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**A STUDY OF THE UNITED ARAB EMIRATES LEGISLATURE**  
**UNDER THE 1971 CONSTITUTION WITH SPECIAL**  
**REFERENCE TO THE FEDERAL NATIONAL COUNCIL (FNC)**

BY

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degree of Doctor of Philosophy in Law.

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Even though many people have helped me in this work, however, I must hasten to say that the ideas expressed and the arguments developed are my own and that the responsibility for errors of fact or interpretation are solely mine.

**Declaration:**

The material contained in this thesis is the work solely of the author. None of the material has been submitted previously for a degree in this or any other university.



## **Abstract:**

This study is concerned with the Federal National Council (FNC) in the United Arab Emirates (U.A.E.) under the 1971 Constitution.

In selecting the U.A.E. as a case study, a historical and socio-economic perspective is adopted. The thesis analyses the U.A.E. traditional society and the effect of external factor namely its relation with Britain, and internal factor, viz. the advent of oil wealth, on the power structure in the emirates. Both factors increased the concentration of central power and decreased popular participation.

The study provides a theoretical appraisal of the role and functions of the legislature in developing countries. It examines the constitutional functions namely legislative, political and financial. The study suggests new roles that the legislatures performs in Third World countries.

The thesis examines the historical development of the U.A.E. constitutional system. Such development ended in 1971 when the emirates adopted a "Provisional Constitution" to the requirements of the rulers.

The study explores the 1971 constitution with particular emphasis on the role of the National Council. It analyses the composition, functions, role and constitutional arrangements of the National Council in the U.A.E. The study provides an analysis of the major political and constitutional cases, in which the FNC was a part, in order to examine the practical working of the constitutional provisions in reality. Finally, the thesis attempts to explain the limitations, imposed on the National Council, present in the existing constitutional framework and suggests some improvements to the *status quo*.

The common ground throughout the thesis is that a constitution with a democratic tendency does not necessarily establish democratic institutions and that it would be more acceptable in a developing country to introduce evolutionary rather than radical changes to its constitutional system. However, the study clarifies the difficulties of concentration of central power in developing countries.

## **INTRODUCTION**

This thesis is a study of the United Arab Emirates (U.A.E.) Constitution (1971) with particular emphasis on the role of the legislature. The thesis begins with an exploration of the historical background to the setting up of the state and the influence of the rulers whose powers and authority may be traced back to earliest days.

### **The country and the constitution:**

The U.A.E. comprises of seven emirates; Abu Dhabi, Dubai, Sharjah, Ras-al-Khaimah, Ajman, Umm-al-Quwain and Fujairah. The United Arab Emirates (U.A.E.) is located on the western coast of the Arabian Gulf. As part of the Arab world, it is a member of the Arab League, United Nations and subscribes to a regional organization, the Gulf Co-Operation Council (GCC) which was founded in 1981.

The U.A.E. has a number of distinguishing features which deserve mention. First, most of the indigenous population are of Arab origin but because of the large number of immigrants in the area they have become a minority in their own land. Second, even today the political system is dominated by centuries-old ruling families who presided over the emirates under the protection of the British for almost one hundred and fifty years. A third feature of this society is that it is more like a city-state than a nation-state. The rate of urbanization among the whole population of the United

Arab Emirates reported as at mid 1980s is 81 per cent (1). As regards religion, the society is Islamic. All the major Islamic schools and sects are represented, both Sunni and Shia, but it is predominantly a Sunni Muslim nation (the Shia constitute less than twenty per cent of the nationals (2), while all the dynasties ruling the emirates adhere to the Sunni sect). Finally, it is a capital-surplus society, unlike other Third World developing countries.

The most important social feature of the individual emirates is the hierarchy of authority. In a traditional family the head of it is "patriarchal", that is, generally in a venerable position. His authority is almost absolute and no single individual may take an important decision in the family circle without consulting him and getting his permission. This patriarchal power is also found in the larger social unit ( i.e. tribe ). The head of the tribe has the full authority to take the decision on settling or moving away (3). Individuals come together in these distinctive groups. In the desert the grouping takes the form of the tribe where the blood relation is the criterion and as a result the familial connection may cross political boundaries; a tribe may stretch through two states or more (e.g. the Sudan tribe can be found in the Emirates, Qatar and Bahrain). The same applies to the ruling families. The rulers of Sharjah and Ras-al-Khaimah are cousins (4).

In 1971 the emirates terminated their special treaty relations with Britain. The U.A.E. adopted a written, provisional, rigid and quasi federal constitution. The constitution did not only preserve to a large extent the pre-1971 traditional way of government, but it legitimated the *status quo* as well.

The 1971 Constitution, as chapter 5 shows, was modelled neither on parliamentary nor on presidential system. It may have some characteristics of both models, yet the U.A.E. Constitution is considered as a *sui generis*. It provides a model of its kind- a modern quasi democratic constitution which governs a traditional society rooted in its history. The U.A.E. constitutional system may therefore be considered as an embryonic constitutional experience.

It should be remembered that some Arab Gulf states share many characteristics with the U.A.E. Three of them, namely, Kuwait, Bahrain and Qatar have written constitutions. However, the Kuwaiti Constitution of 1962 is the first model for the other three constitutions ( U.A.E. 1971, Qatar 1972, Bahrain 1973). It is worth mentioning that Oman and Saudi Arabia have no written constitutions.

There are some similarities among the above mentioned four written constitutions. These similarities may be summed up as follows. 1- The principle of separation of powers is, to a certain extent, has been embodied in all of them. 2- All four constitutions consist of fundamentally the same five chapter headings. Yet, the U.A.E. Constitution has five additional chapters which mostly deal with the federal system of the country. 3- Generally speaking, the four constitutions adhere to the capitalist system. 4- They recognize an independent judicial power. 5- All of the four constitutions adhere to the concept of predominance of the constitution. (5)

Throughout the thesis, especially in chapters 5, 6 and 7, there is an attempt to bring about the major differences among the

four constitutions. However, some of them may be outlined here.

1- The U.A.E. Constitution establishes a federal system while the others deal with a unitary system. 2- There is no clear distinction between the legislative and executive powers in Qatar and the U.A.E. 3- The Kuwait and Bahraini Constitutions institute a parliamentary government, although it did not work in both cases. 4- With the exception of Qatar, the termination or resignation of the Prime Minister brings down the Government. 5- The Constitutions of Qatar and the U.A.E. are provisional. (6)

### **Shari'ah and the Constitution:**

To start with, Islam does not make a division between temporal and spiritual functions of the society. It is important to set out some fundamental concepts of government in Islam. The basic principles of the Islamic political system are found in the Quran and are deeply rooted the actions of the Prophet Muhammad (peace be upon him) and his successors (i.e. Muslim Caliphs).

As A. Khallaf rightly notes, the Islamic government can be considered as a constitutional government (7). First, Shura (i.e. consultation) is a basic component of such government. The affairs of the state cannot be decided by the head of the state, he has to consult with the representatives of the people, namely *ahlul hall wal-aqd*. The way of selecting the members of this institution was not clearly defined. Allah commands in the Quran:

"Those who answered the call of their Lord, and establish regular prayer, and whose affairs are a matter of counsel, and who spend out of what We bestow on them for sustenance." (Chapter 42, Verse 38).

Mutual consultation is one of the excellent characters that the Muslims have to promote in themselves. Allah has ordained His Messenger to do so:

" and consult them in affairs, then when you have taken a decision, put your trust in Allah." (Chapter 3, Verse 159).

The Prophet accordingly used to consult his companions before taking decisions in public matters (8). The Messenger of Allah warned rulers not to abuse their positions. It is reported that he said: "If Allah appoints a person in authority over the Muslims, and he fails to redress their grievances and remove their poverty, Allah will not fulfil his needs and will not remove his poverty on the Day of Judgement." (9) In another tradition the Prophet was reported to say: "There will be seven persons sheltered under the shade of Allah on the Day of Judgement when there will be no other shade beside His shade. They are: a just ruler;..." (10)

Second, the seats of government in Islam are not reserved for certain families or groups of people. It is up to the people to choose their rulers. The head of the state is, therefore, supposed to be freely elected (11). Third, members of the government are responsible for their actions before the people.

Under Islamic government the legislative power is invested in the Muslim jurists (12). Yet, Allah is the supreme legislator. Furthermore, Islam recognizes the independence of judiciary, and hence the judge is governed in his decision by the Divine revelations and his discretion (13).

It must be realised here that the fundamental aspects of the Islamic government were not developed in great detail in the Divine revelations so that Muslims are given room to manoeuvre and may reconcile them with their state of affairs.

Shari'ah contains the legal aspects of the religion of Islam. It was revealed by Allah, the Sovereign, to humanity in the Holy Quran and the Sunnah (i.e. the saying, actions and conformations) of the Prophet Muhammad (peace be upon him). Shari'ah has governed Muslim communities for over thirteen centuries (14). However, its dominant position was challenged and then eroded with the arrival of Western powers and their legal codes in the last century.

The Arabian Gulf states have been affected by the western trend of basing their Laws upon French (Civil) principles. Indeed, in Kuwait for example, the Shari'ah role in the legal structure of modern state was limited to the Law of Personal Status. (15)

However, since mid 1970s, a strong current for the "re-assertion" of Shari'ah has developed in these countries as in many Muslim states. The advocates of this direction have argued that instead of Civil and Common Laws, Shari'ah must become the main, if not the only, source of legislation. They have justified their position on the following grounds. (1) Unlike man-made laws, Shari'ah has a Divine source, viz. Allah. (2) Shari'ah is general and eternal. It is general in the sense that it regulates individual's relations with his creator, himself and his society. It is eternal because of its Divine source. (3) The application of Shari'ah in the legal sphere ensures a harmony between individual's belief and

his/her temporal transactions. (4) Finally, Muslims are instructed by Allah to rule themselves by Shari'ah (16). Allah says in the Holy Quran:

" Do they then seek after a judgement of (the Days of) Ignorance? But who for a people whose faith is assured, can give better judgment than God?" (Chapter 5, Verse 50).

And another verse states:

" And this (He commands): judge there between them by what God has revealed, and follow not their vain desires" (Chapter 5, Verse 49).

The U.A.E. followed the aforementioned direction by adopting Shari'ah in its Constitution and legal structure of the state. The 1971 Constitution states in Article 7 that "Islam is the official religion of the Union. The Islamic Shari'ah shall be a main source of legislation in the Union." Shari'ah is recognized as *a* main but not *the* main or *only* source of legislation in the country. The Constitutional stand is therefore flexible.

However, the practice has shown that Shari'ah has supremacy over other sources of legislation such as Union Laws, customs and general legal principles. Most of the federal Laws, such as penal, criminal procedures, labour and personal status, are based upon Islamic jurisprudence. For example, Law of Civil Transactions, which has been promulgated on 12-12-1985, derived most of its provisions from Hanafi and Malki jurisprudence. (17)

In the judicial system of the U.A.E., Shari'ah is considered as *the* prime source of Law in the Emirates. Law no. 10 of 1973 setting up the Supreme Court provides in Article 75:

"The Supreme Court shall apply the provisions of the Islamic Shari'ah, Union Laws, and other Laws in



force in the member Emirates of the Union Conforming the Shari'ah. Likewise it shall apply these rules of custom and those principles of natural and comparative Law which do not conflict with the principle of that Shari'ah." (18)

Law no. 6 of 1978 setting up the Union courts of First Instance and Appeal followed the same path.

W.M. Ballantyne rightly noted in his book Commercial Law in the Arab Middle East: The Gulf States (1986) that:

" .. although we here have a Constitution which recognized the Shari'a as a principal source of Law, we have a Law setting up the Supreme Court of the land which appears to be providing that the Shari'a shall be the principal source, because by its term any measures which are contrary to the Shari'a would seem by express provision to be invalid. ... The net effect of these provisions is to make the Islamic Shari'a the principal source of Law." (19)

### **The Institution of legislature**

Some generalisations may come from the U.A.E. constitutional arrangements. In common with other developing states by the end of the twentieth century many traditional systems of government have come under pressure to relinquish their absolute authority in order to share political power with the people or at least with a ruling elite. Such participation may be best applied in legislatures.

Legislatures are not necessarily the most important institution in the system they serve. Political scientists have, therefore, paid more attention to electoral systems, political parties, pressure groups and bureaucracy. However, the present study is primarily concerned with constitutional law and aims

thoroughly to explore the legislature as a major component of the constitutional structure of the state.

The system of legislatures may vary in accordance with the relevant constitutional arrangements. Constitutions vary in the role they play in formulating legislatures and their powers. In countries where the constitution is considered as the supreme law, legislature, executive and judicial bodies emanate from it. The constitution is therefore the source of power that is claimed by each one of the three branches.

The fact that legislatures continue to exist under different kinds of political systems in Third World countries is an indication that they fulfil a useful and necessary function. As we will see in general, many western studies of the legislatures of developing countries and the few who focused on the United Arab Emirates (U.A.E.) mistakenly concentrate on one aspect of their role.

The legislature is not of the same importance everywhere in the world. Its status differs from one country to another. So much of a country's culture and historical development is linked to the evolution of its legislature that it is difficult if not impossible to relate the legislative experience of one political system to other parts of the world. There are general principles with regard to the role and functions of the legislature, yet the position of legislature under the U.A.E. constitution is, as we will see, distinctive.

**Aims of the study:**

The aim of the thesis may be shortly stated. The legislature under the 1971 constitution was a new legal concept introduced into the United Arab Emirates (U.A.E.) constitutional structure. Traditionally the rulers used to consult their prominent subjects in their *Majlis* (i.e. Divan) but not as a consultative body of members governed by a clear-cut set of rules.

There are very few cases and statutes, which can help elaborate a constitutional analysis of the U.A.E. system. Moreover, the constitution of the country may embody many new ideas such as federal constitutional court, yet the legal institutions did not respond positively to such ideas. Due to the scarcity of material on the legal and constitutional system of the U.A.E. this is the first study to examine the legislative innovation and its implications on the U.A.E.

The aim of this thesis is to provide those interested in Third World legislatures in general but the constitution of the U.A.E. in particular with an understanding of the role and function of the Federal National Council (FNC). It seeks to demonstrate how the U.A.E. legislature fits into the general position of legislature in developing countries. The thesis also considers improvements in the existing structure in the U.A.E.

It is intended to explain three major issues: the constitutional development of the U.A.E., how the constitution was manipulated for the interests of the rulers, and finally how democratic ideals may be received and implemented in a developing country.

This thesis confirms the general observation that in developing countries there are two types of constitution: a written and a living. The written constitution embodies high rhetoric of legal wordings, whereas the living constitution brings the written provisions down to earth and modifies them when it matters.

**Method of study:**

The major problem encountered by the researcher was data collection because the topic touches upon what is considered in many developing countries as a politically sensitive institution. The researcher found therefore that the questionnaire method is impractical in dealing with the role and functions of the legislature in a developing society. The researcher has been advised by the FNC General Secretariat not to adopt this method because of some precedents where the FNC members declined to answer written questions.

The method adopted in the research is supported by empirical, primary and secondary sources. On the empirical side the researcher met several members of the FNC during his visits to the U.A.E. and discussed the set up and the role and functions of the FNC with members of the General Secretariat Office in Dubai and Abu Dhabi. In fact, informal meetings proved to be an effective way of discussing this issue.

The materials used as primary sources in the thesis include documents on the pre-1971 attempts to establish a constitutional government, the FNC minutes, lists of Bills, questions and public debates in the legislature, federal laws and decrees and Supreme Court constitutional interpretations.

The researcher used graphs and tables to illustrate different aspects of the U.A.E. legislature. Some of the graphs were utilized to present the differences among political views with regard to the distribution of seats in the legislature. Others were used to clarify the actual working of the FNC in the legislative and political fields.

In analysing the position of the FNC under the 1971 Constitution, the researcher combined constitutional provisions and legal documents with empirical findings, legislative minutes and classified data. This analytical approach helped in understanding several points raised through the thesis

### **Academic writings on the U.A.E.**

Apart from some general studies dealing with the political system (20) and others dedicated to the history of the country (21), there is very little published on the legal and constitutional arrangement in the U.A.E. The few studies that exist on the constitution are of a descriptive nature. (22) Most of the existing studies set out the theory of constitutional government and examine the constitution in its light but they do not look at how the legislature has developed in practice.

A number of the most relevant studies deserve mention. Dr. Adel Al-Tabtabai's al-Nidam al-Ittihadī Fī al-Imarat al-Arabiyyah [1978] (The Federal System in the Arab Emirates) (23) was the first of three major studies on the U.A.E. Constitution. It is chiefly concerned with the federal system and the problems it faces in its

development. The approach to the study of the constitution is from a socio-economic perspective.

The second study is by Dr. Sayyed Ibrahim, the former constitutional adviser to the FNC. His book published in 1986 Ma'a al-Majlis al-Watani al-Ittihad (With the Federal National Council) (24) is well-documented, dealing as it does with the proceedings of the legislature between 1972 and 1986. This study is limited to the legislature viewed from a constitutional and historical perspective. His study does not cover the pre-1971 legislative experience nor does he analyse the socio-economic background of the legislators.

The third study is by Hadif Rashid Al-Owais. His Ph.D. thesis [1989], The Role of the Supreme Court in the Constitutional System of the United Arab Emirates, (25) looks at the constitution in its practical application with emphasis on the judiciary.

The present study is distinctive as it is the first attempt to explain the U.A.E. legislature from a constitutional, historical and socio-political perspective. First, its approach is analytical rather than a descriptive one. Secondly, although its principal emphasis is on the post-1971 legislature, it examines the pre-1971 legislative experience as well in order to relate it with the present one. Thirdly, the thesis discusses the constitutional provisions and relates them to the socio-political factors in U.A.E. society. Fourthly, it covers the activities of the legislature over the period of 1972-1991.

### **Organization of the thesis:**

The thesis is divided into three parts. The first part explains the functions of legislature in the general context of the developing countries. This part also involves an examination of the socio-economic background of U.A.E. society to provide foundation for discussions. The second part discusses the moves made before 1971 to institute a "legislature" in the country. The third part examines the U.A.E.'s constitution and the constitutional position of the Federal National Council (FNC). This part also discuss the functions of the U.A.E. legislature and the constitutional provisions in operation.

Part one of the thesis consists of two chapters. Chapter 1 contains a general overview of legislatures in the world as part of the context of the development of U.A.E.'s Constitution and its evolution. Chapter 1 is an introduction which will deal with the definition, role and function of a legislature in the Third World. The major constitutional functions of a legislature, that is, legislative, political and fiscal and all its ramifications, such as legitimization, political recruitment etc., will be considered. Similarly party and electoral systems have a significant effect on the composition and the effectiveness of any legislature and will therefore be touched upon.

Chapter 2 explains the U.A.E's early developments. In any polity a constitution both in its norms and operations is affected by other parts of the political system. Therefore unless one understands the political, social, economic, historical and cultural

forces at work in a society, one will not be able to comprehend its constitutional system. It is beyond the scope of this study to cover all these backgrounds. However, the main historical and socio-political background of the U.A.E. constitutes the focus of chapter 2. The chapter is intended to examine the historical background to the relationship between the emirates and the British and the constitutional consequences of the advent of oil wealth. This chapter will be useful in understanding who have been the major power brokers and decision-makers in the country.

An awareness of the historical evolution of the legislature in the U.A.E. is too crucial to an understanding of its present position. Prior to 1971, the country witnessed two major attempts to create a legislative body. Chapter 3 will discuss the first attempt at constitution making, which occurred in 1938 in Dubai, and the reasons for its failure.

Due to historical circumstances, the U.A.E. society suddenly found itself independent of the British power which had run its foreign affairs for nearly one hundred and fifty years. Therefore, the rulers sought advice from constitutional experts and legal consultants for guidance in drawing up a constitution to regulate their relations and distribute power in their new state. Chapter 4 is concerned with the second attempt at constitution making under 1968 nine-member-union. A dispute over the nature of the proposed legislature became one of the major factors leading to the collapse of the union. This chapter traces the influences which eventually shaped the form of the legislature which became the modern legislature adopted today.



Chapter 5 contain a brief discussion of the basic features of the U.A.E.'s Provisional Constitution, the federal system in the country and the union authorities, and provides a constitutional context for the analysis of the legislative structure which follows.

In chapter 6 the constitutional framework of the modern legislature found in the U.A.E. is explained. The composition of the Federal National Council (FNC) is examined including, the method of selecting members and their likely socio-economic backgrounds, and then explore the rules and procedures followed by the Council. This chapter seeks to demonstrate that as a new body in a traditional society a legislature is invariably modified in practice to suite the traditional forces, especially where the membership and its turnover is concerned.

Chapter 7 sets out the constitutional functions (primarily legislative, political and fiscal) of the U.A.E. legislature and their actual operation. The experience of the working of the legislature points to the fact that however conscientious the FNC may wish to be in executing its limited duties, it cannot function effectively without the co-operation of the executive. This chapter will show that some provisions of the constitution such as summoning and dissolution and powers of the legislature have not been taken into consideration by the traditional rulers.

In the period 1971-1990 a number of political crises and judicial disputes have arisen between the FNC and the government. Chapter 8 deals with these issues. There are four case studies in this chapter which will demonstrate the fact that it is natural in a traditional society such as the U.A.E. that the

governing authorities will resist any attempt on the part of the legislature to expand its role without their consent. This chapter reveals that ambition is not enough on its own to give effect to the rhetoric of high ideals enshrined in the constitution. It must be combined with respect for the existing constitution and confined to diplomatic efforts to introduce improvements to the *status quo*.

Chapter 9 provides the main conclusion of the thesis. It explains the limitations present in the existing constitutional framework and the difficulty of reforming the political process which is, in effect, an autocratic. The conclusion also points out that a constitution with a democratic inclination does not necessarily establish democratic institutions because of the cultural, economic and social backgrounds. Throughout the thesis there is an attempt to make a comparative analysis drawing out the experience of the U.A.E. constitution compared to other developing countries especially that of the Gulf states. This provides some comparative evaluation of the U.A.E. legislature.

**Footnotes:**

- 1 - Mozah Obaid Ghubash, **United Arab Emirates: Immigrants and Development, A Social Perspective** (in Arabic), Cairo University, 1986, p. 73. See also Saad Eddin Ibrahim, (et al). **Society and State in The Arab World** (in Arabic), Centre of Arab Unity Studies, Beirut, 1988, pp. 216-217.
- 2 - Ibrahim, op. cit., pp. 247-252.
- 3 - Ralph H. Magnus, "Societies and Social Change in the Persian Gulf " in Alvin Cottrell (ed.) **The Persian Gulf States: A General Survey**, Johns Hopkins University Press, Baltimore, 1980, p. 373. Ghubash, op. cit., pp. 67-68.
- 4 - Mohamed Ghanim Rumaihi, **Oil and Social Change in the Arabian Gulf** (in Arabic), Khadmah Printing, Translating and Distributing Co., Kuwait (Third Edition ), 1984, pp. 20-21.
- 5 - For more details see W.M. Ballantyne, **Legal Development in Arabia**, Graham & Trotman Limited, London, 1980. pp. 27-35.
- 6 - Ibid. pp. 35-42.
- 7 - Abdul-Wahhab Khallaf, **Shari'ah Politics**, (Arabic) Muassat al-Risalah, Beirut, Second edition, 1984. pp. 28-31.
- 8 - Muhammad Hamidullah, **Introduction to Islam**, Ansariyan Publication, Iran, 1982. p. 102.
- 9 - It was narrated by Abu Daoud and Tirmizi on the authority of Abu Maryam Al-Azdi (may Allah be pleased with him). See **The 200 Hadith**, selected and revised by Abdul Rahim Alfahim, Abu Dhabi Printing & Publishing Co., U.A.E., second edition, 1988. p. 128.
- 10 - It was narrated by Bukhari and Muslim on the authority of Abu Hurairah (may Allah be pleased with him). See Ibid., p. 58.
- 11 - Abul-ala Al-Mawdoudi, **The Setting Down of the Islamic Constitution**, (Arabic) Muassat al-Risalah, Beirut, 1980. pp. 39-43.
- 12 - Khallaf, op. cit., p. 44.

