states that 'all matters not specifically stipulated as falling within federal jurisdiction are to be considered within the domain of the member Emirates' (Article 116). Thus while the rulers of the emirates decided voluntarily to form a federation, and to surrender to it some of their sovereign prerogatives, they retained, at the same time, aspects of sovereignty on an emirate level. In effect, they kept authority sufficient to ensure that a ruler continues to be the absolute authority within his emirate, and that the emirate itself maintains the essential ingredients of government. The Constitution states in Article 3 that 'member Emirates shall exercise sovereignty over their own territories and territorial waters in all matters that are not within the jurisdiction of the Union'. Residual sovereignty is further identified in Article 10, which states that the federation would seek to safeguard its own independence, sovereignty, security and stability, while taking into account the fact that each emirate should respect the sovereignty of the others in their own internal affairs, within the framework of the Constitution.

In foreign affairs, sovereignty of the individual emirates is more strictly limited. They may, according to Article 123, make 'limited agreements of a purely local administrative nature' with neighbouring states, within the confines of the interests and laws of the federation,

provided that the Supreme Council is given prior notice. The second clause of the article, however, gives each emirate the right 'to retain their membership in the Organization of Petroleum Exporting Countries, OPEC, and the Organization of Arab Petroleum Exporting Countries, OAPEC, or to join them,' whereby such emirates would have (albeit limited) independent international personae. No emirates have, in fact, chosen to exercise this option. The same article also recognized 'treaties or agreements concluded by member emirates with states or international organizations' without specifying any such agreements or their nature. At the same time, Article 124 required federal authorities to consult in advance with any individual emirate 'prior to the conclusion of any international agreement or treaty that might affect the status of such Emirate'. The article thus underlines the right of the member emirates at least to be consulted.

Internally, the individual emirates have retained more authority. They, and their rulers, are the ultimate sources of authority, while federal bodies enjoy specific powers granted by these sources.

At the time that the rulers of the emirates created the federation, in July 1971, they did not enjoy full political independence, then still being in treaty relations with the United Kingdom. Thus the powers granted to the federal bodies did not, in effect, diminish the powers they were accustomed to practise and they preserved the bulk of the functions they considered essential to maintain their own authority. Furthermore, the voluntary surrender of powers, or of part of their powers, by the rulers did not preclude their ability, collectively or individually, at any time, to reverse their previous decision.

The traditional status of each ruler within his emirate gave him the power to block the local implementation of any federal law or decision considered to be unacceptable, or incompatible with his own interests. Each emirate may legislate on affairs within its own borders, provided that such legislation is not in contradiction with the Constitution. Each emirate also specifically has the power to undertake the execution of federal law dealing with local matters.

Article 104 of the Constitution gives each emirate the authority to establish or maintain its own judicial organs, to deal with matters outside the jurisdiction of the federal judicial authorities. In addition, the Constitution also spells out other rights for member emirates that underline their retention of powers, the most important of which are related to the ownership of natural resources and the right to establish special armed forces. Article 23 states 'the natural resources and wealth in each emirate shall be considered to be the public property of the emirate,' and not the federation. Article 142 adds that the member emirates also 'shall have the right to set up local armed forces ready and equipped to join the defence machinery of the Union, to defend the Union against any armed aggression if the need arises'.

Other indications of the independence of the member emirates can be found in Articles 5 and 118 of the Constitution. Article 5 gives them the right to retain their own flags. Article 118 stipulates that:

Two or more Emirates may, after obtaining the approval of the Supreme Council, agglomerate in a political or administrative unit, or unify all or part of their public services or establish a single or joint administration to run any such service.

The Constitution lacks clarity on the funds to be made available for financing of the federal budget. Article 127 says that member emirates 'shall contribute a specified proportion of their annual revenues to cover the annual general budget expenditure of the Union'. The Constitution

does not, however, settle jurisdiction over the collection of, or contribution of, such funds, leaving the financing of the federal budget to be decided on the basis of agreement between all or a number of member emirates. Thus the ability of federal authorities to perform the tasks allocated to them is affected by the budget contributions of individual emirates.