- 13 - Dhafir Al-Qassimi, **System of Government in Shari'ah and Islamic History**, (Arabic) Dar al-Nafa'es, Beirut, Fifth edition, 1985. p. 403.
- 14 - For more details on the Islamic Shari'ah see Abdur Rhman Doi I. Doi, **Shari'ah: The Islamic Law**, Ta-Ha Publishers, London, 1984.
- 15 - Ballantyne, op. cit., p. 111.
- 16 - Dr. Wahbah Al-Zuhaili, **Attempts in Codifying Islamic Jurisprudence**, Dar al-Resalah, Beirut, 1987. pp. 6-24.
- 17 - *Ibid.*, pp. 68-87.
- 18 - W.M. Ballantyne, **Commercial Law in the Arab Middle East: The Gulf States**, Lloyd's of London Press Ltd., London, 1986. p. 58.
- 19 - *Ibid.*
- 20 - The most important books in this field are: John Duke Anthony, **Arab States of the Lower Gulf: People, Politics, Petroleum**, The Middle East Institute, Washington D.C., 1975, Hassan H. Al-Alkim, **The Foreign Policy of the United Arab Emirates**, Saqi Books, London, 1989, Ali Mohammed Khalifa, **The United Arab Emirates: Unity in Fragmentation**, Westview press, Boulder, 1979, Enver M. Koury, **The United Arab Emirates: Its Political System and Politics**, Institute of Middle Eastern and North African Affairs (Inc.), Maryland, 1980, and Naji Sadik Sharab, **The United Arab Emirates: A Study in Politics and Rule** (Arabic), Dar al-Kitab al-Jamee, Al-Ain, Second ed., 1987.
- 21 - The most important books dealing with the U.A.E. history are: Muhammad Morsy\_Abdullah, **The United Arab Emirates: A Modern History**, Croom Helm, London, 1978, Rosemarie Said\_Zahlan, **The Origins of the United Arab Emirates**, The Macmillan Press Ltd., London, 1978, Abdullah O. Taryam, **The Establishment of the United Arab Emirates, 1950-85**, Croom Helm, London. 1987, and Frauke\_Heard-Bey, **From Trucial States to United Arab Emirates**, Longman Group, London, 1984.
- 22 - See for example Shams M. Ali, **A Concise of Constitutional Law and Constitutional System of the U.A.E.** (Arabic), maktabat al-Quds, Al-Ain, 1985, Ramadan Mohammed Batteek, **The Development of the Political and Constitutional Thought in the U.A.E.** (Arabic), Muassat Al-Ain lil Elam wa Tawzee, Al-Ain, n.d., Sayyed\_Ibrahim, **The Fundamentals of the Political and Constitutional System in the U.A.E.** (Arabic), Centre of Documents and Studies, Abu Dhabi, 1975, and Muhsin\_Khalil, **The Constitutional System of the United Arab Emirates** (Arabic), Al-Ain Modern Printing Press, Al-Ain, 1989.

- 23 - Adel Al-Tabtabai. **Federal System in the Arab Emirates: A Comparative Study** (Arabic), Matbat al-Kahirah al-Jadeedah, Cairo, 1978.
- 24 - Sayyed Ibrahim. **With the Federal National Council in the U.A.E. 1972-1986**, (Arabic), Al-Safeer Newspaper Press, 1986.
- 25 - Hadif Rashid Al-Owais. **The Role of the Supreme Court in the Constitutional System of the United Arab Emirates. A Comparative Study**, unpublished Ph.D. Thesis, University of Durham, 1989.

## **PART ONE**

In part 1 of the thesis we examine from a general perspective the role and functions of legislature in developing countries. This part also explains the socio-economic and political background of the U.A.E. Part 1 sets up the foundation for discussion and analysis in the subsequent parts. The chapters of part 1 are as follows:

**Chapter 1** the role of the legislature: a general perspective

a - definition, legislators, representation.

b - functions.

c - political party and electoral systems.

**Chapter 2** The socio-economic and political aspects of the U.A.E.

## **CHAPTER ONE**

### **THE ROLE OF THE LEGISLATURE: A GENERAL PERSPECTIVE**

#### **1.1 Introduction:**

We have seen in the general introduction to the thesis that this thesis attempts to fill a gap in our knowledge of Third World countries by examining the constitution of the U.A.E. from the perspective of the economic, historical, and cultural characteristics of the country.

In this chapter, it is intended to set out the distinctive qualities of legislatures which have been developed throughout the world as part of a general background to the U.A.E.'s legislature.

This chapter is divided into three sections. The first section will discuss how legislatures in the Third World are examined in the West and will take a retrospective look at the creation of legislative bodies under colonial rule and their fate after independence. An attempt will be made to set out some arguments as to what its role in developing countries should consist of. There will be some exploration of legislators themselves, which raises the principle of representation.

The second section of the chapter examines the traditional constitutional functions of the legislature, such as law-making and

overseeing the executive, while taking account of the fact that Third World legislatures do not exist merely to fulfil these traditional tasks. Instead they have wider functions as in the West such as mobilization, integration, political recruitment and legitimization as subjects for discussion.

The third section will concentrate on the political party and electoral systems which underpin the legislature. The different types of political systems and how they differ will be examined.

#### The legislature and constitution:

By and large, constitutions play a significant role in creating and formulating legislatures. Constitutions are usually the product of a particular event such as independence from colonial power, breaking from an empire, end of a revolution or defeat in war. The institutions created by the constitution are therefore of prime importance.

As K.C. Wheare rightly stated "Constitutions spring from a belief in a limited government". (1) They tend to impose limitations on the powers of legislatures. The extent of these limitations depends on the aims constitution-makers want to safeguard, the kind of political system the constitution is modelled after, the type of state it creates and the type of relationship that the constitution promotes between the executive and the legislature.

The powers of the legislature may be restricted by the constitution with regards to basic principles such as certain individual rights or specific state laws. For instance, the U.S.A. Constitution forbade *ex post facto* ( i.e. retroactive) law. (2) Few



constitutions went to the extreme by restricting to a great extent or denying the legislative power of legislature such as the constitutions of Qatar and U.A.E.

Moreover, the powers of the legislature vary according to the state system adopted by the constitution. Federal constitutions ( e.g. U.S.A. and India) tend to divide the powers between central and local authorities. The powers of national legislature under such a system tend to be limited. However, the constitution of a unitary state seems to give the national legislature a supreme status over local institutions. (3)

Under written and rigid constitutions actions of the legislature are restricted by constitutional provisions. The constitution has therefore a crucial role in formulating, shaping and limiting the legislature it creates.

#### 1.1.1 Different definitions and classifications:

One major question in evaluating and classifying a legislature resides is that of definition. One cannot give a unambiguous definition of this organ of government. An early definition described a legislature as "a body elected by people at relatively frequent intervals, and it made laws" (4). Some scholars have introduced a functional description, arguing that a legislature is "a functionally adaptable institution that could do a variety of things in a political system" (5). Legally or constitutionally speaking, a legislature is "the department, assembly, or body of men that make the laws for a state or nation" (6). Such a definition,

based upon a specific function would lead to describing the executive, political parties or military institutions as the actual legislatures, rather than the nominal legislature itself (7).

Michael Mezey has defined a legislature as "a predominantly elected body of people that acts collegially, and that has at least formal but not necessarily the exclusive power to enact laws binding on all members of a specific geopolitical entity" (8). Accordingly, he proposes a five-fold typology of legislatures founded on the importance of a legislature's role in policy making and the extent of public and elite support it commands (9).

Differences among scholars regarding definitions has led to different classifications. For instance, Blondel, classifies legislatures according to their importance in policy making. He describes the legislatures of the contemporary world under four broad headings: "nascent or inchoate" legislatures, "truncated" legislatures, "inhibited" legislatures, and "true" legislatures. Mezey, on the other hand, classifies legislatures as: active, vulnerable, reactive, marginal, and minimal (10) while Olson amalgamates the previous two classification and suggests an eight-fold typology (11). We shall see later in chapter 7 of the thesis how the U.A.E.'s Constitution fits into the views explained above.

However, the researcher's point of view with regard to the issue of definition is that the U.A.E. legislature, viz. the Federal National Council, has a distinctive position. The constitutional set up of the FNC does not fit into any of the above mentioned definitions. The legislature in the U.A.E., as we will see in chapter 6 and 7, is not elected and does not have the power of drafting

Bills. It may be considered as a forum for discussion, deliberation and sanctioning federal laws presented by the government.

### 1.1.2 The Western approach to the analysis of Third World legislatures:

Legislatures are studied in depth and widely in the west by constitutional lawyers and historians. The majority of the constitutional research and scholarship in this field has been concerned with the western experience, in the light of democratic western constitutions such as that of the United States. Studies of legislatures in Third World countries only began at the end of the 1960s and the beginning of the 1970s. (12) Generally these studies choose to analyze Third World legislatures using the same criteria as are applied in the study of Western legislatures, focussing on law-making as the principal function of legislatures in developing countries (13) and presenting the Westminster model and other western models as the ideal for the Third World (14).

In January 1985 there were one hundred and fifty five countries in the world claiming to possess some type of legislature and only twenty seven which did not. In 1981 ninety three states had claimed to have a legislature while thirty three did not (15). The increase in the number of these bodies, especially among the Third World countries, is of great significance in that it has occurred since their independence, contradicting the recent assertion of the "decline of legislatures " in Third World states. It marks a shift from the traditional unelected inherited rulers who reflect the cultural tradition of the past and to more democratic open government.

Historically the studies undertaken into constitutional institutions adopted two theories. One is modernization theory and the other is development theory. The modernization theory failed to distinguish between the western ethnocentricity and modernity assuming that to become modern, developing nations had to adopt western democratic institutions. In short most commentators of this school believe that parliamentary democracy is regarded as an essential step towards modernization (16). In contrast, development theory, did not require the adoption of the western models in the realm of legislature but proposed strengthening the executive branch of government in Third World countries.

Samuel Huntington, speaking for the modernization Samuel Huntington, speaking for the modernization school, asserted that "most legislative institutions in the less developed countries are dominated by traditional elites" who hamper modernization. (17)

Robert Packenham, a development theorist, stated in an influential article that:

"What little we do know suggests that strengthening legislatures in developing countries would, in most, cases impede the capacity for change which is often crucial for "modernization" and economic development. " (18)

He concluded his article by asserting that:

"In societies that need and want change, and where political development may be defined as the will and capacity to cope with and generate continuing transformation, it may not make such sense to strengthen the decision-making function of an institution that is likely to resist change. " (19)

It is axiomatic that institutions may both favour change and take steps to resist changes that do not conform to the interest of the institution.

However, Packerham emphasized again in another article declaring that legislatures have a tendency to greater conservatism than executives. Paradoxically the more vigorous the legislative body the more it will resist changes in society (20).

For this reason and others these academic schools claimed that Third World legislatures have failed to conform to western expectations. One suggested solution advanced by the commentators of these schools is to restrict the power of legislatures or, more drastically, to dissolve them completely. On the other hand, the same studies recommended enhancing the powers of local bureaucracies and military and ruling juntas through providing them with technical assistance and economic aid (21) on the grounds that a strong executive is a prerequisite in nations seeking political and economic development. However there is no clear evidence that such development is a product of a powerful executive (22).

### 1.1.3 Legislature in the colonial era:

The sceptical attitude present in a number of western studies to Third World legislatures is not a new phenomenon. During the colonial period this stand-point was dominant. European powers claimed to colonize Africa and Asia to prepare the underdeveloped nations for democratic self-rule. This was not the real core of colonial policy. For example, in Africa, the British established nominated legislative councils while after 1946 the

French established local assemblies as well as increasing native representation in the French Parliament (23). But these colonial legislative bodies were not intended to serve as real representative institutions or to educate nationals in democratic participation. Rather, they were subordinate to Governors and their executive councils, not allowed to discuss sensitive issues but limited to technical matters such as taxes, local budget and mining permits. (24)

After World War Two, in the period preceding independence, legislative councils were used to prepare for political participation not the whole nation but the elites who accepted the western legislative models (25). Colonial rule did not prepare the mass of the indigenous population for democracy, but rather the native executive elites who had tendencies toward authoritarian rule and some scepticism about the role of the legislature. The colonial Governors desired to restrict popular participation in the decision-making process in order to preserve their class supremacy through "bureaucratic despotism" (26).

This was the usual pattern of government in the post-independence period in most Third World countries. In nations where, exceptionally, colonial legislatures did take as a paramount duty the defence of the public interest, it is not surprising that the colonial power regarded such action unfavourably (27). Nevertheless, in countries such as Sri Lanka and the Philippines where native legislatures played an important role in the struggle for independence, they were highly admired as legitimate institutions and enjoyed mass support (28).

#### 1.1.4 Legislature after independence:

The western educated elites who took power from the colonial authorities imitated the Westminster or French model of legislature in order to "modernize" and "develop" their nations and, at the same time, to secure their political dominance and grasp of ultimate power. These elites ignored the social and economic realities in their societies and imported an alien institution or preserved the one they had inherited from the colonial power. Thus several of the newly independent Francophone states such as Senegal and Chad modelled their constitutions on that of the French Fifth Republic (29).

Thus the new order in many developing countries was not different from the pre-independence era. In some countries the executive had the power to nominate a certain number of MPs as an inherited practice from the past (30). In others, the president or the monarch appointed the representative body (31).

Several legislatures in Third World countries were subordinate to the executive. In Chile, for instance, the "contraloria" officials (an administrative body which helped Congress in its law-making function to determine the constitutionality of bills) were happy with the dissolution of the legislature in 1973, indicating that without it, Chile could more effectively achieve development (32). In Thailand many prominent politicians demanded the restraint of the national legislature until "the Thai people have more experience with democracy" (33). These statements can be explained on the basis of lack of public support for the legislature, as in the case of Thailand, or the elite and military support as in

Chile. There might be a conflict between these two kinds of support where the public support the legislature- because of its good performance in defending their interests, and where the political elites do not support the legislature because they regarded it as lacking expertise and an obstacle to urgently needed developments (e.g. in Kenya) (34).

The 1975 National Assembly in Kuwait represented a fierce critical opposition to the Government. The critics accused the government of mismanagement and failure in its policies. As a result, the Prime Minister then resigned on 29 August 1976 declaring that the legislature's "lack of cooperation had become prejudicial to the national interest." (35) The Amir (i.e. Ruler) issued a decree suspending some Articles in the 1962 Constitution and temporarily dissolving the National Assembly as well. The Constitution was to be revised by an *ad hoc* committee. The National Assembly was reinstated in August 1980, to be dissolved yet again for the same reason in 1986. After the Gulf war, the Amir called for new legislative elections in October 1992.

In Bahrain, the National Assembly, which was elected in December 1973, survived for only twenty one months. Three distinctive and opposing groups were elected to the legislature and as a result of such composition, the legislature was in continuing dispute with the government. The Assembly interpellated several ministers and obstructed the legislative process. Finally, the Prime Minister resigned on 24 August 1975 "in protest of the Assembly's interference in the running of the government." (36) The National Assembly was dissolved and Article 65 of the Constitution was suspended.



Scepticism towards the legislature has not manifested itself in most Third World states, by the extreme action of dissolution of the legislature. In fact, many developing countries have upheld their national legislatures and maintained their survival. It has been argued by Allan Kornberg and K. Pittman that

"Although public support is rooted in symbolic attachments and not under the immediate control of political leaders, representative bodies are more or less under their direct control. This is one reason they are incorporated so frequently in the political system of a new state, or are reestablishing after a system has been overthrown" (37).

It is not surprising, therefore, that an absolute monarch like the Shah of Iran continuously supported his feeble Majlis and characterized it as "the cradle of the constitution" (38) since in an authoritarian regime, the legislature is conceived as a co-operating institution which provides the regime with a taste of democracy and enacts its policy (39).

#### 1.1.5 Composition of the legislature:

Traditionally the composition of newly formed legislative councils by the colonial power in most Third World nations was highly selective. Membership was restricted. Only those who worked as local advisers, who were educated abroad, and the traditional elite were allowed to be members. The practice of restricted membership established an unwritten rule that legislatures are not essentially an open forum where every citizen can be elected or accepted as a member.

Legislators for the most part differ from the population in socio-economic background, tending to be wealthier, better educated, and politically influential (40).

J. Blondel asserts that a common characteristic in the composition of legislatures which owes in many western countries, and in some developing countries is that legislatures are dominated by lawyers. He argues that this was not surprising as lawyers are presumed to be more aware and capable of dealing with laws (41). Another element is that the financial means of candidates which is an important indicator of a candidate's chance of winning the election. In Thailand, for instance, businessmen did not contend for parliamentary seats for decades and the legislature was dominated by civil servants and the military. However, recent research has shown that businessmen have started to challenge this dominance and have won three times as many seats as bureaucrats (42). Similarly in Zambia forty per cent of parliamentarians were businessmen or had some business interests (43).

Education is another important element in the background of legislators. In Kenya, for example, educated legislators present themselves as having a better chance to articulate constituency needs than their less educated opponents (44). The influence of Legislators on the decision-making process will also, presumably, be affected by their level of education. It has been reported that 62.6% of Sri Lankan MPs graduated from elite and middle level schools. In the period 1970-1984 MPs who graduated from elite schools presented 90% of individual bills in the Sri Lankan Parliament (45). This enabled them to be actively involved in

government business and to be nearer to the decision-making circle. The education factor had a considerable influence in the 1985 Tanzanian general election, where 49.6% of the members of parliament were university graduates (46). The more highly a candidate is educated the more likely he is able to understand and deal with political matters and represent his constituency.

Regarding occupations, legislators are seldom a mirror image of society since many come entirely from professional backgrounds or are civil servants. Studies of the membership of legislatures in several Third World countries have indicated the prevalence of businessmen, party members, state employees and professionals (47). In one-party states, government employees and party activists predominate in the legislature. To illustrate this point one can refer to the Tanzanian experience. It was noted that in 1970 that 69 per cent of the legislators were mainly from public sector. This increased, after the 1985 election, to 86 per cent (48). Such a tendency could lead to an expansion of the executive or of party power over the legislature and diminish its independence.

Generally speaking, workers, farmers and women are underrepresented. It seems to be assumed that these groups are less interested in the political process or their absence from the national legislative body has echo social bias against them (49).

#### 1.1.6 Representation:

As explained above, legislatures may not reflect a wide enough if not cross section of society. Their elected status suggests they should be representatives of society as a whole. Seldom does reality work out like this. This sense of representation mainly

distinguishes and characterizes a legislature from the other non-representative branches of government (i.e. executive and judiciary) which may be dominated by or their posts allocated to a certain sector, or class of the community, or group of bureaucrats while the legislature generally tends to be an open arena in which the greater part of the population will be represented.

Electoral mechanisms vary and do not always guarantee representativeness and cannot be taken as given as regards the legislatures in many Third World countries which are often dominated by westernized elites, civil servants and party recruits. In other cases the overrepresentation of particular tribes or families may go unchallenged. For instance, the Indians in Guatemala are not represented in the national congress although they constitute more than 55 per cent of the population. Another example of misrepresentation can be found in Lebanon, where a change of representatives in the legislature did not necessarily reflect a change in social demands and political support, but was simply the substitution of a younger for an older generation in the dominant families (50).

There are limits to the influence of an election on the behaviour of an elected member of the legislature. Traditional theory of representation suggests three styles of representation: "delegate", "trustee", and "politico". In the delegate style of representation, the representative is regarded as a deputy reflecting demands of his constituents and channelling their interests without an independent voice of his own. In the trustee type of representation, the representative is expected to act on his own judgment of the best interests of his constituency and of the

nation. The third type of representation combines the characteristics of the previous two styles in that the representative is expected to act neither as a mere reflection of the assumed wishes of his constituents nor as totally independent of them. Recent studies have suggested that these distinctions are not rigid and that representatives act as trustees and as deputies depending on the circumstances (51).

As the case everywhere, many Third World countries Legislators are inclined to represent their constituents' interests where they depend on their support to be re-elected. Constituency representation may be strong in political systems with a weak party system but strong level of local communication. In such systems the representative has to bring the demands of his constituency to the notice of the legislative assembly and has to try to solve problems facing his electorate (52). In other political systems, members of legislatures represent religious, racial, or business groups whose social and economic interests they endeavour to promote (53).

Preference towards different or conflicting interests will depend on the legislator's background and his relation with constituents. It has been argued that highly educated parliamentarians including businessmen and intellectuals prefer to see themselves as independent trustees rather than as delegates for their constituents. Another study emphasized that MPs representing traditional constituencies are more likely to see themselves as spokesmen for the interests of their electorate than are the representatives of modern constituencies (54).

The electorate may affect the style of representation either by threatening not to re-elect their representative or, in an extreme case, by calling him off where the constitution provides for a constituency so to do if the electorate are dissatisfied with his performance and wish to replace him with a more effective representative (55).

### **1.2 Functions of the Legislature:**

The functions are many and no one legislature can fulfil all of them. Moreover, the significance of a particular function does not only vary from one political system to another, but even within the same legislature at different junctures as well. Furthermore, when it is indicated that a specific function is important this does not mean that it is not also performed by other political elements (political parties, interest groups, trade unions, the executive etc.) or that the legislature executes this function better than the others (56).

The kind of government system the constitution adopts affects to a certain extent the role and functions of the legislature. The effect of the voting system in the legislature, for instance, varies depending on whether it is conducted under a parliamentary or a presidential system. In a traditional parliamentary system, such as Westminster system, there is great emphasis on the role of the legislature in forming and dismissing the cabinet. The voting on governmental Bills therefore has good effect on the tenure of the government. In a presidential system, such as the U.S. system, voting may not have the same consequence; and the president

continues as the chief executive regardless of the opposition in the legislature. (57)

The fusion of the functions of the two branches in the parliamentary system provides a coordination between the legislature and the executive. Yet, the legislature may play the role of the lesser partner in the decision-making process. On the other hand, the separation of powers in the presidential system grants the two branches of government a role in making and administering laws. However, a strong opposition from the legislature under this system may hinder the implementation of the executive programme. (58)

Another example of the effect of the government system on the role and functions of the legislature is political recruitment. In the great majority of countries operating under the presidential system, the head of the state and the members of the executive are not necessarily recruited among members of the legislatures. On the contrary, long parliamentary experience in most of parliamentary systems is a pre-condition for being nominated as a member of the cabinet. (59)

In the course of this thesis many of the above mentioned functions will be considered in more detail, but it is useful to clarify and identify the major functions at an early stage.

### **1.2.1 Law-making:**

Even in Western liberal democracies, Parliament was not originally an exclusively law-making body. It was established in

order to discuss and deliberate important questions. In its early history, the legislative function was not the Parliament's main task. As K.C. Wheare stated, the term, "legislature" is misleading, because, generally speaking, this institution did not dedicate a considerable time to acting out this function (60). It was not until the writings of the seventeenth and eighteenth century theorists (e.g. Locke and Montesquieu) and liberal democratic thinkers (e.g. Mill) that legislatures came to be considered primarily as law-making bodies (61).

Such notion was challenged under the Common law system at the turn of the twentieth century when it had become clear that the law-making power is no longer the prerogative of a legislature. Many new agencies and political structures are interfering with and participating in the legislative process as we will see.

#### Constitutional limitations on legislative sovereignty:

The powers of the legislative body have been restricted. In many cases a new constitution is seen as a legitimate tool to achieve this end. It reduces in reality the law-making function performed by the legislature directly or indirectly, that is to say, it lays down provisions which give the executive a say in the law-making area, either by allocating or reserving some matters to the administration alone or by giving the executive the power to initiate and enact laws in an emergency without referring them to the legislature. In some constitutions, the executive has the right to veto decisions of the legislature or, less drastically, the right to demand a review of decisions made. A constitution can also limit



the power of the legislature by empowering the head of the state to use a referendum in disputed or important matters (62).

There are some practical restraints on the involvement of the legislative body in the law-making function. Time is a significant constraint in the field of legislation. Whether legislatures meet for only a few weeks in a year at one extreme or for most months of the year, at the other, there are limitation of time in their ability to cope with new developments and urgent matters. A second practical restraint on the legislature is exercised by the executive which has the advantage of technical information and expertise in the field of making laws. The executive, moreover, has time to initiate legislation and advantage of procedural rules which, in many cases, gives its bills priority over individual bills. Furthermore, it determines, as is the case in Latin America, the important bills which cannot be postponed (63).

Another practical limitation on the legislature is the practice of delegation of power. It is not surprising that delegated legislative powers are a well-known feature of contemporary political systems. Many legislatures are accustomed to delegate part of their legislative power to ministers or government agencies (64). Delegated legislation can be justified on a practical basis. In some countries, this practice is used to deal with politically controversial matters, where the Assembly cannot or will not interfere. In such circumstances, the executive is likely to abuse its legal power and enact decrees which suppress or limit constitutional rights (65).

### The experience in the Third World:

In Third World countries the significance of the legislative function fluctuates from important (e.g. in the Philippines and Chile prior to 1973) to negligible. In the first category there are several reasons which make the legislatures in these countries relatively influential in the law-making and decision-making process. These include the long historical experience of the legislature, a good infra-structure which helps legislators in carrying out their duties and a strong opposition to executive dominance (66). In the second category, which includes most developing countries, legislators do not consider the law-making function as their most important duty and are satisfied with the little time they or the legislative body collectively dedicate to this function. This is true of Malaysia, Kenya, Tanzania and most West African countries (67).

The law-making function can be swayed by a few members of the political system in several Third World states; by western-oriented MPs (e.g. in Sri Lanka) or by a few men having the support of business groups or owning the press (e.g. in Uruguay) or the foreign agencies like the representatives of different international and multinational agencies (e.g. in Colombia) (68). In such legislatures, private-members' bills are hardly ever presented and, if introduced, have little chance of becoming law. This is not strictly a Third World phenomenon, but is known in many western legislatures (69) where most bills are initiated and presented by the government.

### **1.2.2 The legislature as checks and balances over the executive:**

Legislatures have at their disposal different techniques to oversee the executive. They can simply use a direct, written or oral question or general debates to secure clarification from a concerned minister. Legislators can propose bills relating to the budget or other financial matters (70). Many legislatures set up investigating committees or permanent committees to scrutinize or interpellate ministers and government departments. In some countries, a vote of no-confidence may be used. As practised in Pacific island states, the use of this vote is more or less related to the probability of the dissolution of the legislature. In other countries, the vote of no-confidence is not used because the assembly is not the proper place for changing the government (71).

In many developing states, the survival of the legislature is of importance as being the main or only organ of criticism in the political system. In such states, a legislature that challenges the executive or takes its overseeing function seriously will be confronted with the deep hostility of the government. In 1975 the Kenyan government was defeated for the first time in parliament for its failure to censor a select committee report about a political assassination. The government reaction was harsh. Several MPs were dismissed or arrested. The legislature later confirmed its subordination to the president (72). Government reaction, in other countries, goes beyond these measures. In Thailand, for example, the government was seldom defeated but when this did occur the

parliament was dissolved by a military coup since army and the government refused to tolerate any legislative rebuff (73).

Criticizing the government has not, in many cases, been an option on whose outcome a legislator can depend. Studies of the Tanzanian elections and Singapore's legislative performance have shown that the public are likely not to prefer MPs who continuously criticize the government and that legislators themselves usually start a speech of criticism with praise of the government or minister's record (74). Some writers have argued that ministers do not like to be publicly criticized, yet, they may use the overseeing function in order to underscore the openness of the regime. Consequently, this might be a good source of support if played correctly (75).

One major duty of a legislature is the control of public spending and the national budget. Historically, the British parliament evolved as a body which helped the king by authorizing taxation. Government had to ask for the legislature's approval for its annual budget. This function has declined in the sense that no individual MP, generally speaking, has the proper ability or capability of dealing with financial matters. The government usually secures its position in these issues through assembly's standing orders and its majority in the legislature. Budgets, therefore, are passed in the assembly with little argument.

#### Restrictions on legislature activities:

The colonial experience in many Third World countries has led to ministers and officers not being accountable to the legislative councils but to the chief executive (76). This lesson has been

taught, learned, and well practised in post-independence states in different developing nations.

The political facts of life are that legislatures are likely to be subordinate to the executive in many political systems. Such subordination may reflect the role of a political leader or leaders in a national struggle and personal charisma conferring political legitimacy independent of the legislature. The weakness of the opposition in a political system may be a second reason for the dominance of the executive. Thirdly internal splits and factions in the legislative body may minimize its ability to scrutinize the executive.

A fourth reason for the subordination of the legislature may be executive intervention in the elections to restrict the numbers of opposition members in the assembly. Fifthly, constitutions may shift the power between the two branches of government in favour of the executive. Finally, the function of overseeing the executive may be constrained by time, legislatures that meet occasionally are restricted in their capacity to supervise (77).

### **1.2.3 Legislatures as mobilizing agents:**

Generally, a legislator in many Third World legislatures is placed centrally between two parts: on the one hand you have the people whom he presumably represents, on the other hand the government. In the first part the legislator is mandated to introduce local demands to the government whereas in the second part, if he is from the ruling party, he acts as an agent for the government in his constituency. So in this way he represents the

interests of his local constituents as well as serve as a mobilising agent for the government.

Legislator's constituents expect him to represent their problems and ideas to the executive, seek a solution and acquire more funds for local projects while the government expects the legislator to generate support for its policies in the constituency (78). Although mobilization can be conducted through several governmental bodies, the legislature plays a particularly important role in this function. Having a good image in the public eye puts elected deputies in a favourable position to mobilize public support for the actions of the administration. At the same time they play an important role in making the government aware of public demands (79). This is the situation in such countries as Tanzania, Zambia, Kenya and Singapore (80).

As bodies where local demands are articulated and taken into account legislatures, can be used to enhance a regime's legitimacy and to secure public consent to government policies. If the legislators' collectively perform their function well and government is responsive to public needs, then, as it has been argued, popular support for the institution will remain stable and indeed increase (81).

The degree of articulation and responsiveness of the legislature to popular demands will depend on its strength and on the willingness of government to comply. In some instances, by making known local needs legislators may effect government plans and therefore modify them. For instance, in Korea and Thailand personal efforts and collective demands in the legislature have

almost certainly led to alteration in the allocations to development projects in rural areas. Conversely government can use its power to provide local services to enhance its own legislators' popular support among the citizens, thereby diminishing opposition chances (82).

As Blondel has stated (83), legislators "enjoy an access to the central government departments and to members of the government that is unquestionably greater than that of most citizens." These means of access both formal and informal enable the legislator to make known to the executive his constituency's interests. Thus in the legislature itself, he can use public debates, question times, drafting bills, and committee meetings for this purpose, in addition to informal contacts with ministers and heads of government departments with whom he has established personal relations. On the other side of the coin, members of legislative bodies can use local party branches and probably other unofficial groups to encourage and mobilize his constituents' support in favour of the executive.

#### **1.2.4 Political Recruitment in General:**

Generally, political recruitment has been defined as that function of a political system which "recruits members of the particular subcultures- religious communities, status, classes, ethnic communities, and the like, and inducts them into the specialized roles of the political system" (84). In other words political recruitment aims at identifying and engaging persons deemed suitable to fill legislature's posts and who will, at the same

time, be loyal to the ruling elite. We will see in chapter 6 how this general proposition applies in the U.A.E.

Those occupying legislative seats provide the political system with a number of important services some of which have already been mentioned, notably with reference to the role of the legislature as a platform to reflect, represent, and protect interest groups. In personal terms, membership of the legislature will almost certainly carry with it a relatively high income and social status. In Costa Rica, for instance, the overwhelming majority of legislators' incomes were found to have increased after they entered Congress (85). Some aspirants run for election just for the prestige of being deputies or senators or as a step-stone to a higher position in government (86).

In some countries the legislature is regarded as a training ground for future leaders or executive members. At the same time legislators seem to benefit from their occupation by attracting the attention of the government. In Kuwait, for instance, the National Assembly is considered as a pathway to cabinet posts. In their study on "Kuwait's Political Elite: The Cabinet", A. Assiri and K. Al-Monoufi found that in the period between 1962 and 1986 the Kuwaiti legislature represented a significant area of recruitment for the cabinet. Almost a quarter of the total number of ministers were parliamentarians. (87)

In the Philippines and Argentina being employed in congress is a pre-condition for a higher post up to and including the presidency (88). In other countries, membership of legislature is given as a reward to loyal and active supporters of a regime or as a



second-rank field of activity for supporters with political ambitions but who have not been accepted as members of the dominant organs (i.e. the executive and the military). Tordoff argues that the national assembly in Tanzania and Zambia has provided the political system with a large number of posts used in recruiting persons who would otherwise not be included in the political process (89).

In order to determine and control recruitment to the legislature, some governments impose certain educational and financial restrictions. For example, Kenya use to stipulate passing an English language test as a necessary qualification for membership, whilst financial status is also a well-known requirement. These requirements for memberships, if they are insisted upon may result in the legislature serving as the forcing-house of a political class over a period of time (90). In deed, it has been said that:

"... the legislature recruits, socializes, and trains [its members] to and for other roles in the political system in which they may wield more power than they do as national legislators ... They learn the norms of the elites, they learn political skills, and they acquire visibility and prestige resources which are useful to them in acquiring, maintaining, and utilizing these other roles." (91)

This definition of the legislature's role is not, of course, an axiom. Its applicability will depend on the level of party discipline, the inaccessibility or openness of the political system, and the readiness of members of the legislature and of the public to accept this role. Of course, where governments recruit their executive members from outside the arena of the legislature the definition will not apply.

### **1.2.5 Legislatures as integration mechanism:**

In societies which are divided on the basis of race, religion, language or economy the legislature may be able to play a central role in the integration process. Grossholtz, in his article on the integrative role of legislatures in Malaysia and the Philippines, defined integration as "a process leading to a political cohesion and sentiment of loyalty toward central political institutions" (92). An alternative definition is proposed by Weston Agor who described the integrative role of the legislature in terms of "the capacity to minimize conflict among component roles and subgroups by heading off or resolving the conflicts that arise." (93)

The legislature is likely to be the only institution in many political systems within which different racial, territorial, religious, and linguistic groups can articulate their interests and deliberate with the others and, if possible, reach a compromise. Integration in the legislature might be acquired symbolically or practically. Symbolic integration derives from the representation of distinct groups in the legislature whose posts can be distributed among them. In many countries the legislature is regarded as an open forum. This increases the possibility of most social groups being represented (94). In practical terms, every group has its legitimate interest which may be satisfied where they do not conflict with the interests of others or of the nation as whole, following a process of agreement and compromise in the legislature (95)

However, this function has been refuted by some writers (96). They have argued that the meeting of several dissimilar groups

under one umbrella can contribute to the disintegration of the nation. They illustrate this assertion with reference to Kenya where competing parties, representing distinct sectional interests, served as an instrument for delaying national integration. The outlawing of these parties was the necessary preliminary to achieving the political stability of the country. It is argued, therefore, that achieving national integration has priority over party competition and factional criticism (97).

Of course, the legislative body can only exercise an integrative role when the wider political context allows. It has been stated quite correctly that:

"... when it is the only integrative agent in a society subject to strong disintegrative forces, the legislature is quite unlikely to maintain stability." (98)

Its integrative capability will depend upon the willingness of political parties to cooperate in the legislature. In addition, constitutional sittings may enhance the possibility of performing this function. In cases where representation strongly reflects religious or racial differences, the integrative role of the assembly will probably be minimal. In Lebanon, for example, it was difficult to arrange mutual concessions among different sectarian groups, for every deputy considered himself as a defender of his community's interests before anything else (99).

#### **1.2.6 Legislatures as agents for legitimating:**

The legislature may fulfil a legitimating function in: "maintaining or increasing the level of diffuse support for the regime or increasing the support that occurs for the regime apart

from the extent to which its specific policies are supported." (100)

The aim of the legitimating function has also been described as the "production of acquiescence in and/or support for the moral right to rule of the government by the members of the political system." (101)

Three patterns of operation have been described in the legitimization function of the legislature. (1) Through its continuous meetings and sessions, the legislature may promote, intentionally or unintentionally, the illusion that the existing regime is legitimate. (102) (2) By approving/acquiescing in decisions taken by the ruling elites or party, the assembly may consciously legitimize government policies. (3) The legislature may act as a safety-valve controlling conflicts arising in the political system by diminishing tension and achieving a degree of consent among different interest groups to the government's actions. Thus the function of the Brazilian Congress has been described as "a safety valve or way of letting off steam in a political system where no body got what he wanted and/or where the government was not willing to let every body have what he wanted." (103)

The significance of an elected legislative body for legitimating government acts has not been ignored in authoritarian states whose leaders regard the legislature as an important component of the political system, though its real power is minimal. In Iran, for instance, the Shah and political elites made frequent references to the importance of participation by the *Majlis* ( the legislative body) in the formulation and enactment of government policy. In fact, the *Majlis* was not more than a useful tool for convincing the citizens

and the western world that the system was a constitutional monarchy (104).

It can be seen therefore that the maintenance of the costly institution of a legislature in a political system is widely regarded as worthwhile since as a political process legislature is likely to pay for itself in conferring legitimacy upon the actions of civil or military rulers and secure public acquiescence at less cost than more coercive methods (105). The extent to, which the legislature can perform the legitimation function depends upon its mode of election, its representativeness, and public expectations of its members. It has been suggested that in newly independent countries the legislature may be in need of regime support for its survival and, on that account, be seeking legitimacy from the elite and not *vice versa*. Such a situation is observable both in countries without legislative bodies in the pre-independence period, and in states where a legislature was a colonial inheritance (106).

Although the dissolution of a legislature in a newly independent state may not seem to affect the legitimacy of the regime yet it leaves the government alone in the political arena to justify its policies to the people without the cooperation of a compliant assembly. As has been noted in many developing countries failure in the area of legitimacy, means the failure of the political system or the end of the regime itself (e.g. in Iran and the Philippines) (107). It has been well said that "Government policies can be always imposed by force but it is generally agreed that policies are more likely to be successful if people obey them not simply because they have to but because they think they are right." (108)

### **1.3.1 The relationship between legislatures and political party system:**

In many developing countries, legislative bodies were established under the supervision of colonial power, while the political parties, established as national movements against the occupying power or as local organizations, became much stronger and more influential than the colonial legislatures. In such cases, their priority in the political life of the country will give political parties greater authority in society after independence than the legislatures (109).

#### **Strong or weak parties:**

The extent to which political parties are national rather than regional in their support will clearly be significant in determining their power and the extent of their influence on the legislature. The more united and more national the parties are, the more strength they will have over the assembly. If the parties are weak, the legislator will probably have greater freedom as the representative of his constituents, especially when he has been elected by a small majority (110). It is worth noting that the failure of legislatures in some developing countries to perform their functions and their ultimate abolition has been the result of a weak party system. It has been suggested that the consequence of a weak party system is less support for the legislature. The support may also depend on the political awareness of the electorate. On this view, the party system is an important element in preserving legislature (111).

However, it can equally be argued that a powerful political party may result in weakening the role of the legislature to a greater extent than under a monarchical system (112). In a system where a dominant party is in power, the legislature may become a purely secondary organ on which the executive depends not at all to remain in power. The degree of party dominance may be observed in the assembly's reactions to the executive (113). On the other hand, a strong party system may serve the community and benefit the whole political process. It has been suggested that powerful and organized parties are essential, in that they act as checks on the executive and as links between the legislature and the people and articulate public interests. It appears therefore, that the effects of strong parties may be dual in that they may either contribute to or take from the relative importance of legislature in a political system (114).

#### Single or multi party system:

The effect of a party system on a legislature varies depending on whether it is a one-party or multi-party state (115). In a one-party state the legislature is likely to be subordinate to the ruling party. In Tanzania, for example, the CCM (previously known as TANU and Afro-Shirasi parties) makes national policy and the National Assembly approves it. Candidates for legislative seats must seek a post in the government or in the party apparatus and have good relations with party factions in order to be nominated as one of the two candidates who stand for election in each constituency (116).

A multi-party system may face problems in new states where the emerging parties tend to be loose coalitions of factions which lead to their ineffectiveness in the legislature. Where the executive is confronted with a multi-party legislature with no single party having a majority, it will deal cautiously with the parties and try to reach compromises so that it can guarantee legislative support for its programmes. Such situations can lead, in some cases, to the collapse of the political system and the abolition of the legislature as happened in Chile in 1973 (117).

#### Party influence on the legislature:

Political parties not only influence the relationship between the executive and the legislature, but shape the relationship between individual legislator on one hand and the constituents on the other. Thus, in countries with political parties, the electorate votes for candidates chosen and introduced by a party. This is most obvious in single-party states or in systems which stipulate registration in a political party as a pre-condition for running as a candidate in general election. Even in an open system where, allegedly, anyone can stand for election, it is likely that a candidate supported by a party will have a greater chance of winning a seat than a non-party candidate (118).

If the party is strong, then the relationship between the representative and the represented will be correspondingly weak. It has been found that the public interest will be identified and interpreted in systems with strong party affiliation not by individual deputies but by the party organs. Such firm party



control may lead to a decline in public support for the legislature as has been recorded in Argentina and Venezuela (119).

Some theorists have argued that party discipline is more important than representing local interest, in enabling the party to carry out its national programme.<sup>(120)</sup> At the other extreme, there are those who say that the representative must fulfil his promises to the constituents before any other consideration.

There are many ways in which a government or political party can enhance its influence over legislators. The first mechanism is through adopting a constitution which introduces a one-party state or limits the number of political parties that may operate in the system. The government can also issue legislation disqualifying representatives who change parties (e.g. Vanuatu) <sup>(121)</sup>; it may oblige members of the legislature to swear an oath of loyalty to the governing party, or restrict opposition actions (e.g. Singapore) <sup>(122)</sup>. In some multi-party systems the ruling party enlarges its organization to include most of the social strata which perpetuate its position in power (e.g. Mexico), or try to bribe legislators by allocating development funds to members of the government party and those who join it from the opposition <sup>(123)</sup>.

### **1.3.2 Relationship between legislatures and the Electoral System:**

Elections may be preferred as a positive sign of popular participation and bring credit to the political elite. Moreover, the electoral system, as has been suggested, can be used to facilitate

controlled public involvement in the ruling process. The general election held by the military Baathist regime in Syria in 1973 after it seized power is an example of the electoral process legitimating the political system and was welcomed as such by the international community, clearly illustrating the fact that elections in one-party states legitimate the ruling party and the dominant ideology (124).

#### Choice of suitable arrangements:

Every electoral system has a tendency to lead to some distortion of votes. However, the difference among distinct electoral systems is on the basis of the extent to which this distortion can be realized. Electoral systems are not rigid frameworks and may produce different consequences in different societies. Thus a particular kind of proportional representation may work well in one country but result in an unbearable situation in another (125).

In its choice of electoral system a regime may refer to its political and social traditions. An important factor in selection will be the consequences of a particular system of election on the distribution of power in society and on the balance of power between government organs, especially as regards the relationship between the executive and the legislature. The government of a new state will tend to choose an electoral system which will enhance its power or which will satisfy social change without decreasing the power of the executive. In countries with organized parties, the latter will seek to preserve their domination of power in the legislature through their choice of electoral system (126).

The most popular electoral systems are plurality, majority, and proportional representation. (1) Proportional representation is a system where legislative seats are distributed among the competing parties on the basis of votes each one of them has received in the election (127).

A rigid pattern of proportional representation is likely to strengthen the hand of the main party over its candidates especially under a list system in which the party control the order of names on its lists so as to place the most loyal candidates at the top regardless of their popularity compared to other candidates listed lower down because deemed less reliable (128). Proportional representation of this kind represents the wishes of the party rather than of the people. In some states the list system exists in a modified form so that voters have the right to choose the candidates they prefer either from the same list or from different lists regardless of the order of names. This is known as the Single Transferable Vote (129).

It has been argued that the system of proportional representation favours small parties and guarantees them a voice in the national legislature, since they only need to secure the support of a relatively small number of voters (130). However, it may lead to no single party having a sufficient majority to form a government, thus resulting in the formation of an unstable coalition. Nonetheless, this cannot be assumed since proportional representation may equally well prevent the emergence of a united opposition (131).

(2) The plurality or First-Past-The-Post system, in which the candidate with the larger number of votes wins the seat, is likely to produce different results to proportional representation. If there are no well organised parties it will probably be hard for one candidate to get a majority of votes and so the system is less fair than proportional representation in that it does not accurately reflect the political views of the electorate. This distortion increases if combined with single-member constituencies (132).

#### The experience in the Third World:

The electoral systems of many developing countries are designed to pack the legislature with members acceptable to the regime. There are a number of devices employed to this end. A literacy qualification is a well-known condition for voting in Latin America. Combined with the over valuing the vote in rural constituencies, this secures the domination of the national legislature by the upper class elites (133). Another condition imposed by governments to control legislatures is the allocation of certain percentage of seats to sectors of society under the control of government. This practice was well established in Syria and Egypt (under Nassir) where 50 per cent of the seats were assigned for the peasants and wage-earners. The unions representing these two sectors were controlled by the ruling party, hence, the government was guaranteed half the seats in the assembly (134).

Other means employed by government to control the membership of legislatures include preferring certain political parties, prohibiting independent candidates from standing for legislative election, and outlawing ideological or ethnic parties (135).

Electoral system may also be used by parties to change the composition of the legislature where the practice of alternates is employed so as to replace, for example, an elderly popular member who retires soon after election by his alternate, a young party activist (136). Bogdanor has noted the effects of the type of electoral system on the composition of the legislature. He argues that proportional representation rather than the plurality system favours the representation of women and of ethnic minorities (137).

#### Effect of electoral systems on the legislature:

The effects of the electoral system on the legislature and the political system as a whole are likely to be predictable in countries with ethnic or religious minorities where these groups are represented on different grounds than the majority. Minorities can be represented in the legislature by reserving specific seats for their candidates. This has been done in Zimbabwe and Cyprus. One problem which may arise under such a system is determining which groups are entitled to be called a minority. Another pattern of minority representation in Third World has been introduced in Lebanon where there were two kinds of electoral districts. In the first kind, only candidates of the dominant sect must contend the seat. In the second kind of districts the college system was introduced in accordance with which candidates of all the sects represented in the district formed lists which were proportionally distributed among them, each list seeking the support of all voters in the district (138).