In summary, the power structure in the UAE favours the member emirates rather than the federal authorities, for the following reasons. Firstly, the Constitution, while enumerating the matters within the jurisdiction of the federation itself, left those of the member emirates undefined, covering all matters not specifically assigned to the federal authorities. The emirates are the source of authority, and the federation merely a means for the devolution of part of the authority.

Secondly, the legislative jurisdiction of federal authorities is restricted, in matters that are not federal by nature, to a limited number of subjects, such as communications, education, health, currency and electricity supply. Moreover, the legislative prerogatives bestowed on the federal authorities in accordance with Article 121 of the Constitution are not, in themselves, exclusive. Article 149 gives the member emirates a share of such authority:

As an exception to the provisions of Article 121 of this Constitution, the Emirate may promulgate legislation necessary for the regulation of the matters set out in the said Article, without violation of Article 151 of this Constitution.

Article 149, therefore, conflicts with Article 121, since it permits individual emirates to promulgate legislation even on matters specifically allocated to the federation. The reservation thus spelt out at the end of Article 149 can, however, operate as a balancing factor if the federal authorities decide to challenge any moves by individual emirates that they consider contrary to the provisions of federal laws and decisions. There is a clear duplication of authority in some areas of powers allocated to the federation and to the emirates. In the words of one jurist:

Article 120 gives the Federation the exclusive legislative and executive authority on foreign affairs, while Article 121 gives it sole legislative jurisdiction, without executive powers, on the definition of territorial waters and on navigation on the high seas.

Furthermore, within the federation all legislative powers reside ultimately in the Supreme Council and, hence, the rulers. No federal legislation can be promulgated without approval by at least five of the seven rulers, including those of Abu Dhabi and Dubai. As a result, the local authorities of the emirates, and considerations related to them, are predominant in the sphere of legislation.

Thirdly, executive authority also resides ultimately in the Supreme Council. In addition, the executive powers of federal institutions are restricted to particular and specified matters. The local authorities are entrusted not only with the execution of their own laws and regulations, but also with that of laws and regulations where jurisdiction is shared with the federal authorities, although the latter retain the formal right of supervision. The manner in which the Constitution refers to financing of the federal budget adds to the limitations on the extent of federal executive authority. No such limitations in financial affairs are placed upon individual emirates.

Fourthly, the judicial system laid down in the Constitution neither changes nor limits the status of local emirate judicial authorities. It simply adds a new level of courts, headed by the Supreme Court, which has specific functions. It also permits each emirate, if it so chooses, to merge its own system with the federal system.

Conclusion

Looking back over nearly three decades, the federation is an established fact of life. It is evident that the country's political elite has taken its time to ponder on the various approaches not only to form the federation but also on the way it should evolve. The ratification in May 1996 of the provisional Constitution, amended to include the designation of the city of Abu Dhabi as federal capital as permanent, reflected an acceptance that it had proved its worth. At the same time, it was accepted that further amendments could be made as and when the need for them became apparent, without questioning the fundamental basis of the federation itself. In late 2000, however, there was little evidence of a desire for significant structural change.

If we look back over the years since the UAE was formally created in 1971, it is clear that certain steps have been taken to increase the jurisdiction of some of the federal agencies, in particular in the judicial system and departments involved with immigration and security. At the same time, as member emirates have developed their administrative infrastructure and as the educational system has produced a more numerous and more qualified labour force, so new local departments have been established, dealing with matters such as information and tourism. It should be noted that this development is fully in conformity with the Constitution and represents the natural evolution of the administrative structure of the country as a result of development.

The traditional pursuit of consensus, as reflected within the new political institutions, has meant that the dynamic of the political process has been able to respond to demands for change within the framework of a broadly accepted political legitimacy.

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