The relationship between the legislator and his constituents will also be influenced by the electoral system which determines

electoral districts. Such districts are determined either under the Constitution, the legislature, the executive, or by an independent boundary commission acting alone or in concert. In single-member or small multi-member constituencies where candidates are better known to the electorate the relationship is likely to be more effective and closer than in large multi-member constituencies in which the candidates may be no more than names to the vast majority of constituents. The relationship in a large multi-member constituency will probably be weakest under the list system (139).

The purpose of the electoral system as it operates in some developing countries is to prevent the emergence of a political class or of a legislative career. The Mexican electoral norm of no-re-election of legislators appears to be justified on these grounds, although such a principle may weaken the legislature itself (140). In Tanzania the process of election to the legislature tends to block the ambition of many legislators to be re-elected. Over half of the successful candidates in the 1985 election were new comers (141).

Finally, abstention of voters in legislative elections has been interpreted by academic analysts as opposition to the process or to the regime itself. If the voters stay away from the election on large scale or in a specific region, this phenomenon cannot be interpreted as lack of interest in political participation but rather it as a sign of public disapproval. The abstention phenomenon has been observed in a number of Third World states where the government has banned the opposition or used electoral system to manipulate legislative elections (e.g. Syria, Ghana, Senegal) (142). An increasing degree of abstention might result in the legitimacy of the *status quo* being challenged in other ways.

#### **1.4 Conclusion:**

For the most part it will be inappropriate to generalize the findings relating to one political system or geopolitical area to other parts of the world since it is hard to verify empirically the extent to which functions are actually performed by a certain legislature.

Third world legislatures were analysed in the Western studies by using the same guide-lines as are utilised in the study of Western legislatures. Their focus on the Law-making function led them to the conclusion that legislatures in developing countries are unsuccessful or aggravate development.

It has become now clear that the new order in many of the newly independent countries was not that different from rule under the colonial power, since the executive and judiciary continued to be more important than the legislative assembly which, far from being the dominant influence in the political arena, was treated by the ruling elites who controlled the executive in much the same way as it has been treated in the pre-independence period.

A survey of world legislatures reveals that most legislatures of the world are not truly representative. In other words, not every social, political, racial, religious, economic and territorial group is represented in the legislature according to their percentage in society. One variation among contemporary legislatures is in the extent of misrepresentation between legislators and electorates.

The key question to be considered, is what is the role of the legislature in developing countries and how that role is capable of adaptation or change. Constitutional scholars thus have identified a number of functions which include law-making, the promotion of national integration, the representation of local and national interests, the mobilization of public support for the political leadership, and the legitimization of political actions. In addition, legislatures can act as forms for political recruitment, contribute to the political indoctrination of the masses and, in some cases, they may scrutinize the actions of the executive.

We have seen with regard to the relationship between the legislature and political parties that the emergence of political parties on the political scene of many developing countries has a great effect on the relationship between the legislature, the executive, and society at large. Parties become intermediate bodies between the legislature and executive on the one side and the legislature and the people on the other.

Moreover, we have seen that the election of the legislature benefits the existing order by providing at least token representation of existing social forces whilst generating the illusion of popular support for the government. In some authoritarian regimes, elections are sometimes used merely as a means of relieving of social tension while in other instances they are regarded as the appropriate means of redistributing legislative seats among those peripheral to the political power structure.

The main question of the role and function of the legislature is an important theme in the thesis. In this chapter the experience of Third world has been contrasted to that of the Western



countries. We turn to examine how the U.A.E. Constitution and legislature developed. However, it is useful to understand the socio-economic and political background of the U.A.E. Chapter 2 explains the U.A.E.'s early historical, political and legal developments.

**Footnotes:**

- 1 - K.C. Wheare, **Modern Constitutions**, Oxford University Press, London, 1964. p. 9.
- 2 - **Ibid.**, pp. 10-12.
- 3 - **Ibid.**, pp. 50-57.
- 4 - Michael Mezey, **Comparative Legislatures**, Duke University Press, Durham, N.C., 1979, p. 3.
- 5 - **Ibid.**, p. 4.
- 6 - **Black's Law Dictionary**, Fifth Edition, West Publishing Co., St. Paul, Minn, 1979.
- 7 - Nelson Polsby, "Legislatures" in Fred Greenstein, and Nelson Polsby, (eds.) **Governmental Institutions and Processes**, Vol. 5, Addison-Wesley Publishing Co., Massachusetts 1975. pp. 258-59.
- 8 - Mezey (79), op. cit., p. 6.
- 9 - **Ibid.**, p. 227.
- 10 - Jean Blondel, **Comparative legislatures**, Prentice-Hall, Inc., Englewood Cliffs, N.J., 1973, pp. 137-140. See Mezey (79), op. cit., pp. 277-78.
- 11 - David Olson, **The Legislative Process**, Harper & Row Publishers, New York 1980. pp. 449-53. Hague and Harrop introduced in their first edition of their book (1982) a classification based upon the relation between the legislature and executive. They outlined five types of legislatures ; dominant, autonomous, adversary, inhibited, and submissive. Yet in the second edition (1987) they adopted Michael Mezey classification.
- 12 - Significant studies in the field of Third World Comparative legislatures are: Allan Kornberg, and Lloyd Musolf, (eds.) **Legislatures in Development Perspective**, Duke University Press, Durham, N.C., 1970. Weston Agor, (ed.) **Latin American Legislatures: Their Role and Influence**, Praeger Publishers, New York, 1971. Allan Kornberg, (ed.) **Legislatures in Comparative Prospective**, David Mc Kay Company, Inc. New York, 1973. Jean Blondel, **Comparative legislatures**, op. cit. Albert F. Eldrige (ed.) **Plural Societies: the Search for Cohesion in National Development**, Duke University Press, Durham, N.C., 1977. Joel Smith, and Lloyd Musolf, (eds.) **Legislatures in Development: Dynamics of Change in New and Old**

**States**, Duke University Press, Durham, N.C., 1979.  
Michael Mezey, **Comparative Legislatures**, op. cit.

- 13 - Michael Mezey, "The Functions of Legislatures in the Third World" in **Legislative Studies Quarterly**, Vol. 8, No 4, p. 513.
- 14 - James Elliot, "Towards Parliamentary Democracy in the Third World: the Case of Thailand" in **Parliamentary Affairs**, Vol. 37, No. 2, 1984. p. 216. .
- 15 - Rod Hague & Martin Harrop, **Comparative Government and Politics: An Introduction**, Macmillan Press Ltd. London (First Edition 1982, Second Edition 1987. p. 134 and p. 186.
- 16 - See Samuel Huntington, "The Change to Change: Modernization, Development, and Politics" in **Comparative Politics**, Vol. 3, No. 3, 1971.
- 17 - Quoted in Ersin Kalaycioglu, "Why Legislatures Persist in Developing Countries: The Case of Turkey" in **Legislative Studies Quarterly**, Vol. 5, No. 1, 1980. p. 124.
- 18 - Robert Packenham, "Legislatures and Political Development" in Kornberg and Musolf (eds.), op. cit., p. 522.
- 19 - **Ibid.** p. 578.
- 20 - Robert Packenham, "Functions of the Brazilian National Congress" in Agor (ed.), op. cit., p. 285.
- 21 - Abdo Baaklini, "Legislatures in New Nations: Towards a New Prospective" in **Polity**, Vol. 8, No. 4, 1976. pp. 559-71.
- 22 - Yash Ghai, "Systems of Government" in Ghai, Yash (ed.) **Law, Politics and Government in the Pacific Island States**, Institute of Pacific Studies of the University of the South Pacific, Suva, 1988. p. 98.
- 23 - Victor Le Vine, "Parliaments in Francophone Africa: Some Lessons from the Decolonization Process" in Smith and Musolf (eds.), op. cit., pp. 126-28. See also B. B. Schaffer, "The Concept of Preparation: Some Questions about the Transfer of Systems of Government" in **World Politics**, Vol. 18, No. 1, 1965. pp. 51-53.
- 24 - Le Vine, op. cit., p. 134.
- 25 - Barry Munslow, "Why has the Westminster Model Failed in Africa ? "in **Parliamentary Affairs**, Vol. 36, No. 2, 1983. p. 223.
- 26 - Le Vine, op. cit., pp. 150-51 and Baaklini, op. cit., p. 567.
- 27 - Abdo Baaklini, and Alia Abdul-Wahab, "The Role of the National Assembly in Kuwait's Economic Development:

- National Oil Policy" in Smith and Musolf (eds.), op. cit., p. 333.
- 28 - Richard Sisson, and Leo Snowiss, "Legislative Viability and Political Development" in Smith and Musolf (eds.), op. cit., pp. 57-58.
  - 29 - Le Vine, op. cit., pp. 142-43. The same thing happened in Latin America where the Creoles adopted American and some European models for their political systems after the independence in the nineteenth century. See Carlos Alberto Astiz, "The Decay of Latin American Legislatures" in Kornberg (ed.), op. cit., pp. 116-17.
  - 30 - Newell Stultz, "Parliaments in Former British Black Africa" in **The Journal of Developing Areas**, Vol. 2 (July) 1968. p. 482.
  - 31 - James Bill, "The Politics of Legislative Monarchy. The Iranian Majlis" in Herbert Hirsch, and M. Donald Hancock, (eds.) **Comparative Legislative Systems**, The Free Press, New York 1971. p. 362.
  - 32 - Arturo Valenzuela, and Alexander Wild, "Presidential Politics and the Decline of the Chilean Congress" in Smith and Musolf (eds.), op. cit., p. 190.
  - 33 - Michael Mezey, "The 1971 Coup in Thailand: Understanding Why the Legislature Fails" in **Asian Survey**, Vol. 13, 1973. p. 311.
  - 34 - Gerhard Leowenberg & Samuel Paterson, "Legislatures and Political Systems" in Louis Cantori & Andrew Ziegler, (eds.) **Comparative Politics in the Post-Behavioral Era**, Lynne Rienner Publishers, Boulder 1988. pp. 270-71.
  - 35 - Alan Rush, **Al-Sabah: History & Genealogy of Kuwait's Ruling Family 1752-1987**, Ithaca Press, London, 1987. p. 30.
  - 36 - Laraine Newhouse Carter, "Bahrain" in Richard Nyrop (ed.), **Persian Gulf States: Country Studies**, American University, 1984. pp. 182-184.
  - 37 - Allan Kornberg, and Kennieth Pittman, "Representative and Military Bodies: Their Role in the Survival of Political Systems of New States" in Smith and Musolf (eds.), op. cit., p. 82.
  - 38 - Bill, op. cit., p. 364.
  - 39 - Juan Linz, "Legislatures in Organic Statist-Authoritarian Regimes. The Case of Spain" in Smith and Musolf (eds.), op. cit., pp. 90-94. The concept of corporatism was introduced by Phillipe Schmitter. It provides that the constituents will be categorized functionally by the state and they will select their representatives to the national legislature.

- 40 - Peter Rains, "Profile Variables Among Argentine Legislators" in Agor (ed.), op. cit., p. 174.
- 41 - Blondel, op. cit., p. 81.
- 42 - Anek Laothamatas, "Business and Politics in Thailand: New Patterns of Influence" in Asian Survey, Vol. 28, No. 4, 1988, pp. 453-55.
- 43 - William Tordoff, "Residual Legislatures: The Case of Tanzania and Zambia" in Journal of Commonwealth and Comparative Politics, Vol. 15, 1977, p. 237.
- 44 - Goran Hyden, and Colin Leys, "Elections and Politics in Single-Party Systems: The Case of Kenya and Tanzania" in British Journal of Political Science, Vol. 2, 1972, p. 399.
- 45 - Robert Obsert, "Democracy and the Persistence of Westernized Elite Dominance in Sri Lanka" in Asian Survey, Vol. 25, No. 7, 1985, pp. 762-65.
- 46 - Jan Kees Donge, and A. J. Liviga, "The 1985 Tanzanian Parliamentary Elections: A Conservative Election" in African Affairs, Vol. 88, No. 350, January 1989, p. 55. The education factor has not gained the same value in Ireland where it has been shown that only 38 per cent of the Irish Dail deputies were university graduates in November 1982. See Michael Gallagher, "Social Backgrounds And Local Orientation of Members of the Irish Dail" in Legislative Studies Quarterly, Vol. 10, No. 3, 1985, pp. 377-78.
- 47 - Gallagher, op. cit., p. 374 Laothamatas, op. cit., p. 453.
- 48 - Donge, op. cit., p. 58.
- 49 - Olson, op. cit., p. 99.
- 50 - Joel Verner, "The Guatemalan National Congress: An Elite Analysis" in Agor (ed.), op. cit., p. 301 and see Crow, op. Cit p. 285.
- 51 - Yogendra Malik, "Role perception and Role Evaluation of Indian Urban Political Elite" in Asian Survey, Vol. 23, No. 9, 1983, pp. 1062-63. See Gary Hoskin, "Dimensions of Representative in the Colombian National Legislature" in Agor (ed.), op. cit., p. 406.
- 52 - Chan Wook Park, "Legislators and Their Constituents in South Korea: The Patterns of District Representation" in Asian Survey, Vol. 28, No. 10, 1988, p. 1049. See ague, op. cit., pp. 194-99.
- 53 - Laothamatas, op. cit., p. 453.
- 54 - Malik, op. cit., p. 1077. See Mezey (83), op. cit., p. 522.

- 55 - Ghai, op. cit., p. 68. Such practice is held in some pacific island states (e.g. Kiribati, Belau, Tulvalu).
- 56 - Packenham (70), op. cit., p. 527.
- 57 - Olson, op. cit., pp. 167-69
- 58 - D. George Kousoulas, **On Government: A Comparative Introduction**, Wadsworth Publishing Company, Belmont, California, 1968. pp. 72-78. .
- 59 - Olson, op. cit., p. 170.
- 60 - O. Hood Phillips, and Jackson, **Paul O. Hood Phillips' Constitutional and Administrative Law**, Sweet & Maxwell, London, Sixth Edition 1978, p. 123. See also K. C. Wheare, **Legislatures**, Oxford University Press, London 1963, p. 1.
- 61 - See John Locke, **Two Treatises of Government**. The Second Treatise on Civil Government, Chapter XI. See Baron De Montesquieu, **The Spirit of the Laws**, Book XI, Chapter 6.
- 62 - Blondel, op. cit., pp. 36-38.
- 63 - Ghai, op. cit., p. 90. See also Astiz, op. cit., p. 123.
- 64 - E. C. S. Wade, and A. W. Brady, **Constitutional and Administrative Law**, Longman, Hong Kong, reprinted Tenth Edition 1986, p. 48. They argued that delegated legislation is a necessary practice in modern political systems because the short of parliamentary time, technical reasons, in state of emergency, and that the executive is more flexible, pp. 611-12.
- 65 - Such instance occurred in Lebanon. See Ralph Crow, "Parliament in the Lebanese Political" in Kornberg and Musolf (eds.), op. cit.,
- 66 - Weston Agor, "The Decisional Role of the Senate in the Chilean Political System" in Agor, op. cit., pp. 21-38.
- 67 - Lloyd Musolf, and J. Fred Springer, "The Parliament of Malaysia and Economic Development: Policy Making and MP" in Smith and Musolf (eds.), op. cit., pp. 297-98. See Raymond Hopkins, "The Influence of Legislature on Development Strategy: The Case of Kenya and Tanzania" in Smith and Musolf (eds.), op. cit., p. 166. See also Jan Kees Donge and Authumani Liviga, "In Defence of the Tanzanian Parliament" in **Parliamentary Affairs**, Vol. 39, No. 2, 1986, p. 25. See Le Vine, op. cit., p. 126.
- 68 - Obsert, op. cit., pp. 760-71. See McDonald Roland "Legislative Politics in Uruguay: A Preliminary Statement" in Agor (ed.), op. cit., p. 114. See also Ernest Duff, "The Role of Congress in the Colombian Political System" in Agor (ed.), op. cit., p. 369.

- 69 - Blondel, op. cit., pp. 109-11 and also Olson, op. cit., pp. 173-74.
- 70 - Hague, op. cit., pp. 201-03.
- 71 - Ghai, op. cit., p. 96. The pacific island states which adopt the vote of no-confidence and which is not related to the dissolution of parliament are the Solomon Island, Papua New Guinea (in the first four years of legislature tenure it can not be dissolved) and Vanuatu. The Lebanese legislature did not use this power because of its sensitivity in a heterogeneous society, see Crow, op. cit., p. 295.
- 72 - Hopkins, op. cit., p. 167.
- 73 - Michael Mezey, "The Functions of A Minimal Legislature: Role Perception of Thai legislators" in **Western Political Quarterly**, Vol. 25, 1972, pp. 686-89. See David Morell, "Thailand's Legislature and Economic Development Decisions" in Smith and Musolf (eds.), op. cit., p. 345.
- 74 - Donge (89), op. cit., p. 53. See Chan Heng Chee, "The Role of Parliamentary Politician in Singapore" in **Legislative Studies Quarterly**, Vol. 1, No. 3, 1976, p. 426.
- 75 - J.P. McAuslan and Yash Ghai, "Constitutional Innovation and Political Stability in Tanzania: A preliminary Assessment" in **The Journal of Modern African Studies**, Vol. 4, No. 4, 1966, pp. 500-01. See Tordoff, op. cit., p. 243.
- 76 - Munslow, op. cit., pp. 224-25.
- 77 - Stultz, op. cit., p. 489, Bill, op. cit., p. 62, and Olson, op. cit., p. 17.
- 78 - Mezey (79, op. cit., 268.
- 79 - Alejandro Portes, "Legislatures Under Authoritarian Regimes: The Case of Mexico" in **Journal of Political and Military Sociology**, Vol. 5, 1977, p. 189.
- 80 - Tordoff, op. cit., p. 244, see Stultz, op. cit., p. 322, and see Chee, op. cit., p. 436.
- 81 - The constituents may use an election campaign to put forward their societal or personal requests as is reported to have taken place in several developing countries. Politicians may seek a manifesto or authority from the electorate. In Korea, for example, candidates have been faced with long lists of demands ranging from job seeking to mediation in courts or police stations. The same pattern has occurred in the Philippines where not only particulars requests were presented but also petitions at national level. Park, op. cit., pp. 1058-59. See Robert Stauffer, "Congress in the Philippine Political System" in Kornberg and Musolf (eds.), op. cit., pp. 358-59.
- 82 - Park, op. cit., 1057. see Morell, op. cit., p. 347.

- 83 - Blondel, op. cit., pp. 97-99, and see Park, op. cit., pp. 1051-55.
- 84 - Victor Le Vine, "Political Elite Recruitment and Political Structure in French-Speaking Africa" in **Cashiers D'Etudes Africaines**, Vol. 8, 1968, p. 369.
- 85 - Mezey (79), op. cit., pp. 227-28.
- 86 - James Payne, "The Colombian Congress" in Hirsch and Hancock (eds.), op. cit., pp. 178-79.
- 87 - Abdul-Reda Assiri and Kamal Al-Monoufi, "Kuwait's Political Elite: The Cabinet" in **The Middle East Journal**, Vol. 42, No. 1, 1988, p. 54.
- 88 - Lee Fennell, "Congress in the Argentine Political System: an Appraisal" in Agor (ed.), op. cit., pp. 159-61. See Stauffer, op. cit., p. 345.
- 89 - Tordoff, op. cit p. 224.
- 90 - Stauffer, op. cit., p. 355, and see Hopkins, op. cit p. 171.
- 91 - Packenham (71), op. cit., p. 274.
- 92 - Jean Grossholtz, "Integrative Factors in the Malaysian and Philippine Legislatures" in **Comparative Politics**, Vol. 3, No. 1, 1970, p. 94.
- 93 - Weston Agor, "Senate: Integrative Role in Chile's Political Development" in Hirsch and Hancock (eds.), op. cit., p. 245.
- 94 - Malcolm E. Jewell & Albert F. Eldridge "The Legislature as a Vehicle of National Integration" in Eldridge (ed.), op. cit., p. 276.
- 95 - Grossholtz, op. cit., p. 109.
- 96 - Loewenberg, op. cit., pp. 276-77. See Hyden, op. cit., pp. 393-95.
- 97 - Hague, op. cit., p. 194.
- 98 - Mezey (83), op. cit., p. 526.
- 99 - Mezey (79), op. cit., p. 265.
- 100 - Ibid., p. 270.
- 101 - Packenham (71), op. Cit p. 271.
- 102 - Joel Verner, "Legislative Attitudes Toward Overpopulation: The Case of El Salvador" in **The Journal of Developing Areas**, Vol. 10, 1975, p. 65.
- 103 - Packenham (71), op. cit., pp. 271-73.



- 104 - Bill, op. cit., p. 364.
- 105 - Polsby, op. cit., pp. 264-67. See Portes, op. cit., p. 185.
- 106 - Mezey (79), op. cit., p. 274.
- 107 - G. Hossien Razi, "The Nexus of Legitimacy and Performance: The Lessons of the Iranian Revolution" in **Comparative Politics**, Vol. 20, 1987, pp. 454-58.
- 108 - Mezey (79), op. cit., p. 266.
- 109 - Malcolm Jewell, "Linkages Between Legislative Parties and External Parties" in Kornberg (ed.), op. cit., pp. 204-05. See Duff, op. cit., p. 391.
- 110 - Blondel, op. cit., pp. 52-53. See Ghai, op. cit., p. 69.
- 111 - Mezey (73), op. cit., pp. 316-17.
- 112 - Blondel, op. cit., p. 52.
- 113 - Yash Ghai, "Political Consequences of Constitutions" in Ghai (ed.), op. cit., p. 355.
- 114 - Mezey (72), op. cit., pp. 690-91. Political parties in Third World states tend both to create and to solve problems. They encourage political participation of citizens, represent their demands, and propose practical solutions, also the parties are likely to abuse their power if they become the dominant institutions in the society. See Elliot, op. cit., pp. 224-25.
- 115 - There are several reasons where a single party can become the only operating political institution in a society. (1) Leadership of the independence struggle may have conferred legitimacy upon the party in a particular society. (2) It may have been established by national leaders of great public reputation. (3) The predominant position gained by a particular party through its effective organization and performance may be preserved by banning other parties. See Jewell, op. cit., pp. 208-09.
- 116 - Donge (89), op. cit., pp. 48-51.
- 117 - Valenzuela, op. cit., p. 197. See Joel Smith and Lloyd Musolf, "Some Observation on Legislatures and Development" in Smith and Musolf (eds), op. cit., p. 10.
- 118 - Maurice Duverger, **Political Parties**, Low & Brydone (Printers) Ltd., London, reprinted 1969, pp. 353-55.
- 119 - R. Lynn Kelley, "The Role of the Venezuelan Senate" in Agor (ed.), op. cit., pp. 505-06. See Ranis, op. cit., p. 205.
- 120 - Polsby, op. cit., p. 299.
- 121 - Ghai, op. cit., p. 356.

- 122 - Hyden, op. cit., p. 395, and see Chee, op. cit., p. 425.
- 123 - Morell, op. cit., pp. 351-557. This practice was used in Thailand to increase the number of government party representatives from 75 to 127.
- 124 - Guy Hermet, "State-Controlled Elections: A Framework" in Guy Hermet, Richard Rose, and Alain Rouquie (eds.) **Elections Without Choice**, Macmillan Press Ltd., London 1978, pp. 12-15. See Elizabeth Picard, "Syria Returns to Democracy: the May 1973 legislative Elections" in Hermet, op. cit., pp. 140-41, see Naomi Chazan, "African Voters at the Polls: A Pre-examination of the Role of Elections in African Politics" in **Journal of Commonwealth and Comparative Politics**, Vol. 17, 1979, p. 138, and also see McAuslan, op. cit., p. 493.
- 125 - Vernon Bogdanor, "Electoral Systems and Party Systems" in Bogdanor and Butler, David **Democracy and Elections**, Cambridge University Press, Cambridge 1983, p. 251.
- 126 - Wheare, op. cit., pp. 57-58.
- 127 - Arned Lijphart, "Proportionality by non-PR Methods: Ethnic Representation in Belgium, Cyprus, Lebanon, New Zealand, West Germany, and Zimbabwe" in Bernard Grofman and Arned Lijphart, (eds.) **Electoral Laws and Their Political Consequences**, Agathon Press, Inc., New York 1986, p. 113.
- 128 - Duff, op. cit., p. 383.
- 129 - **Report of the Royal Commission**, Fiji 1975, pp. 13-14.
- 130 - Wheare, op. cit., pp. 55-57.
- 131 - Fennell, op. cit., p. 152, and see Olson, Op. cit., pp. 40-41.
- 132 - It has been argued that the plurality system tends to produce a two-party system and a majority party. However, the number of parties will probably depend more upon a society's political social structure than upon the electoral system. It was reported that in the 1982 legislative elections in Papua New Guinea only 18 parliamentarian out of 109 won a majority in their constituencies. Yet, this number decreased to seven in the 1987 elections. See Ghai, op. cit., pp. 59-60. Also Bogdanor, op. cit., pp. 257-6.
- 133 - Astiz, op. cit., pp. 118-20.
- 134 - Picard, op. cit., p. 134.
- 135 - Hermet, op. cit., p. 4. See Chazan, Op. cit., p. 146.
- 136 - Kelley, op. Cit p. 469, and see Payne, op. cit., p. 179.

- 137 - Bogdanor, op. cit., pp. 248-50. In some instances the electoral system is intended to favour central or national parties rather than regional and provincial parties by restricting the right to establish or vote for regional parties. See Elliot, op. cit., p. 225.
- 138 - Lijphart, op. cit., pp. 116-21. One of the draw backs of all such systems is that they violate the principle of equal representation and at the same time may lead to the elimination of orthodoxy among candidates of the sects concerned, as happened in Lebanon. These systems do not contribute to national integration and may end in crisis.
- 139 - Jewell, op. cit, p. 213.
- 140 - Portes, op. cit., pp. 192-95.
- 141 - Donge (89), op. cit., p. 51.
- 142 - See Hermet, op. cit., p. 12. Also Martin Harrop & William Miller, **Elections and Voters**, Macmillan Education Ltd., London 1987, p. 258. See Chazan, op. cit., pp. 149-50, and see Picard, op. cit., p. 137.

## **CHAPTER TWO**

### **THE HISTORICAL, SOCIO-ECONOMIC AND POLITICAL ASPECTS OF THE UNITED ARAB EMIRATES (U.A.E.)**

#### **2.1 Introduction**

This chapter seeks to highlight the socio-economic background of the United Arab Emirates (U.A.E.) in order to analyse how the U.A.E. legislature has functioned over the years. We turn to examine the U.A.E. first in the context of its social, economical and political background.

Before the discovery of oil in the 1960s, economic activities were dictated by the geographical location and climate of these littoral states. The main activities of the people were diving for pearls, fishing and seafaring. Agriculture was a secondary occupation because of the weather, soil and scarcity of water. After the discovery of oil in certain regions of the United Arab Emirates, the whole economic structure was changed. The affluence of oil had drastic consequences for the traditional way of life.

However, to approach an economic analysis of the U.A.E. society on a pre-oil and post-oil basis would be misleading. Such perspectives would be very narrow and would not take account of the many facts of social life (1). A similar point might be made that class analysis would be equally unhelpful, especially in the case of

**Emirates population figures, 1980, 1985, 1990.**

Emirate	1980 <sup>a</sup>	1985 <sup>a</sup>	1990 <sup>b</sup>
Abu Dhabi	451,848	670,125	889,518
Dubai	276,311	419,104	559,771
Sharjah	159,317	268,723	377,851
R.A.K.	73,882	116,470	159,061
Fujairah	33,331	54,425	76,659
U.A.Q.	12,426	29,299	46,168
Ajman	36,100	64,318	92,535
Total	1,043,215	1,622,464	2,201,563

a = Census figures. b = Ministry of Planning forecasts.

Source: Sarah Searight, **The United Arab Emirates through the 1990s**, The Economist Intelligence Unit, May 1990.

U.A.E. traditional society for several reasons. The most important is that prior to the oil era, for most of the population specialization in one form of economy was rare and impractical (2) and the basis of social stratification was political rather than economic. Economic status did not play a significant role in the differentiation between groups and the demarcation of social strata. Kinship was the common factor. An impecunious individual might easily identify with a group consisting of much richer citizens. It has been said that "... instead of horizontal classes

stretching across the societies, there were parallel vertical groups maintaining their distance from each other" (3).

Detailed analysis of the history of the Emirates concludes that two factors affected the socio-economic structure of their societies. One was their relation with Britain, the second was the outflow of "black gold" (i.e. oil ). In this chapter the relationship of the Emirates with Britain will be discussed and the traditional social structure explained. The implications of oil wealth for the old order will be explored and the legitimacy of the ruling families' claim to power will be examined.

## **2.2 Emirates Relations With Britain (1820-1971)**

British influence was first in evidence in the Gulf with the coming of the East India Company to the region in the early eighteenth century (4). The company was responsible for extending Britain's commercial links and protecting its economic interests. The first connection between the East India Company and the Gulf states was with Kuwait. After Persia occupied the port of Basra at the mouth of the Gulf in 1776, the company established a factory in Kuwait, regarding it as a new port from which to deal with the heart of the Arabian Peninsula (5). It was an informal relationship, not to be cemented in a legal form until one century later.

In fact, the British connection with individual emirates was much stronger and may be traced back to the nineteenth century. It started with the attack on Ras-al-Khaimah, the capital of Arab marine power in the Gulf at that time, and its destruction in 1820. In the same year the East India Company concluded a peace treaty

with ten of the tribal chiefs (known as shaikhs). It has been suggested by some British historians that the treaty was intended merely to ban piracy and slavery. As one of the officials stated in recent years :

"The suppression of piracy was an obvious way to secure sea routes while the suppression of slavery was no more than an English liberal fashion at that moment in the nineteenth century." (6)

However, the real intention was not so enlightened. Self interest was the dominant consideration. It was in fact a step toward enhancing Britain's commercial interests in this new area and securing the sea routes to India.

In 1853, after a series of short-term treaties, Britain imposed on the local shaikhs a treaty that has come to be known as the "Perpetual Maritime Truce". Ever since then the signing emirates have been called the "Trucial States". Britain institutionalized its power in the Gulf by preventing the signatories from retaliating against each other. In the case of a dispute, the aggrieved party had to raise his claim with the British authority which was the only eligible power to deal with such incidents (7). This treaty, like the 1820 treaty, was concerned with peace at sea not on land. It had a special effect on the balance of power among the Trucial States. The power of the Qawasim tribal confederation in Sharjah and Ras-al-Khaimah, which was mainly a marine power, was decreased while its rival, the Bani Yas confederation in Abu Dhabi, which was mainly a land power, gained ground(8).

The final step in the British plan to control the Trucial States was taken in 1892 when the so-called "Exclusive Agreement" was

signed by the shaikhs of these states. They agreed on behalf of themselves and their heirs

"not to enter into any agreement or correspondence with any power other than Britain ; not to consent to the residence within their territories of any agent of another government and on no account to cede, sell, mortgage or otherwise give occupation of any part of their territory to anybody but the British Government."  
(9)

By this agreement the shaikhs surrendered all their external affairs to the British Government and approved the minimum of British interference in internal affairs.

Certain conclusions may be drawn from a study of the major treaties that the shaikhs were involved in. First of all, these treaties did not explicitly define what was meant by "protected states". They did not even determine the parameters of the impending jurisdiction nor define clearly the territory it was supposed to be applied to. In addition, in no place did these treaties indicate that these states had surrendered their international representation to Britain. Nonetheless, Britain was always justifying its presence and domination in the area on the basis of these treaties (10). It used to describe its fellow signatories in a vague phrase, as "independent states in special treaty relations with His Majesty's Government." (11)

It was not only the political systems of these societies which were subject to British influence, but such influence extended to the legal systems. The British extra-territorial jurisdiction was introduced at the beginning of the twentieth century. British influence came through treaties and arrangements concluded with the rulers, and on the Foreign Jurisdiction Acts of 1890-1913



which enabled the crown to establish courts in foreign lands. Actually the British extra-territorial jurisdiction was imposed in the emirates in 1946 under the Trucial States Order in Council. The practice and extent of extra-territorial jurisdiction differed from one state to another. It was extended in the Trucial States to cover all non-national subjects, while in Bahrain and Kuwait it was less widely applied (12).

As W. Ballantyne notes, the introduction of the British jurisdiction to the area created two systems of courts. First, local courts exercising their jurisdiction over subjects of the states concerned. These courts applied Shariah and customary laws. Second, British courts applying extra-territorial jurisdiction over non-national subjects. The body of law exercised in these courts was based on Common law principles (13). The hierarchy order of the British courts in the Trucial States was as follows. 1- Court for the Trucial States, 2- Chief Court for the Persian Gulf as an appeal court, and 3- Full Court of the Persian Gulf as the higher appeal court. (14)

However, many changes were made during 1950s and 1960s with regard to the persons and matters under foreign jurisdiction in the emirates. Provisions were introduced for the transfer of jurisdiction over certain non-national groups and matters to the individual emirate's jurisdiction. The emirates were encouraged to formulate their own institutions and legislation. Frauke Heard-Bey rightly noticed that "compared to most countries which had been former British colonies, the influence of British legal thinking (in the Trucial States) was nevertheless only skin deep." (15)

It is important to point out that the British Government of India was responsible for the administration of British relations with the Trucial States. However, after the independence of India in 1947, the conduct of these relations was transferred for one year to India Office in London. The Colonial Office was not responsible for the emirates' external affairs, because they were never former colonies. In 1948 the Foreign Office took the responsibility from India Office. (16)

With regard to internal affairs of the emirates, the British were not of the habit of interfering unless there was danger to British interests in the area. Such policy became more obvious in the 1950s and 1960s. A writer wrote that "the Political Agents did not as a rule force the views of the British Government upon the shaikhs. In spite of this, they did expect that their advice would be heeded by the Rulers." (17)

In practical terms, the British institutions (i.e. Political Resident and Political Agents) were very important in shaping these states' policies. To continue in power a shaikh had to have the support of his people and the British authorities. In some cases the latter was much more important than the former. The Political Resident's decision might affect a shaikh's political future. His refusal to recognize a shaikh's claim to power was a significant obstacle to the latter's ambitions. Such a situation arose in Dubai in 1929 (see chapter 3), and in 1965 in Sharjah and Abu Dhabi where the two shaikhs did not fully cooperate with the British authority (18).

An important feature of the British rule was the power of a British official. In personal influence, if an official was in favour of a certain shaikh, this became valuable so that it could increase the authority of the ruling family in society. This power was inherent in the official's status and the influence at his disposal. It became a personal matter for the official to develop his own style. Rosemarie Zahlan gave a clear picture of this situation in Bahrain, which was similar to that in the Emirates, as follows :

"The Political Agent controlled Bahrain's foreign relations; he had jurisdiction over all foreigners in Bahrain; he sat as a judge in the Joint Court along with the ruler's representative there; he controlled the entry of all foreigners to Bahrain; and he was the only link between the government of Bahrain and BAPCO."  
(19)

Britain's presence and its treaty arrangements changed the existing order of things. It divided the existing political units into new smaller units. Although Donald Hawely, in his book The Trucial States (1970), tried to give the impression that there were already seven emirates and Britain merely preserved that position through its treaties with them (20), the reality was different. Prior to the British involvement in the area only two political units were in existence; the Qawasim and the Bani Yas confederations. The British power split the Qawasim area into five small emirates, and encouraged the separation of Dubai from the Bani Yas confederation. The final result of this policy was a new and weak political mosaic with seven emirates having emerged by the end of 1952 (21).

At the same time, Britain was intent on preserving the underlying socio-political structure of the societies. Local affairs were left in the hands of the shaikhs themselves. Indeed, Britain

positively enhanced the power of the heads of the emirates as long as they entered into its treaty system and co-operated with it. The authority of other shaikhs, especially those in the hinterland, was diminished or restricted in favour of the coastal shaikhs (22).

Finally, the long-term relationship between these states and Britain, especially in the case of Trucial States, isolated them from the outside world. On the eve of 1971 most of these states lacked the machinery for good domestic administration and international relations and were without well-trained armies (23). Britain was not willing to provide such institutions during its domination period. Its basic concern was, in fact, to fossilize the *status quo* in order to preserve its interests.

### **2.3 The Socio-economic Structure of the Traditional Society: prior to the advent of oil**

One must pay attention to two factors which have affected the social structure of the emirates, namely tribal values and Islam. The former was established with the arrival of waves of migrants from south-eastern Arabia in the second century AD. (24) Islam has been accepted in the area since early days of its emergence.

Tribal values which are based on kinship led to division of the society into small groups. These divisions are based on tribal and not class system. The individual therefore identifies himself with a group (i.e. tribe) rather than with a geographical location.

Islam, on the other hand, introduced the concept of equality among all humankind. The only division that Islam recognizes is based on religion. Islam, in addition, acknowledges the importance of leadership and therefore did not abolish the tribal hierarchy in the society. Islam also provided the traditional society with a legal code, viz. Shari'ah, which everyone has to refer to.

To sum up, the roots of social structure of the U.A.E. traditional society fall within the tribal values, while the legal framework of the society and personal behaviour is found in the Islamic traditions.

### 2.3.1 The Ruling Families

The Gulf region has the highest concentration of monarchies and dynasties in the world. Outside this area in the Middle East there are only two monarchies (Morocco and Jordan). In fact there are six monarchical states in this tiny geographical area. The United Arab Emirates alone has seven ruling families, one for each emirate. The existence of these families can be traced back, in the majority of cases, to the end of the eighteenth century (e.g. Kuwait, Bahrain, Abu Dhabi, Sharjah) while one ruling family (Fujairah) emerged in 1952.

In the Trucial States, tribal politics have played a significant role in determining which were to be the ruling families. As has been stated above, there were two tribal confederations. Each was divided into tribes, clans and families. Each tribe had its own chief. The paramount chief was designated as the head of the emirate. The seven ruling dynasties are the prominent families in the leading tribe in their area. This supremacy might be gained by

power or allegiance. The families are; the Al-Bu-Falah of Abu Dhabi, the Al-Maktoom of Dubai, the Al-Qasimi of Sharjah and Ras-al-Khaimah, the Al-Nuaimi of Ajman, the Al-Muala of Umm-al-Quwain, and the Al-Sharqi of Fujairah (25).

There were not many differences between the shaikh and his subjects. In his dress and everyday living he had the same kind of lifestyle as the rest of the population. He could be easily reached by his people. He knew almost every member of his society and their problems. He was supposed to hold the authority of rulership in order to guarantee his followers' interests, defend their rights and protect their properties. The shaikh was the final arbiter. All disputes were referred to him. His ruling, after consulting his tribal elders, was final. Some ruling families were supreme in their societies because of their role in settling tribal disputes ( e.g. Al-Bu Falah in Abu Dhabi) (26).

The ruling families used several subtle techniques to consolidate their leadership. These included forming alliances with important tribes in their territories to secure their loyalty and support and arranging marriages to the daughters of important figures in society. By choosing for themselves or their sons wives from the community's leading families, they cemented their relations with the people and secured their support peacefully (27).

Rulership was hereditary in a ruling family; however, the question of succession was not clearly defined. This is an historical phenomenon in Arab polities. The most eligible candidate was the one who had the strength, wealth and ability to fill the power vacuum. The non-existence of the law of primogeniture led to a

severe power struggle among the ambitious candidates. The ruling family was not a united group or a cohesive institution (28). It is not surprising therefore that in Abu Dhabi three shaikh brothers were assassinated in the period between 1912 to 1928.

The economic resources of the shaikh were limited. He was dependant on taxes, levies and customs duties imposed on the economic activities of the local community. Taxes on the pearling industry provided the shaikh with most of his income. Yet, not every member in the society was obliged to pay taxes. The shaikh could exempt his family members and some of the leading families in the community. There was a kind of economic interdependence between the ruler and the ruled. The right to levy taxes was something that distinguished city shaikhs from desert shaikhs.

The shaikh's rule was not absolute. There were certain checks and balances on his authority. Retention of his power depended on the support of his family and the various sections of his community. He had to prove his competence as a ruler, provide his family members with financial support and consult them regularly. If he failed to do so, then his life could be threatened by his ambitious kinsmen. He could be deported or killed. At the same time, if a group of his subjects were not satisfied with his treatment or way of ruling they could easily withdraw their families and take refuge in the territory of another shaikh. This kind of check was a serious threat to the shaikh both on an economic and on a military level (29).

Another form of checks and balances over the shaikh's rule was the traditional *Majlis*. The shaikh has to consult the

prominent members of his emirate before taking any decision. Moreover, he had to secure an acceptable system of wealth distribution to his subjects. It is noteworthy, that most of these forms of traditional pressures are still remain in the present U.A.E.

As we have seen earlier on, the treaty signed with Britain in 1820 marked a shift in the location of powers further away from the people while at the same time strengthening the position of the shaikhs. In effect the treaties reversed the prior limited form of acceptability to the people and made the shaikhs rather accountable to the British. For this reason they became stronger in relation to the people having been given a free hand in administering local affairs but in relation to the British they were subordinate.

R.S. Zahlan describing the role that the British power played in the political order in the traditional societies wrote:

"The rulers received moral and political support from Britain, and were allowed a free hand in the conduct of local affairs. They therefore gained much in stature during the British period. .... The treaty system strengthened [their] position and assured the continuity of [their] influence. With time, it became a guarantee. Most important it contributed to the institutionalization of [their] position." (30) British support transformed the position of some of the rulers in their emirates from equal among equals into autocratic rulers.



### 2.3.2 The Influence of the Merchants

Prior to the discovery of oil, the merchant group provided the main economic leadership in U.A.E. society. The merchants represented the beginning of a capitalist class but failed to form a truly cohesive group. In general, their economic position was derived from their organization of the major economic and production activities of the community in which they lived.

Most merchants were pearl merchants. They provided the main finance to pearl-fishing boats. In return they were eligible for a certain percentage of the production and had first option in buying the rest of the harvest. The other major marine activity in which the merchants were engaged was trade with the Indian subcontinent coast, Persia and the East Africa coast, with whom they had good relations.<sup>(31)</sup>

The influence of the mercantile group was not the same in the other shaikhdoms. There were many wealthy families but they were in a weaker position *vis-a-vis* the ruling families. From outward appearances only the ruling family of Dubai could be seen to be wealthy. The merchants, nevertheless, were in a better position in the political hierarchy than the rest of the society.

The position of the old-established merchant families was affected by two major developments. Regionally, the introduction of British steam cruisers in the Gulf led to decline in trade by traditional seafaring methods, and the introduction into the international market in the 1930s of the Japanese cultivated pearl led to the rapid collapse of the major source of wealth in the Gulf

area. The crash was so severe that by the end of the 1930s most of the merchants were heavily in debt. Only big families managed to survive the crash.

### 2.3.3 The Indigenous non-elite groups

The remainder of the population of the Emirates fell into two categories : first, the sedentary inhabitants, known as the *hadar*, and second, the nomadic or semi-nomadic tribes, known as the *badu* or bedouins. The two groups were recognized as being culturally different but economically interdependent (32). The bedouins spent most of the year in their oases in the desert, but in the summer season a great number of them joined the work force in the pearling industry as divers. The *hadar*, on the other hand, settled in towns near the coast, although some of them had gardens or cattle in the hinterland.

Bedouins who generally, are semi-nomadic, owe allegiances to their tribes and shaikhs. The tribe was the basic political unit in the Gulf region. Its most important feature was the hierarchical system of power. The shaikh controlled the tribe; his decisions were final. He was responsible for securing his fellow tribesmen's interests. Everything depended upon kinship. To the Bedouins, a political ideology based on the Western idea of "sovereignty" over a piece of land was a wholly foreign concept. They spent the major portion of their lives travelling around in the desert seeking benefits from the land, but not owning it (33).

As has been mentioned above, the ruling dynasties in the Emirates sprang from the tribes. Having provided the political

system with a ruling family from among its members, the tribe gave that family its unstinting loyalty and support. Tribes were the pool of power that the ruling families relied upon. The loyalty and friendship of the tribal shaikhs, therefore, was of great value to the coastal rulers (34).

In the Trucial States, and especially in Abu Dhabi, the tribes played a significant role in society. From among them were recruited the rulers' bodyguards and the urban militia. The most important tribes were the Bani Yas, the Manasir, the Dhowahir, the Awamir, the Qawasim, the Naim, the Sharqi, the Al Ali, the Tanaij and the Naqbi(35).

The *hadar* or sedentary inhabitants had their origins in the tribes but presented economic activities unconnected with the tribe. Some of the *hadar*, especially in Ras-al-Khaimah, were peasant farmers but many more engaged in fishing and seafaring. The most important profession was pearl diving. This industry provided work for most of the national work-force and supplied the local economy with its greatest amount of revenue in the pre-oil era (36).

The pearl-fishing industry was a circumscribed occupation because its season lasted for only three to four months during the summer. After the season ended the workers could be redundant for the rest of the year unless they found work elsewhere. Practices within the profession were unjust and created a kind of social division among the population. The merchants and boat owners were at one end of the social scale and the rest of the society at the other.

The workers on board the ships did not work for a fixed salary but were paid on a share basis. The season's pearl harvest was divided among the merchants who financed the ship, the shipowner or leader and the crew. The major share went to the first two groups and with what remained the diver could not even afford to repay the debts he had prior to the start of the season. It was not a profitable profession (37). The industry has been described in these words :

".... the pearl trade must be judged, even in its best years, as disappointing ; the vast majority of those who follow it live and die in debt, its proceeds fall into few hands, and enriched chiefly the foreign buyers and, locally, a limited circle in a limited area"  
(38)

#### **2.4 The Oil Era (1960s - to date)**

We have seen earlier that, the British were only interested in the peace in the sea, yet this position changed with the advent of oil at the turn of this century. The importance of oil became apparent with industrialists of the West.

By the beginning of the twentieth century Britain had obtained undertakings from the rulers of Gulf states "to reserve oil exploitation rights to those appointed by the British Government" (39). The first undertaking was in Kuwait in 1913, then Bahrain in 1914, and Trucial States and Oman in 1922 and 1923 respectively. However, such undertakings did not mean a monopoly of the British oil companies in the area. For instance, the multinational company Iraq Petroleum Company (IPC), which through its subsidiary Petroleum Concession Limited (PCL) secured

concessions from the Trucial States, was in fact a consortium of British, French, Dutch, American and other interests. (40) Dubai was the first emirate to sign an agreement with PCL in 1937, followed by Sharjah (1937), Kalba (1938) and Abu Dhabi (1939).

The most prominent common features of these agreements were: they were to last for a long period of time; the undertaking covered large areas; oil companies were given almost absolute authority in those areas, and the British political resident or agent had an important role in the process (41). Local rulers and the British power were keen to control the new wealth and direct it toward their own interests.

The discovery of oil had both advantages and disadvantages. First, it created boundary problems among neighbouring countries. As will have been gathered, political borders were not a well-known phenomenon in the Gulf region. With the advent of oil every inch of land became important. The British authorities, after dominating the political scene in the area for more than one century, suddenly set out to define the borders of every state. This was in order to make it easier for the oil companies to explore and drill in their concession areas. However, the definition of boundaries took a long time and is still not altogether settled. It has been suggested that the advent of oil forced a solution to many a long-standing territorial dispute. In addition it renewed old jealousies between those states which had oil and those which did not. Indeed, it was jealousy, that prevented Ras-al-Khaimah from joining the newly federated state of the United Arab Emirates, and the hope that commercial quantities of oil might be discovered in its territories.

Three months later it joined the union after its hopes had been dashed (42).

The oil industry was incompatible with the traditional economy of the Gulf region. It was an enclave industry. It did not integrate into the local economy, instead it built itself outside the boundaries of this economy. The industry was dependent on foreign technology, companies and even work-force. It benefited directly the foreign power. Nationals were excluded to a great extent from joining it and gaining technical skills (43). The local societies did benefit indirectly from oil wealth, however, and for this reason some writers have called these states "Rentier States", because they got royalties in return for renting their lands to foreign oil companies. Their national income was not a product of their national economy (44).

Oil wealth created jobs and became a welcome source of income for local governments. The new wealth was distributed in different ways. For instance, land was purchased for development, especially in Abu Dhabi, at artificially inflated prices. This was justified on the grounds that it would distribute the oil income to the greatest number of people, although in effect it did not. Rich families benefited hugely from such programmes (45). Another way of distributing the oil prosperity was through creating a large civil service. In the new government departments, nationals were employed on a large scale. The government became the largest employer in the country and by now it is estimated that more than half the population depend on government salaries.

The economic dependence of these states on oil income became and remains very high. On the one hand it has enhanced the power and role of the modern state in society. On the other hand, it has increased the need for foreign labourers and expatriates to service the new economy and its infrastructures. The most serious consequences of this dependency still lies in the future. These states are dangerously vulnerable to threats to the international oil market and the debts they have borrowed (46).

## **2.5 The Effect of Oil on the Traditional Socio-economic Structure**

Oil prosperity challenged and continues to challenge the old stratification in the Gulf states. It has enhanced the power and the authority of certain groups, while at the same time reducing or limiting the role of other groups in running society's affairs. In short, it has been responsible for the emergence of a new social order. Exactly what this meant for the ruling families, merchants and the indigenous population will be addressed in this section.

### **2.5.1 The Ruling families**

The authority of the ruling families was fully endorsed and recognized because oil companies dealt only with the ruler or their agents. The payments were made directly into the rulers funds. He was the only institution in the society to receive oil royalties directly. This development effectively reinforced his position and increased his importance. In relation to the population, he had gained economic as well as political power. However, the ruler no longer depended on his traditional sources of income, that is

taxation and customs duty. This resulted in a breakdown in the interdependence between ruler and community. It also marked a shift in the production of wealth. The shaikh's extremely large income of petro-dollars could be used to pay his people generously and relieve them of taxation (47).

Internally, oil wealth has increased the cohesiveness of the ruling families. Each ruler needs the help of his family in running his expanding state apparatus. The family provides him with loyal henchmen. This had an important constitutional dimension. On the legal side, the law of primogeniture has not been adopted in each of the Emirates, as has been the case in the neighbouring states of Kuwait and Bahrain (48).

Concession agreements have reinforced the political system created in the nineteenth century by the British power when they divided the Trucial coast into seven entities. The oil companies have perpetuated this somewhat eccentric state of affairs. Every ruler is now entirely independent. This means that the traditional popular agreement with the people has been to a certain extent weakened. Indeed, the emirate of Fujairah was given formal independence from Sharjah in 1952 by the British specifically to enable oil companies to get concession agreements from its ruler.

On the administrative side the ruler has been able to establish for himself the apparatus of a modern state and appoint personal advisers and directors. Thus he has increased his power and extended his authority over his traditional rivals such as family members, merchants and tribal chiefs. However, Tim Niblock contends, that the oil economy has strengthened the



position of the rulers at the expense of radical change (49) and popular support for government.

### 2.5.2 The Merchants

After the economic decline of the pearl market, the oil economy became the new means of survival and a major source of income for most of the wealthy families. The rulers in most of the Gulf states were pleased to be in a position of control as they did not want this group to be weakened nor did they want them to be strong again. Accordingly, they favoured the merchants in the wealth distribution programme and increased their participation in development plans, while maintaining the upper hand (50). It is the writer's belief that they would not marginalize the merchants because they are the only group with resources to challenge the position of the rulers in the event of a contest.

Merchants abandoned their traditional economic activities and involved themselves in enterprises connected with the oil industry. Banks, construction companies, travel and shipping agencies and insurance companies sprang up. They were either national ventures or were run on behalf of international groups. Merchants became agents for Western manufactured goods, especially those from the United Kingdom and the United States. They imported and distributed cosmetic commodities (51). Their ties with the West were enhanced by the investment of their surplus capital in shares, bonds, estates and stocks in the Western markets. In this way they became heavily influenced by Western capitalism.

In the United Arab Emirates, wealthy families are represented in and dominate the Chamber of Commerce. It is the platform from which they defend their interests and demand a bigger role in the national economy. Local merchants have taken legal steps to cut down competition from foreign rivals. Commercial laws and national laws restrict the ownership of industrial and business activities to nationals. However, in some cases it allows foreigners to operate in the country if they have native partners whose shares are not less than fifty-one per cent (52). Ruling families, in some of these states, abdicate to the merchants their involvement in the local economy. They invest their money abroad and appoint certain leading families to be their agents in the local market. This has tightened the relationship between the two groups, bringing them together in defence of their common interests (53).

### 2.5.3 The Indigenous non-elite groups:

With the advent of oil the balance of power has turned in favour of the emerging state system and the tribe is no longer the basic element in the political structure of the society. The power of tribal shaikhs has been weakened and their role marginalized (54).

In the United Arab Emirates, central government and the individual emirates have encouraged tribesmen to settle since 1971. Where they have done so, notably in Abu Dhabi, they have come to play a significant role in the army, the police, the security forces and the palace guard. They have been provided with generous subsidies and modern houses. This process has enlarged

the basis of support for each emirate's shaikh and increased the number indigenous inhabitants among the settled population (55).

On the economic front, the traditional occupations of the indigenous peoples have been hard hit by international events and the advent of oil. Consequently these traditional activities have been abandoned by the locals and replaced with much more lucrative occupations in the state departments or the tiny private sector. The effect of it has been to remove them from previously largely autonomous situation and become integrated in the political economy through serving the state.

The advent of oil has had the following profound effects. First it has consolidated the ruling class but undermined the previous partially autonomous structure (i.e. the *Majlis*) where the people participated. Secondly, at domestic level it has led to a great deal of integration in the political economy while at the same time bringing it into the fold of western international capitalism. Finally it has thrown up new groups in the political economy.

#### 2.5.4 New Groups in the Modern State

Oil prosperity has led to an expansion in the education system and governmental service departments. This in turn has affected the native population and changed their socio-economic situation. Expansion has also meant more reliance on foreign expatriates and labourers because of the lack of expertise among the nationals. Three new groups consequently have emerged. They are the "middle class" and the "lower class" and immigrants. The term classes may not fit the category of group exactly but it is the

best English translation of it. Here each group will be briefly examined.

### The "Middle Class"

The enormous oil wealth has inevitably developed and expanded this group. Its social position is derived from the expertise and technical skills its members have acquired through education. Education has been expanding rapidly since the 1950s. New schools and universities have supplied the group with a constant stream of new recruits, keen to participate in the day-to-day administration of the country's affairs.

Because there is no clear distinction between social strata in the Gulf states, the composition of middle class is ill-defined. Scholars have provided their own various definitions of the "middle class", suggesting that its members were to be found among educated citizens, experts, state and private sector employers, journalists and petty merchants (56). They have in common a single principle which is that the members of the middle class were likely to occupy their professions and posts through merit and achievement rather than their familial ascription (nepotism).

Another distinctive feature of the group is that most of its members seek to serve the existing socio-political structure rather than to alter or revolt against it. This may be attributed to the social tradition of power centralization and a lack of economic independence. This group is distinctive from the model of the European bourgeoisie, it did not emerge independently of the existing structure and did not build its own economic base. It relies heavily on the state for its income. Another reason for its

subordinate position is that it did not present itself as a cohesive class defending its interests (57). Yet, there is a small part of this group which is not happy with the *status quo* and has aspirations unfulfilled until now.

### The "Lower Class"

In the pre-oil economy the lower class was the class in which most of the native nationals belonged. Now, however, it represents a very small proportion of the native population. The policies of successive governments have raised the economic standards of their citizens and as a result most of them have become well off financially. What is left of the native "lower class" is largely made up of divers, fishermen and peasants who either did not abandon their traditional occupations or did not benefit much from government services. The majority of "lower class" workers in contemporary societies are non-nationals (58).

By and large, class consciousness did not develop among low-paid workers for several reasons. First, because of traditional loyalty to family rather than class. Second, trade unions were banned everywhere except in Kuwait and Bahrain. Third, cheap foreign work-force challenged the effect of local workers. Fourth, it was difficult to unite labourers divided by nationality, language, religion and tradition. Finally, the modern native work-force had no history to fall back on (59).

### Expatriates

The termination of the special treaty relations with the British government in 1971 left the rulers with a dilemma. The Gulf rulers found that they lacked the trained personnel to run the

administration of their new states. Britain had done nothing to prepare them for that day. Consequently the newly independent and affluent countries turned to their Arab neighbours for help. An influx of Arab expatriates started to fill the newly created ministries. They were largely responsible for the legal and political structures that came into being after 1971. Legal experts provided the states with their constitutions and formed their legislation. By and large, the Arab expatriates have benefited their hosts countries (60).

At the same time, however, there has been a growth in population that could never have been predicted. Because of the small numbers of indigenous in these countries and the need for a rapid development process, hundreds of thousands of foreign semi-skilled and unskilled labourers were imported. They came from different parts of the world. The majority of the immigrants were from India, Pakistan, South East Asia, and Iran. Their numbers surpassed these of the nationals. Recent statistics reveal that the nationals in the United Arab Emirates are now a minority in their own land. Nationals comprise not more than twenty per cent of the population. (61)

Expatriates dominate the work-force especially in the private sector (62). In recent years, the Emirates have imported Asian labourers rather than Arabs on the grounds that they constitute a cheaper work-force and can come alone leaving their dependents at home. Another alleged advantage is that the exporting agencies guarantee their return by the end of the contract they have been engaged to work on (63). They are also expected to have less contact with the indigenous Arabs. However, this influx of Asian labourers,

who differ ethnically and linguistically from the locals, in uncontrolled numbers has engendered fear among the indigenous population. The planners demanded restrictions on their numbers but there is no support for this from the commercial sector. Policies have been laid down to rationalize immigration but have failed because of the powerful commercial interests involved (64).

The large numbers of expatriates have overburdened the local economy but seen when this became most evident, after the drop in oil prices in the 1980s, the local governments did not renounce their labour policies; they still depend heavily on foreign labour. It seems that government officials are not worried by the size of the expatriate community for several reasons. They argue that the foreign workers are in the country for jobs, not for permanent settlement and that they have no political ambitions. Furthermore, they are convinced that the policy of diversifying the work-force has in effect improved national security (65).

The government has introduced certain legal measures to guarantee the privileged position of nationals over expatriates and thus to ease local fears. These safeguards have been embodied in naturalization law as well as civil and commercial laws. It has become very difficult to obtain the state's nationality. In the civil service field, laws and decrees governing recruitment have given nationals priority over non-nationals by demanding fewer qualifications from them. A third concession has been the banning of non-nationals from property and business ownership.

We have seen that there is a continuity in the structure of ruling groups notwithstanding the fact that new social classes have

emerged but there has been a shift in the means of legitimating power.

## **2.6 Shifts in Power and Influence in the U.A.E.**

We now turn to consider how the changes introduced on the social, political and economic background of the U.A.E. has led to significant constitutional and legal developments. In general terms the authority of a particular ruler may be perceived to be legitimate if the overall majority of the ruled consent to be governed by that ruler. Acceptance may emanate from traditional sources that have been inherited through generations, religious considerations, personal qualities of the leader ( i.e. charisma) or a process by which the leader is chosen by the people to rule for a specific period of time (66).

The United Arab Emirates emerged from a typical process of evolution. At first, groups of tribes settled in an area which they related to later. The need to organize their internal affairs obliged them, in each case, to surrender some of their rights to a specific leader, who was to become the paramount shaikh. Later, with the arrival of the British, the power of the shaikh and his family was substantiated. The treaty system gave the shaikh and his territory legal status. In the final step, with the discovery of oil, most of the boundaries were delineated and the statehood process was completed in 1971. It has been argued that the Britain did not create these states because they were in existence when it came, but it did divide some parts of them and shaped their political borders (67).



This political entity in which the emirates are combined has been described as an example of a "traditional secular" state, on the ground that tribal tradition, not religion, has played the significant role in the ruling families' acquisition of power. None of the ruling families claims to be descendants of a religious ancestor (68). Dr. Rumaihi has suggested that society in the Gulf states implicitly accepts the authority of the ruling families in looking to them to defend its interests and secure its territory (69). The rulership of most of the dynasties has been uninterrupted for two centuries and is part of a continuous process.

Political opposition could take a positive or a negative form. On the positive side, if the ruler was not able to prove his efficiency, he could be killed or overthrown. Assassination, however, did not threaten the power of the ruling family. This was because allegiance was given to the family as a whole and not to the person of the ruler. A change in leadership by force did not necessarily decrease the ruling family's right to rule. The negative weapon was presented in the act of exit. When members of the population were not satisfied with the ruler's policies, they simply renounced their allegiance and migrated to another place (70).

These forms of traditional opposition were controlled later. The law of primogeniture settled the question of succession in some states and the delineation of political boundaries limited the use of the exit sanction. Nonetheless, it is important to remember that in a traditional society like the U.A.E. it is unlikely that traditional forms of pressure such as the Majlis and the role of the prominent members in the society, can be easily diminished. One

must be aware of the fact that these forms of pressure do prevail in the U.A.E. politics.

It was a combination of historical and social factors in these emirates which underpinned the legitimacy of the ruling families. Tribal traditions played an enormous role and kinship was the basis of hereditary rule. Once in power, personal reputation was important to the ruler's survival. (71)

With the coming of the oil economy, changes in the social and economic situation meant that the old criteria were no longer enough to keep the dynasties in power. Ruling families, therefore, played the cards of affluence and efficiency as further legitimating factors. They used oil-income to create new administrative institutions, which enabled them to tighten their grasp on state affairs and meet development needs, and they were efficient in establishing a welfare system while preserving a largely unchanged social structure. It has been said that the Gulf states were "pursuing a legitimacy strategy of accommodation rather than trying to assimilate traditional groups into a new national identity" (72).

Apart from these socio-economic devices the U.A.E. Constitution, see chapter 5, played an important part in the legitimating process. This may be explained as follows. The U.A.E. constitution brought together into a federal system the previously disparate emirates with the various heads of emirates constituting themselves into a constitutionalized ruling class. That is constitutionalising what obtained before and during the period of relationship with Britain. So the U.A.E. Constitution largely

became the factor that legitimated their rule against the background of the traditional set up.

## **2.7 Conclusion**

The old socio-economic structure allowed a wide section of society to participate in making decisions and running state affairs. The fact that the shaikhs depended on the merchants for a major part of their income gave them a say in the policy-making process. In addition, the support of the tribal chiefs was important for the regime's stability and legitimacy, therefore, they were consulted in local affairs. Consultation was and still is a basic component of social values in the Arab society.

The system of administration in the traditional society necessitated a kind of grass-root democracy. The ruler nominates a *wali* (i.e. deputy or representative) for the populated centres in his emirate. The *wali* must be acceptable to the local tribes in order to perform his duty as an intermediate between the ruler and the ruled. Such institution, however, did not inhibit the tribesmen from discussing and consulting their affairs directly with the ruler in his *Majlis*. The *Majlis* was and still is a very potent force in local politics.

Another important feature of the traditional administration is wealth distribution. The relationship between the ruler and his subjects has always embodied the rule of give and take. The ruler has to secure an adequate system of wealth distribution to his family and subjects in order to last in his position. He has to depend on favours and subsidies especially when dealing with

beduin tribes. The ruler was eventually expected to be generous and not greedy.

The advent of oil has strengthened the power of the ruling families and polarized the decision-making process. The oil economy has made them independent of these two groups for whom there is no role in the oil production. Far from discounting the old social groups, however, the rulers have been at pains to include them in their policies (73). It is now the foreign oil companies the rulers are dependent upon.

Socio-economic change in the emirates has been much more rapid than political change. Indeed the position of the ruler has been reinforced by the expanding bureaucracy. The fact that tribal structure is in decline in contemporary society, but tribal values are not, has further benefited the ruling families. The weakness of tribal ties has strengthened their centralized rule, and the tribal values have provided them with a traditional source of legitimacy.

Socio-economic changes in U.A.E. society have profoundly affected the constitutional position of the ruler and traditional "legislature" i.e. the *Majlis*, alike. The tribal shaikh has been elevated from *primus inter pares* to a ruler supported by institutionalised administrative and military power. He has become legally responsible for his subjects and territory, having entered into the treaty system with the British.

On the other hand, the traditional legislature with its egalitarian basis has to a certain extent lost its power. F. Heard-Bey describes this dilemma when writing in the conclusion of her book that:

"The tribal communities of the Trucial States have traditionally practised grass-roots democracy. People could discuss their needs with familiar figures in authority and express their opinion, but if they were suddenly required to transfer their loyalties from the Ruler to seemingly anonymous civil servants, less and less of the effective type of democratic response would survive." (74)

However, when the population settled on the coast and the nature of the economy changed, power had to be concentrated in the hands of a single leader inevitably the shaikh of the most powerful tribe. Dealings with the British could not be left to the traditional "legislature"; agreements had to be made with one person (i.e. the shaikh) and the people were set aside in the process.

The traditional *Majlis* became less and less relevant in towns. Gargash (75) summarises its inadequacies under the new socio-economic situation when he points out that matters in a settled and developing economy are more complex than in a tribal one. The *Majlis* had neither the time nor the experience to deal with the sort of issues that began to arise. In addition, urban populations were much larger and heterogeneous than the traditional "legislature" could represent and accommodate their interest.

There was a need for change in the constitutional structure of the traditional *Majlis* especially in the more advanced and complex populations in the Trucial States. The traditional way of consultation had to be modified to keep pace with the new socio-economic situation. A typical attempt occurred in Dubai in 1938. This will be the focus of chapter 3.

**Footnotes:**

- 1 - Khaldoun Hasan Al-Naqeeb, **Society and State in the Gulf and Arabian Peninsula: A Different Perspective** (in Arabic), Centre of Arab Unity Studies, Beirut, 1987, pp. 19-22.
- 2 - Frauke Heard-Bey, op. cit., p. 26.
- 3 - Magnus, op. cit., p. 378. Also Miriam Sultan Lootah, "Social Side of Security in the United Arab Emirates " in **Social Affairs** (in Arabic), Vol. 14, Summer 1987, pp. 67-68. For a Marxist analysis of the traditional societies in the Peninsula see Fred Halliday, **Arabia Without Sultans**, Penguin Books Ltd., London, 1975, pp. 33-46.
- 4 - For the history of the British relation with the area see B.C. Busch, **Britain and the Persian Gulf**, Berkeley, 1967. Also Jamal Z. Qasim, **Arabian Gulf, a historical study of the Arab Emirates 1507-1840** (in Arabic), Dar-al-Fikr al-Arabi, Cairo, 1985.
- 5 - R.V. & Mahendra Kumar Pillai, "The Political and Legal Status of Kuwait" in **International and Comparative Law Quarterly**, Vol 11, January 1962, p. 109.
- 6 - David Roberts, "The Consequences of the Exclusive Treaties: A British View " in B.R. Pridham (ed.) **The Arab Gulf and the West**, Croom Helm, London, 1985, p. 9. See also Herbert Liebesny, "International Relations of Arabia: The Dependent Areas " in **Middle East Journal**, Vol. 1 No. 2, 1947, p. 156.
- 7 - Husain Al-Baharna, "The Consequences of Britain's Exclusive Treaties: A Gulf View " in B.R. Pridham, op. cit., p. 24.
- 8 - Rosemarie Said Zahlan, op. cit., p. xiii.
- 9 - Donald Hawely, **The Trucial States**, Longman Group Ltd., London, 1970, pp. 138-139. For the text of these treaties see Husain M. Al-Baharna, **The Arabian Gulf States**, Librairie Du Liban, Beirut, (Second Edition), 1975, pp. 365-367.
- 10 - Herbert Liebesny, "Administration and Legal Development in Arabia The Persian Gulf Principalities " in **Middle East Journal**, Vol. 10, No. 1, 1956, p. 36. See Al-Baharna (75), op. cit., p. 10.
- 11 - Roberts, op. cit., pp. 2-3. See also Al-Baharna (85), op. cit., p. 17.
- 12 - Liebesny (47), op. cit., pp. 166-167.

- 13 - W.M. Ballantyne, **Legal Development in Arabia**, Graham & Trotman Limited, London, 1980. p. 8.
- 14 - Heard-Bey, op. cit., p. 315.
- 15 - Ibid., p. 318.
- 16 - Ibid., p. 309.
- 17 - Ibid., p. 311.
- 18 - John Duke Anthony, op. cit., p. 108. See also Hans-Jorg Tamm, **The Process leading to the independence of the Emirates of the lower Gulf with special regard to Anglo-Kuwaiti politics in the period 1968/71**, unpublished Diploma, Universitat Wien, February 1987. p. 64.
- 19 - Rosemarie Said Zahlan, "The Impact of the Early Oil Concessions in the Gulf States " in R.I. Lawless (ed.) **The Gulf in the Early 20th. Century: Foreign Institutions and Local Responses**, Centre for Middle Eastern and Islamic Studies, University of Durham, 1986, p. 68.
- 20 - Hawely, op. cit., p. 23.
- 21 - For more details on this policy see Heard-Bey, op. cit., pp. 285-301.
- 22 - J.E. Peterson, "Tribes and Politics in Eastern Arabia " in **Middle East Journal**, Vol. 31, 1977, p. 298. Also John Duke Anthony, "The Impact of Oil on Political and Socioeconomic Change in the United Arab Emirates " in John Duke Anthony (ed.) **The Middle East: oil, Politics, and Development**, American Enterprise Institute for Public Policy Research, Washington D.C. 1975, p. 80.
- 23 - Roberts, op. cit., p. 5.
- 24 - Heard-Bey, op. cit., p. 22.
- 25 - For the history of the Trucial States see Hawely, op. cit., and Muhammad Morsy Abdulla, op. cit.
- 26 - See Heard-Bey, op. cit., p. 41.
- 27 - P.A. Lienhardt, "Some Social Aspects of the Trucial States " in Derek Hopwood (ed.) **The Arabian Peninsula: Society and Politics**, George Allen and Unwin Ltd., London, 1972, pp. 228-229. Also Frauke Heard-Bey, "The Gulf States and Oman in Transition " in **Asian Affairs**, Vol. 59, No. 1, 1972, pp. 15-16.
- 28 - Rosemarie Said Zahlan, **The Making of the Modern Gulf States**, Unwin Hyman, London, 1989, p. 21. Rivalries were not only to be found within the ruling family, but also plagued relations among different ruling families. Some of the ruling dynasties looked down on other

families. An example of this was Al-Khalifah, the ruling family of Bahrain, who considered other Trucial States shaikhs of a lower caste. See Anthony (75), op. cit., p. 69.

- 29 - Secession was an important weapon which was used by the people against unjust shaikhs on several occasions throughout the history of the Gulf states. A significant example is the withdrawal, in 1834, of the Al-Bu-Falasa tribe from Abu Dhabi to Dubai where they established their authority. For accounts of such incidents see Peter Lienhardt, "The Authority of Shaykhs in the Gulf: An Essay in the Nineteenth-Century History " in Arabian Studies, Vol. 2, 1979, pp. 62-66. Also J.B. Kelly, "The Future in Arabia" in International Affairs, Vol. 42, No. 4, 1966, p. 635.
- 30 - Zahlan (89), op. cit., pp. 15-20.
- 31 - The importance of merchants in Kuwait and the Trucial States varied. In Kuwait, commercial life was well established. Mercantile families constituted the economic leadership and in turn had their own dependent families. Their economic power surpassed that of the Al-Sabah. This group, hence, had an important role in decision making and represented a political threat to the ruling family. The Hilal Al-Mutairi case provides a good example of their power. Shaikh Mubarak Al-Sabah imposed high taxes on the pearling industry without consulting the merchants. Three of the leading merchants rejected these taxes and the most prominent amongst them, Hilal, migrated with his family and dependent families to Bahrain in protest against this decision. It was the Shaikh himself who, after sending personal representatives, went to Bahrain and convinced the merchant to return to Kuwait. See Abdul-Aziz Al-Rasheed, History of Kuwait (in Arabic), Manshurat Dar Maktabat al-Haya, Beirut, 1978, pp. 190-198. Lienhardt (79), op. cit., pp. 71-73.
- 32 - Brian D. Clark, "Tribes of the Persian Gulf " in Alvin Cottrell (ed.), op. cit., p. 487.
- 33 - Iyyad Helmei Al-Jassani, Oil and Economic and Political Development in the Arabian Gulf (in Arabic), Dar al-Ma'arefah, Kuwait, 1982, p. 22.
- 34 - Zahlan (78), op. cit., p. 4. See Clark, op. cit., p. 485.
- 35 - For further details see Heard-Bey (84), op. cit., pp. 27-57.
- 36 - It has been reported that in 1905 the contribution of pearl fishing in the Emirates to the local economy was eighty lakhs of rupees or about six hundred thousand pounds. It employed over twenty-two thousand men. See K.G. Fenelon, The United Arab Emirates: An Economic and Social Survey, Longman Group Ltd., London, (Second Edition), 1976, p. 59.



- 37 - In Bahrain, for instance, until 1923, death was not considered to be a justification for the eradication of the diver's debts. They were transferred to his family. For a broader discussion of the share system, debts and pearling industry conditions, see Mohamed G. Rumaihi, "The Mode of Production in the Arab Gulf Before the Discovery of Oil" in Tim Niblock (ed.) **Social and Economic Development in the Arab Gulf**, Croom Helm, London, 1980, pp. 51-54, and Jacqueline S. Ismael, **Kuwait: Social Change in Historical Perspective**, Syracuse University Press, New York, 1982 (under the heading "political economy of pearling").
- 38 - Stephen Longrigg, "The Liquid Gold of Arabia " in **Journal of the Royal Central Asian Society**, Vol. 36, 1949, p. 24.
- 39 - See Ballantyne (86), op. cit., pp. 173-176.
- 40 - See Heard-Bey, op. cit., pp. 294-297. For more details on oil concessions see Abdulla, op. cit., pp. 62-71.
- 41 - Al-Baharna, op. cit., p. 27. For the role of oil companies in monopolizing these states, see Halliday, op. cit., pp. 395-426.
- 42 - Anthony (75), op. cit., p. 6.
- 43 - Rumaihi (84), op. cit., pp. 57-66. The Arab Gulf states were undoubtedly of great importance to the imperial powers during their difficulties with national regimes in Iran in 1951 and Iraq in 1961. Oil production in Kuwait, for example, was increased on these two occasions as a sanction against national policies adopted by those regimes. Furthermore, Kuwaiti oil strengthened the pound sterling and provided the United Kingdom with ten per cent of all liquid funds invested in its currency. See Al-Jassani, op. cit., p. 127, and Harvey O'connor, **World Crisis in Oil**, Elek Books, London, 1963, pp. 357-361.
- 44 - Al-Naqeeb, op. cit., pp. 122-123.
- 45 - Michael Field, "Economic Problems of Arabian Oil States " in Shahram Chubin (ed.) **Security in the Persian Gulf: Domestic Political Factors**, Gower Publishing Company Limited, Westmead, 1981, p. 51. The same happen in other Gulf states. In Kuwait, for instance, this policy was first introduced in the 1950s. See Naseer Aruri, "Kuwait: A Political Study " in **The Muslim World**, Vol. 60, No. 4, 1970, p. 327.
- 46 - Howard Bowen-Jones, "The Gulf Today: an Overview of a Region in Recession" in **Arab Gulf Journal**, Vol. 6, No. 2, 1986, p. 11.
- 47 - Zahlan (86), op. cit., p. 72. It was reported that in Bahrain one quarter of the oil income was given to the ruling family. This was to be distributed among them. See Arnold

Hottinger "Political Institutions in Saudi Arabia, Kuwait and Bahrain " in Chubin (ed.), op. cit., p. 3.

- 48 - Article 4 of the Kuwaiti Constitution stipulates that "Kuwait is a hereditary Amirate held in succession in the descendants of the Mubarak Al-Sabah....". The Bahraini Constitution states in article 1 that "The rule of Bahrain shall be hereditary, the succession to which shall be transmitted from His Highness Shaikh Isa bin Salman Al-Khalifa to his eldest son and then to the eldest son of this eldest son and so forth, generation after generation.... ".
- 49 - Tim Niblock, "Oil, Political Change and Social Dynamics of the Arab Gulf States " in Arab Gulf Journal, Vol. 5, No. 1, 1985, pp. 37-43.
- 50 - This was not a matter related only to the emirates; other Gulf states were pioneers in this field. In Kuwait, for example, many of the 1950s development projects were allotted to the leading merchant families. See Sir Rupert Hay, "The Impact of the Oil Industry on the Persian Gulf Shaykhdoms" in Middle East Journal, Vol. 9, No. 4, 1955, p. 366.
- 51 - See Naseer H. Aruri, "Kuwait: Sociopolitical Developments " in The Arab Oil-Producing States of the Gulf, Political and Economic Development, American Enterprise Institute for Public Policy Research, 1980, p. 44.
- 52 - Mohamed Rumaihi, Beyond Oil: Unity and Development in the Gulf (in Arabic), Khadmah Printing, Translating and Distributing Co., Kuwait, (Second Edition), 1987, p. 302.
- 53 - Niblock, op. cit. p. 42. A natural consequence of this strengthened relationship is apparent in Kuwait. Merchants are of great importance in the socio-political structure of the Kuwait, and leading mercantile families have come to share executive power. It has been estimated that during 1960s and 1970s they provided two-thirds of the cabinet ministers. Although they represent not more than fifteen families, they own all the private sector investments outside Kuwait and almost thirty-eight per cent of commercial agencies locally. Fred Lawson wrote that four major clans dominate almost one-third of the directorships in the largest national companies. See his article "Class and State in Kuwait " in Merip Reports, No. 132, Vol. 15, May 1985, p. 16. Dr. Abdulla Al-Nifaisi stated that private sector investment was not less than six thousand million dollars. See his book Kuwait: Another Opinion (in Arabic), Ta-ha Advertising, London, 1978, p. 11.
- 54 - Clark, op. cit., pp. 501-506.
- 55 - Anthony (ed.), op. cit., p. 89.
- 56 - See Avi Plascov, Security in the Persian Gulf: Modernization, Political Development and Stability,

Gower Publishing Company Limited, Westmead, 1982, p. 85. Also Lootah, op. cit., p. 78.

- 57 - Plascov, op. cit., p. 86. Bahrain, it is worth mentioning, has a much more advanced working class than the United Arab Emirates. The early discovery of oil in Bahrain allowed many rural peasants to join the work-force. This "class" has achieved solidarity through its struggle with the foreign administration running the oil industry. Bahraini workers were pioneers in the unionization of labour in the Gulf region. Unfortunately, the efforts to create a recognized working class were crushed by the state and the oil companies. See Magnus, op. cit., pp. 399-401.
- 58 - See Magnus, op. cit., pp. 399-400.
- 59 - For further discussion on the issue of class analysis in the U.A.E. see Abdullah Jumah Al-Haj, "Elite analysis and its application in the Emirates political system" (in Arabic), **Social Affairs**, Sharjah, Vol. 8, No. 29, 1991, pp. 37-70. See also Rumaihi (84), op. cit., pp. 152-153.
- 60 - Rumaihi (87), op. cit., pp. 264-266. The United Arab Emirates, for example, had fewer than forty native university graduates in 1971 and even fewer adequately trained personnel. See **United Arab Emirates**, Middle East Research Institute (Meri), University of Pennsylvania, Croom Helm, London, 1985, p. 45.
- 61 - Sarah Searight, **The United Arab Emirates through the 1990s**, The Economist Intelligence Unit, London, May 1990. p. 10.
- 62 - See Naomi Sakr, **The United Arab Emirates to the 1990s: One Market or Seven ?** The Economist Intelligence Unit, Special Report no. 238, London, 1986, p. 69. Niblock has calculated that 90.3 per cent of the labour force in the United Arab Emirates are non-nationals, while in Kuwait and Bahrain they account for 78.6 and 58.6 per cent respectively.
- 63 - Allan G. Hill, "Population migration and development in the Gulf states" in Chubin (ed.), op. cit., p. 62.
- 64 - Rob Franklin, "Migrant Labor and the Politics of Development in Bahrain " in **Merip Reports** No. 132, Vol. 15, May 1985, p. 12; and **United Arab Emirates**, op. cit., p. 48. A good example of this was the six months rule introduced in the Emirates in 1981. The expatriate has to leave the country for six months after the end of his contract. He can only get a new job after this time lapse. After being in force for a short period of time, the rule ran into practical difficulties and was formally dropped in 1984. See Sakr, op. cit., pp. 71-72.
- 65 - Hill, op. cit., p. 70. Also Jones, op. cit., p. 21.

- 66 - Saad Eddin Ibrahim, "Sources of Legitimacy in Arab World Political Systems" in **Democracy Crisis in The Arab World** (in Arabic), Symposium organized by the Centre of Arab Unity Studies, Beirut, 1984, p. 404.
- 67 - Iliya Harik, "The Origins of the Arab State System" in Ghassan Salame (ed.), **The Foundations of the Arab State**, Vol. 1, Croom Helm, London, 1987, pp. 39-42.
- 68 - Ibid., pp. 24-31.
- 69 - Mohamed Rumaihi, **Social Roots of Democracy in Contemporary Arabian Gulf Societies** (in Arabic), Khadmah Printing, Translating and Distributing Co., Kuwait, 1977, p. 10.
- 70 - Lienhardt, op. cit., p. 63. Also Hottinger, op. cit., p. 5.
- 71 - Michael C. Hudson, **Arab Politics: The Search for Legitimacy**, Yale University Press, New Haven, 1977, pp. 19-26; also Ismael, op. cit., p. 125.
- 72 - Hudson, op. cit., p. 26. See Ibrahim (84), op. cit., 418-421. Dr. Khaldoun Al-Naqeeb's explanation for the survival of these dynasties is that they are ruling nowadays through unofficial corporations with tribal, sectarian, commercial, religious, middle-class and working-class origins. See pp. 149-151.
- 73 - This was also the case in Kuwait. See Jill Crystal, "Coalitions in Oil Monarchies: Kuwait And Qatar" in **Comparative Politics**, Vol. 21, No. 4, July 1989, p. 441.
- 74 - Heard-Bey, op. cit., p. 404.
- 75 - A.M. Gargash, **political Participation in Kuwait and the United Arab Emirates**, unpublished Ph.D. thesis, University of Cambridge, 1989, pp. 23-24.

## **PART TWO**

In a thesis which examines the working of the present legislature, it would be desirable to examine its historical background. Part 2 of the thesis examines the historical development of the U.A.E. Constitution and discusses the pre-1971 movements made to institute a legislature. The chapters of this part are as follows:

Chapter 3 The reform movement in Dubai: 1938.

Chapter 4 The development of the legislature under the nine-member-union (1968-1971)

## **CHAPTER THREE**

### **THE REFORM MOVEMENT IN DUBAI; 1938**

#### **3.1 Introduction**

It is first necessary to examine the historical evolution of the legislature in the U.A.E., especially during the pre-1971 era, so that one may understand the constitutional arrangements of the present legislature (i.e. FNC). The thesis could be incomplete if the two early legislative attempts are not discussed.

As noted in chapter 2, the traditional *Majlis* was incapable of dealing with the fresh demands of the newly settled society. The result was that its influence was by-passed by the rulers. Furthermore, the British influence over the area resulted in a change in the composition of the local elite. This was evident in the reduction in the power base to a single ruling family. Such developments created tension in society and inevitable resistance to the newly emerged autocracy. The influence spread to the Trucial States in the form of a "reform movement" in Dubai. Similar patterns seem to be evident in the neighbouring states of Kuwait and Bahrain.

This chapter will examine and discuss the characteristics of Dubai, the background to the reform movement (so named by academic writers) and the reforms it proposed. The agreement

reached between the ruler and his subjects in 1938 will be examined and the reason for the ultimate failure of the reform movement to create a democratic and powerful legislature will be identified.

### **3.2 The significance of Dubai**

Dubai is one of the Trucial States on the Gulf coast. It has been established as an independent emirate since 1833 (1). Dubai has certain distinctive features which distinguish it from the other emirates. First, it is geographically divided into two parts by a small creek and this has led, as we will see, to a division of power within the ruling clan. Second, Dubai is a cosmopolitan town with inhabitants of many races (e.g. Arabs, Persians, Indians). Third, Dubai has strong commercial links with the Indian subcontinent, Persia and East Africa.

Since 1902 Dubai has flourished economically especially following the decline of Lingah, a port which had been of some importance on the Persian side of the Gulf. The high customs dues imposed by the Persian authorities on that port encouraged merchants to transfer their activities to the more liberal town of Dubai (2). Dubai became the centre for many prosperous entrepreneurs and as a result the population rose sharply at the beginning of the twentieth century.

. Viewed in the context of the political, economic, and social conditions prevailing on the Trucial Coast at the turn of the century, Dubai was far more advanced than any of the other

emirates. To a large extent this was because of the Al-Bu-Falasa, the ruling tribe in Dubai, was unique among the Trucial Coast tribes in that no ruler had ever ascended to power by overthrowing his predecessor. Dubai's political leadership was always keen to preserve its thriving economy, and this was particularly true during the rule of Shaikh Maktum (1894-1906) and his son Shaikh Sa'id (1912-1958). The latter has thus been described by the historian R. Zahlan:

" Of all the rulers on the Trucial Coast, Sa'id bin Maktum was by far the best judge in this respect. A master of the art of compromise,..... The difference between him and them (i.e. his fellow rulers) in the way they conducted their respective affairs was striking .... When he felt that he had lost the confidence and support of his Majlis, in 1929, he decided that, rather than fight, as his fellow rulers would surely have done, he should resign. He obviously did not think that the total disruption of the economy was a fair price to pay merely to save his position .... He was unique among the rulers on the Coast in having never had a clash with a British representative, and the British generally liked and respected him" (3).

However, this calm and prosperous state of affairs could not last for ever. With the passage of time, change was inevitable. As noted in chapter 2, by the end of the nineteenth century, the effect of the British presence had been to shift local political power from the ruling tribe as a whole to a single ruling family within the ruling tribe.

### **3.3 The origins of the 1938 "reform movement"**

We now turn to explain the development of the 1938 "reform movement". The term "reform movement" in this context is used



because it represented a pressure group which never crystalised into a political party because of lack of a unifying ideology and political awareness among its founders.

The causes of the 1938 reform movement in Dubai fall into two categories; internal factors and external factors. The main internal factors were dynastic disputes and the decline of the traditional economy. The main external factors were the reform movement gathering momentum in Kuwait and the attitude of the British towards reform in Dubai.

The first internal factor, i.e. the dynastic disputes, can be traced back to 15 April 1929 when Dubai notables met under the chairmanship of Ahmad bin Dalmuk, a prominent pearl merchant who was anti-British and a victim of the decline of the pearl industry. The *Majlis* decided to accept the resignation offered by the ruler Shaikh Sa'id and appoint Shaikh Mani' bin Rashid, Sa'id's cousin and Ahmad's son-in-law, as the new ruler of Dubai. Three days later, however, upon the refusal of the British Political Resident to accept such a change, Shaikh Sa'id was reinstated as the ruler of the emirate. The cousins did not accept Sa'id as the legitimate ruler and tried to assassinate him in November 1934 (4).

Subsequently, the sons of Rashid, having formed an anti-Maktum faction within the ruling clan, tried to challenge the legitimacy of the leadership by mobilizing all the Al-Bu-Falasah tribe against Sa'id. This was the first time that the position of the ruler in Dubai had been threatened by an important element in the society. The opposing camp attempted to take advantage of the

geographical location of Dubai by concentrating its supporters and allies in a strategic position on one side of the town.

The second internal factor, that led to the demand for reform was the economic condition of the town. After the collapse of the pearl industry, many of the merchants were bankrupted, especially those on the cousins side. They faced a hard time because of their debts to foreign merchants and the ruler did nothing to ease the situation. On the other hand, Shaikh Sa'id's own financial position was considerably strengthened when he signed oil concessions and air route agreements with British companies in 1937. All royalties were to be paid directly into his private purse. In contrast to the situation during the first two decades of the twentieth century, the ruler was now financially better off than any of the members of his tribe or, indeed, any of the inhabitants of Dubai (5).

In spite of the fact that the local economy was already in decline, in 1937 the ruler introduced, with British support, two new economic policies calculated to jeopardize those forms of income still remaining to the local notables, namely slavery and arms traffic. The notables rejected the ban imposed on these activities and demanded it be lifted at once. They were especially determined to resist emancipation of the slaves (6).

The first major external factor was the 1938 reform movement in Kuwait. It was greatly admired by the Dubai elite upon whom it made a deep impression. The reform movement reflected the opposition of the enlightened members of Kuwaiti society to the monopolistic maladministration of the ruling family. The movement succeeded in establishing an elected legislative

assembly on 2 July 1938 for reasons beyond the scope of this work. (7) It introduced the first written constitution for the State of Kuwait. The assembly members were elected from among the leading families in Kuwait. Unlike Dubai, in Kuwait there was no dissension within the ruling family, although the President of the assembly was the heir apparent. Opposition came mainly from the merchants.

A second important external factor was the British attitude in support of the reform movements in the Gulf area. The early reaction was at first auspicious. The British Political Resident and his Agents advised the rulers of Dubai, Bahrain and Kuwait to meet the demands of their subjects by adopting some measures of reform. The British authorities were aware of the local people's desire for greater participation in the field of political and economic decision-making. In a letter to the Foreign Office, the Political Resident, T.C. Fowle, summarized his feelings towards the emerging demands:

" Such movements will doubtless arise elsewhere on the Arab Coast, and it is obvious that as the chief exponents of democracy His Majesty's Government can not ally themselves with the Shaikhs to stamp these movements out, even if this were practicable. What we can, and what in my opinion we should do, is to try by exercise of judicious influence, to ensure that such movements come to fruition by a process of 'peaceful change', as in Kuwait, rather than by violence, and that they should, also as in Kuwait, be well disposed towards us" (8).

He continued, in his letter to acknowledge the importance of these movements:

"I would like to stress the fact, which both the shaikhs of the Persian Gulf and ourselves must realize, that the idea of popular movements, ..., has now permeated

the Arab state, and must be taken account of. Even on the backward Trucial Coast, at Dubai, the opposition party to the Shaikh [has] asked for certain popular reforms" (9).

However, the British reaffirmed the ruler's authority and made it clear that they would not have any contact with the reform movement except through the ruler himself. The ruler, in return, maintained his role as an advocate of the British presence in the area (10). A convention had thus been established which endured.

### **3.4 The establishment of the 1938 Majlis**

There was a certain inevitability about the limited initial success of the reform movement given local feelings. In Dubai in mid 1938 economic and political changes had become essential. In particular, the ruling tribe, i.e. the Al-Bu-Falasah, together with Dubai notables, were dissatisfied with the way that the ruler was conducting Dubai's affairs. They, therefore, congregated in the traditional Majlis and presented a list of demands to the ruler (11). These were as follows: an official budget for the emirate, public health facilities, a police force to guard the market, reorganization of the customs department, a fixed allowance to the ruler and his family, and the abrogation of the monopolies held by the ruling family (12). Shaikh Sa'id did not respond to these demands, and therefore his opponents occupied one side of the town. During the lengthy negotiations between the two sides, the opposition parties demanded the establishment of a representative council on the model of the Kuwaiti Assembly which was elected on the 2<sup>nd</sup> July 1938.

Finally, a compromise was reached on the 20<sup>th</sup> October 1938, under the supervision of the Political Agent, W. Weightman who stressed, however, that the British Political Resident could not guarantee the agreement because the new Majlis had not been ratified by the British Government representatives in the area. The 1938 Agreement may be examined in more detail.

### **3.5 The 1938 Political Agreement** <sup>(13)</sup>

The term "agreement" has been defined by lawyers as " a concord of understanding and intention between two or more parties with respect to the effect upon their relative rights and duties, of certain past or future facts or performance." <sup>(14)</sup> An agreement differs from a contract in that the contract is "a formal legal arrangement supported by consideration", while the agreement refers either to such a sense or to an "informal arrangement with no consideration." <sup>(15)</sup>

The 1938 agreement, from the evidence collected by the researcher, was political rather than legal. It had no guarantees and was not supported by power of enforcement. Moreover, no court cases arose out of this agreement due to its short existence. The major points of the agreement may be summarised as follows:

1 - The establishment of a Majlis (known as the Grand Council), to be presided over by the Ruler of Dubai, Shaikh Sa'id bin Maktum. The Majlis would consist of fifteen members selected by the "principal people" of Dubai <sup>(16)</sup>.

2 - The Majlis would meet from time to time in order to discuss the internal and external affairs of the state (17).

3 - The Ruler would carry out all the orders passed by the majority of the Majlis members.

4 - The Ruler of Dubai would bring to the Majlis all the matters relating to the affairs of the emirate. He could not take any decision unless it was approved by the majority of the Majlis members (18).

5 - Any decision would be taken on a majority vote (19).

6 - The income and expenditure of the State would be controlled in the name of the State with the approval of the majority of the Majlis members (20).

7 - The Majlis could not discuss the Ruler's private property (21).

8 - The Majlis would have the right to issue orders in the absence of the Ruler and those orders would be directly put into effect (22).

9 - An allowance of one-eighth of the total revenue of Dubai would be allocated to the Ruler (23).

It is interesting to note that the agreement was the first written constitution on the Trucial Coast between a ruler and his subjects designed to regulate the running of local affairs. In effect it became the first document with constitutional status. The assembly was the first institutionalized body in the political structure of the area. In analysing the agreement one can make some important deductions against the background of correspondence between the ruler and the Majlis.

In making an evaluation it is to be noted that the process of the election has not been discussed in detail in any of the few writings that have dealt with this subject. These writings argued that fifteen members were appointed but are vague as to the actual identity of the members of the *Majlis* (24). On the basis of an examination of the correspondence between the ruler and the *Majlis*, however, some general conclusions may be made. First, the *Majlis* members were elected to their posts and not appointed by the ruler. This was clear from the first letter issued by the *Majlis*. This election may be interpreted as having been a departure from the traditional paternalistic norm. Second, from correspondence between the ruler and the *Majlis*, it is possible to trace the names of the fifteen members of the *Majlis* and confirm that they were leading members of the ruling clan or tribe (25). Third, the voters were drawn from a limited circle of society. The total number was around thirty-four members of those who attended the election. Fourth, the voters and candidates seem to have been qualified on the grounds of their social standing rather than their suitability and capability for such a task. They were members of the ruling family or prominent merchants. It seems that elections served as the mechanism for resolving feuds in the ruling family.

The local elite feared alienation from the political and economic arena and were therefore willing to overthrow the ruler peacefully by replacing him with a much more acceptable member of the ruling clan. Had it not been for the British intervention this would have been done because the ruler was very much opposed to any form of legal framework which might reduce or limit his power. The British intervened to protect his and their own interests, and

advised the ruler to accept the new form of political participation. The agreement was constructed with safeguards on both sides. The elite would have a say in the running of the emirate through the Majlis, while the ruler would preside over it to ensure his position. The Majlis was to symbolize a new *modus vivendi*.

The leading families guaranteed their supremacy above the rest of the society by insisting on the role of the "principal people" of Dubai (an acronym for Arab tribal citizens). They became the only eligible electorate in the state. The agreement recognized the social reality in Dubai at that time. A large number of Dubai's inhabitants in 1938 were new migrants who were not deeply rooted in the society, and not used to the Arab customs of government. In the circumstances, therefore, it would be naive to devalue the Majlis because it did not represent all sections of the society. However, the agreement was the first step towards a distinction between nationals and foreigners. The election of the Majlis members, who were all Arab males, was a breakthrough in itself for the Trucial Coast Emirates.

The Majlis established its power through scrutinizing every decision taken by the ruler and it was more or less implicit in the agreement that the Majlis would have a dominant influence in emirate affairs. In contrast to the previous tradition where the ruler could implement any measure with only the restraining influence of non-binding consultation with the prominent members of the society, the ruler of Dubai under this agreement had to get the approval of the majority of the Majlis members prior to passing any decision. The ruler still held decision-making power but it was



firmly circumscribed by the Majlis. Clearly, the new body had been granted a large slice of the decision-making process.

The agreement made a distinction between the public and the private purse. It first recognized the existence of public expenditure as well as public income and the need for a state budget within which the state would have the power to spend rather than a single person (i.e. the ruler). The word "state" itself was an innovation introduced to the national legal framework. At the same time, the Majlis had been given the monetary authority to control the revenue of the emirate and this enhanced the power of the legislative body in Dubai over the executive branch represented by the ruler. Their insistence upon this clause reflected the elite's concern to avoid the economic dominance of the ruling family and the need for financial reform in Dubai.

Although the opposition party was in favour of abolishing the prerogatives that the ruler and his family enjoyed, the agreement did not go as far as to adopt all their arguments. The reality was that the ruler had exclusive monetary power and unlimited financial resources. The agreement, therefore, sought to limit the financial resources of the ruler, but not to the extent that it became unacceptable to him. The ruler was allocated one-eighth of the total revenue. This step was comparable to that taken by Kuwait earlier in that year (1938) when the Law of the Budget gave the Legislative Council the power to control all the state's income and expenditure but allowed a certain amount of personal income to the ruling family (26).

The law-making function had been surrendered to the Majlis whereby, in making decisions, the ruler had to consult with the Majlis. The Majlis' legislative function was not subject to the ruler's approval. The legislative body could pass any measure with no prior consultation with the ruler. It can be appreciated that the 1938 Majlis differed radically from the traditional Majlis. Prior to the agreement, the traditional Majlis could advise but could not pass a measure of any kind. The ruler's consent was essential to implementation of the council's advice. Under the 1938 agreement such consent was not stipulated and, therefore, the Majlis had full law-making process.

Generally speaking, the 1938 agreement was designed to be a turning point in the relationship between the ruler and the ruled, to end the unlimited power of the ruler, and to give to certain members of the community the opportunity to participate in the running of their society's affairs. It is worth mentioning that the agreement did not define clearly what the Majlis' term of office would be or what its members' privileges would consist of, but nevertheless, the Majlis had become, in real terms, the government of the state. However, as will be shown, such fact was not perceived by the ruler to be true.

### **3.6 The Reforms of the 1938 Majlis**

Documents of the Majlis examined from Rosemarie's work, (27) show that the reforms proposed by the Majlis were not only concerned with economic questions but also were intended to develop and reform the social and political aspects of the society.

As a matter of courtesy the Majlis made a point of asking the ruler to give his consent on every matter. The Majlis tried to be very informative about its actions. It sent regular letters to the ruler and simultaneously to the British representative in Sharjah.

It seems that because of their social background, the Majlis members were particularly concerned with the economic situation in Dubai. At the first meeting of the Majlis, fourteen porters were appointed to guard the market. At the second and third meetings, the customs issue was discussed. People were designated to reorganize and run the customs department, and a list of twenty-two new jobs in this department was agreed upon (28). Furthermore, a two per cent tax was to be imposed on all imported goods, and all exported merchandise was to be relieved of duty.

On the social and welfare front, the Majlis established the first municipal council on the Trucial Coast and appointed a director to run its affairs. The municipality was responsible for the cleanliness of the town, the beauty of the creek and the expansion of the port. Customs revenue was utilized to establish the first three public schools in Dubai. The Majlis recruited a director and seventeen teachers and porters for the education department (29). In addition, the Majlis found a suitable doctor to run the health service. Finally, the Majlis allocated a sum of three hundred rupees to be distributed to the disabled and elderly as social security payment (30).

The Majlis' attempts to reorganize the judiciary met with less success. As a first step it appointed a member of the ruling clan as a judge in one part of Dubai but the ruler refused to recognize his

authority and would not accept any interference in his own judicial jurisdiction (31). He himself formed a judicial council consisting of his brother and his son but the members of the Majlis rejected this arrangement which it considered a violation of the agreement. They pointed out that the ruler had not sought their approval in this matter (32). In the end the Majlis ordered the establishment of a court in the ruler's section of Dubai under his presidency, and a lower court in the other section under the presidency of a learned judge (33).

In all matters, the Majlis conscientiously cited the terms of the agreement, and quoted any relevant Clauses in all correspondence with the ruler. The ruler, on the other hand, did not show much inclination to adhere to the agreement. It is obvious that the agreement was the Majlis' *raison d'être* and, therefore, was respected by the members of the Majlis much more than by the ruler who more or less ignored the Majlis and attended only few sessions. He also made efforts to block the reforms or at least to minimize their effects.

The Majlis was ready to use all the revenue of the emirate in order to finance reforms but the ruler would not agree to hand over management of the oil concession royalties to the Majlis. Naturally, control of economy is a veritable ground for contest between the main powers in the society. The Majlis therefore discussed with the ruler matters relating to local employees' salaries, ships' revenue, shops' revenue and teachers' allowances, stressing its anxiety to be independent of his financial support. However, the ruler insisted that he was the only one eligible to pay salaries and to receive royalties. Forty days after its establishment, the Majlis asked the

ruler to discuss with them the question of the oil company and the revenue of the air station in Dubai. Finally on 3<sup>rd</sup> March 1939, after the continued refusal of the ruler to respond to the Majlis' appeals, the Majlis passed a motion which allocated ten thousand rupees as an annual allowance for the ruler. It also made a list of the ruling family members and the fixed salaries they were to be allowed (34). Shaikh Sa'id rejected this decision and demanded a guaranteed percentage of the total revenue.

The financial issue was the last straw which brought the activities of the Majlis to an abrupt end on 29<sup>th</sup> March 1939 when, on the occasion of the wedding of Sa'id's son, troops loyal to Sa'id invaded the Majlis quarters and killed some of its members. The head of the movement, i.e. Mani' bin Rashid, escaped with some of his followers to the emirate of Sharjah. Three days later, the Political Agent arrived in Dubai and advised the ruler to create a new advisory council. The new council consisted of fifteen members, ten of whom were new. It was destined to survive for a very short term.

### **3.7 Considerations which led to the Failure of the 1938 Reform Movement**

The reform movement in Dubai was much more of an evolutionary kind rather than a revolutionary one. It did not become a clash with the British authorities nor did it displease them. Indeed, one of the important factors in the reform movement's survival for almost six months was its alliance with an important faction in the ruling clan. At the root of its ultimate

failure, however, were such internal factors as the old dispute between the two parties involved in the agreement, the legal framework of the Majlis, the financial problems and the lack of grass-root support in the community. The major external factors were the fate of the Kuwaiti reform movement and the British position.

### Internal elements

There is quite compelling evidence that the old rivalry between the ruler and his cousins was a major factor in the failure of the reform experiment. The relationship between the two parties was clouded by suspicion and stubbornness. The suspicion was on the ruler's part. Any reform was seen as a threat to his own powers and to the benefit of his opponents (35). The same stubbornness on the part of the cousins may be detected. They tried to take all the powers from the ruler and his family, even to prevent his brother from building new shops. The two parties were not cooperating partners, rather they were competing against each other.

The legal framework of the agreement participated in its own destruction. There was no separation of powers prior to the agreement, all the powers were concentrated in the hands of one person, i.e. the ruler. By the terms of the agreement, all legislative and executive powers were transferred to the newly-created body, i.e. the Majlis. Furthermore, the Majlis intended to have a say in the third branch of the government, i.e. the judiciary, as well. There was no sharing of power, rather it was a new form of power concentration. This reflects that the elite and the ruler were of one political mind, but of different interests. The failure of the

agreement was a sign of the failure to limit the unlimited power of the ruler.

The Majlis' ambitions were much higher than its financial capacity. The notables were eager for a share in the new affluence but the ruler was not ready to accept this. The agreement did give the Majlis financial power but because he would not allow the terms to be fully implemented, the running of state affairs remained in the hands of the ruler. It was because of the financial implications that the ruler so reacted harshly against the Majlis.

There is ample evidence that the Majlis movement was especially concerned to protect the interests of the ruling tribe (i.e. the Al-Bu-Falasa) and the local notables. First, the Majlis allocated large monthly salaries to its members. Second, the funds of the social security programme were allotted to the ruling clan elders and members' relatives. Third, the new departments were run by some of the Majlis members and their patrons (36).

In addition to these minor abuses of power there is an important issue involving the Majlis that has rarely been discussed. It was the case that debts which had accumulated on individual members of the Majlis in consequence of the decline of the pearl industry. The Majlis kept asking the ruler to postpone calling in these debts, or to adopt the local custom of dealing with the matter himself instead of referring it to Shariah Law. This was such an obvious attempt by the members to use their positions to safeguard their own interests that the Majlis became subject to the irritation of the rest of the population. This disenchantment, together with general lack of political sophistication among the

locals, meant that the reform movement did not receive firm grass-roots support.

### External elements

In addition to the above mentioned internal factors, two major external elements contributed to the demise of the 1938 legislative experience in Dubai. The first was the collapse of the Kuwaiti reform movement. The extent to which its fate had a bearing on the collapse of the Dubai reform movement has rarely been touched upon in discussions on the subject. The initial success of the Kuwaiti movement certainly raised hopes of and gave an example to follow for the elite in Dubai. The Kuwaiti Legislative Assembly was dissolved by the end of December 1938 and although re-established later was dissolved for the second time on 10<sup>th</sup> March 1939. The second dissolution was accompanied by bloodshed. The researcher asserts that this was the signal for the ruler of Dubai to follow the same path and end his Majlis movement on 29<sup>th</sup> March 1939.

The second element was the change in the British position. By and large, the British support for the 1938 *Majlis* diminished by the passage of time. It is believed (37) that the British opposition to the role of the *Majlis* eventually became the decisive factor in the fate of the movement. There was, in the researcher's opinion, a subtle British consent towards the closure of the Majlis. The ruler was too weak to take such bloody action by himself and must have been confident of British support.



### **3.8 Conclusion**

In spite of all the shortcomings of the 1938 reform movement in Dubai, it succeeded in persuading the conservative elements: in that sense it was partly successful because it attempted to adopt a modern form of constitutional government. The movement itself offered an alternative to the traditional exit practice mentioned in chapter 2. The elites, rather than withdrawing themselves and their dependents from the emirate, stayed and defended their right to participate in local affairs.

The fate of the reform movement proved that the British accepted the existence of legislative bodies in the Gulf area as a safety-valve to control and pacify political unrest. However, as in the Kuwaiti experience, when the Majlis started to deal with the concession agreements the British altered their position. They viewed these bodies as a threat to their interests in the area. Some of the British Agents and Advisers wrote to the Political Resident expressing their opposition to the formation of any kind of consultative bodies (38).

Moreover, the reform movement showed historically that the traditional ruling elites in the U.A.E. preferred an evolutionary rather than radical change in the process of constitutional development.

All the reforms introduced by the movement were preserved and became the first step towards reforming the whole system. However, the questions of a legislative assembly and public participation in government were not touched upon till thirty years

later when federation came to the Trucial Coast. This second attempt will be the focus of the next chapter.

**Footnotes:**

- 1 - Heard-Bey, op. cit., p. 239.
- 2 - Prior to 1902, not more than five steamships called at Dubai every year. But after 1904 Dubai became a regular station for the British Steam Navigation Company. This indicates the emergence of the port of Dubai as a commercial centre for British interests in the area. See Zahlan (78), op. cit., p. 12.
- 3 - Ibid., p. 65.
- 4 - Abdullah, op. Cit., pp. 126-28.
- 5 - Mohamed Rumaihi, "The 1938 Reform Movement in Kuwait, Bahrain and Dubai" (in Arabic) **Journal of the Gulf and Arabian Peninsula Studies**, Vol. 1, No. 4, 1975, p. 55.
- 6 - See Rosemarie J. Sa'id, "The 1938 Reform Movement in Dubai", **Al-Abhath** (American University, Beirut), Vol. 23, 1970, pp. 254-55. The author of this study was the first researcher to write on the topic. She has presented all the Majlis correspondence in the appendix of her study. All the letters mentioned below are from her collection.
- 7 - For further details about the 1938 reform movement in Kuwait see: Suhail K. Shuhaiber, **political Development in Kuwait: Continuity and Change in an Arab Independent Gulf State**, Ph.D. Thesis, University of Oxford, 1981, pp. 55-70. Mymoonah Al-Khalifah Al-Sabah, **Kuwait Under British Protection** (in Arabic), 1988, pp. 147-202. Jill Crystal, **patterns of State-Building in the Arabian Gulf: Kuwait and Qatar**, Ph.D. Dissertation, Harvard University, 1986, pp. 123-39.
- 8 - Saeed Khalil Hashim, **The Influence of Iraq on the Nationalist Movements of Kuwait and Bahrain: 1920-1961**, Ph.D. Thesis, University of Exeter, 1984, p. 109.
- 9 - Ibid., p. 208.
- 10 - A Kuwaiti historian, from the ruling family, interpreted the links between the British authority and the legislative assembly as enforcing and enhancing British power in Kuwaiti internal affairs. However, these allegations contradict the sequence of events and the fact that the movement was brought to an end with tacit British approval. See Al-Sabah, op. Cit., p. 143.
- 11 - The Majlis is a gathering where the ruler meets his subjects and listens to their grievances and ideas about any local issue. It was a person to person contact.

- 12 - Rumaihi (75), op. cit., pp. 57-60.
- 13 - For the complete text of the agreement see Appendix B, p. 382.
- 14 - Black, op. cit., p. 67.
- 15 - Bryan A. Graner **A Dictionary of Modern Legal Usage**, Oxford University Press, Oxford, 1987. p. 30. In international law, an agreement is usually of a less significant or formal nature than a convention or treaty. See Clive Parry (et al.) **Encyclopaedic dictionary of International Law**, Oceana Publications Inc., New York, 1986. p. 12.
- 16 - Zahlan (78), op. cit., p. 158.
- 17 - Mohammad Al-Mutawa, **Social Change and Political Development in the Omani Coast 1934-1970**, Ph.D. Thesis, University of Reading, 1983, p. 63.
- 18 - A letter from the Majlis to Sa'id dated 5 Shawwal 1357 H. (26/11/1938).
- 19 - Zahlan (78), op. cit., p. 158.
- 20 - Heard-Bey, op. cit., p. 256.
- 21 - Al-Mutawa, op. cit., p. 63..
- 22 - A letter from the Majlis to Sa'id dated 16 Dulhijjah 1357 H. (5/2/1939)
- 23 - Heard-Bey, op. cit., p. 256.
- 24 - Said, op. cit., p. 264.
- 25 - Four of the members were from the ruling clan. They were Jumma bin Maktum, Mani' bin Rashid, Hashir bin Rashid and Suhail bin Buti. The rest of the Majlis members were Mohamed bin Abdulla bin Huraiz, Rashid bin Abdulla bin Huraiz, Biat bin Mohamed, Rashid bin Mohamed bin Dalmuk, Mohamed bin Sa'id Al-Gandi, Mohamed bin Thani, Abdulla bin Mohamed Al-Bodur, Nasir bin Khalifah, Mijrin bin Sultan, Mohamed bin Sa'id bin Ailan and Abdulla bin Obaid Al-Basti.
- 26 - See Shuhaiber, op. cit., pp. 59-60. J. Ismael, op. cit., asserts that in the 1938 reform movement in Kuwait, seventy-six per cent of the total public revenue was to be paid to the ruling family (i.e. Al-Sabah) and its entourage. See pp. 73-77.
- 27 - Sa'id, op. cit., pp.
- 28 - A letter from the Majlis to Sa'id dated 28 Sha'ban 1357 H. (22/10/1938).

- 29 - Shaikh Sa'id obstructed the building of one of the three schools. Shaikh Mani' bin Rashid became the head of the educational department.
- 30 - A letter from the Majlis to Sa'id dated 17 Dulhijjah 1357 H.(27/1/1939).
- 31 - A letter from the Majlis to Sa'id dated 8 Ramaddan 1357 H. (31/10/1938).
- 32 - A letter from the Majlis to Sa'id dated 5 Shawwal 1357 H. (26/11/1938).
- 33 - A letter from the Majlis to Sa'id dated 24 Dulqe'dah 1357 H. (14/1/1939).
- 34 - Two letters from the Majlis to Sa'id dated 11,12 Muhrram 1358 H. ( 3,4 /3/1939).
- 35 - Heard-Bey, op. cit., p. 257.
- 36 - Zahlan (78), op. cit., pp. 159-60.
- 37 - The same belief with regard to the British role in the fall of the 1938 *Majlis* in Kuwait was expressed by Ahmad Abdulla Saad Baz in his unpublished Ph.D. Dissertation, **Political Elite and Development in Kuwait**, George Washington University, 1981, pp. 122-123. See also Jasim M. Jerkhi, **The Electoral Process in Kuwait: A Geographical Study**, Ph.D. Thesis, University of Exeter, 1984, p. 87.
- 38 - The Political Agent in Bahrain wrote:

" If the British Government force the Shaikh to accept a council, the public would regard it as a sign that the administration which had been approved by the British Government for so many years had been suddenly become failure."

See Hashim, op. cit., p. 220.

The same concern was introduced by Sir Charles Belgrave, a British adviser to the ruler of Bahrain. He wrote:

" They [i.e. the Shaikhs of Bahrain] are one and all regard any suggestion of a council as being the swan-song of the Khalifah as Rulers of Bahrain. The Shaikhs believe that the British Government would not wish to undermine their position as Rulers of Bahrain. They are certain that with a council in Bahrain (however it might be styled or formed) the Khalifah would not remain the Ruling Family."

Quoted in M.G. Rumaihi, **Bahrain: Social and Political Change since the First World War**, Bowker Publishing Company, Epping, 1978, pp. 201-202.

## **CHAPTER FOUR**

### **THE LEGISLATURE UNDER THE NINE-MEMBER- UNION (1968-1971)**

#### **4.1 Introduction**

We have examined in the previous chapter the rise and fall of the first attempt to establish a constitutional government in the U.A.E. (1) However, the trend towards modern constitutional system in the emirates was not totally abandoned. A second attempt occurred in the period between 1968 and 1971 which witnessed the formation of a federation among the Trucial states.

It is worth mentioning prior to the discussion of the second attempt that in 1951 a common local defence force was established and trained by the British authorities. A year later a council consisting of the rulers of the emirates came into existence. This council was known as the Trucial States Council (TSC). Its main objective was to discuss local affairs and find solutions to problems arising amongst its members. A fund was set up in 1965 in order to develop the poor services in the smaller emirates (2). None of these projects, however, was aimed at establishing a unified state nor advancing the overall political system in the area. They were a mere reflection of the British desire to create a governable co-operative bodies in order to implement its policies.

This chapter deals with the movement towards a form of federation which began after the British announced in 1968, that they were going to withdraw from the region. The chapter will focus on the constitutional position of the legislature in the proposed new union. First as part of the background it is important to understand what led to the British withdrawal and then examine the agreement which established the union and the main disputes which arose from it.

The chapter is intended to show that the traditional rulers were unwilling to consider the question of a full representative legislature. They used dissension over representation in the legislature as an excuse to hamper the advancement of the union.

#### **4.2 British withdrawal from East of Suez:**

Britain continued to remain in the Gulf area because of the importance of oil to the West. There was in fact no local threat to Britain's domination. To maintain a presence in the Gulf was adopted as a principle of the then Labour Government's policy. Its Defence Secretary, Denis Healey, announced in December 1967 that " it would be totally irresponsible for us to withdraw our forces from the area" (3). However, this policy suffered a reversal a month later when the British Prime Minister Harold Wilson, announced in the House of Commons that British troops would be withdrawn from East of Suez by the end of 1971.

Many reasons for this decision have been offered by students of British and Gulf area politics. Some have argued that it was basically an economic decision due to the devaluation of the pound

sterling and IMF pressure on the British economy (4). Other writers have suggested that the change in global politics was a major factor leading to the withdrawal decision. Soon Britain realized that it was not the sole power in the Gulf area and there was severe economic competition with other industrial countries in the oil industry. Furthermore, Arab nationalism was at its peak and local people were becoming more aware of their situation (5). However, the economic proposition was not sufficient justification for withdrawal. Britain was going to save from this decision no more than nine million pounds, while its interests in the area netted four hundred and fifty million dollars annually (6).

No explanation is entirely convincing. Perhaps the most interesting is that the decision was a mere reflection of inter-party politics at Westminster. The leftist MPs in the Labour Party were opposed to any reduction in domestic social commitments and were pressing for a large cut in the defence budget (7).

The withdrawal decision was condemned by the British Parliamentary opposition. In the Gulf area, the rulers were not ready to face the unknown future alone. They had not had the experience in foreign affairs which would enable them to find for themselves. The rulers were against such a decision because of the regional ambitions which might threaten their territories. The richest among the emirates went to the extreme of offering to bear the cost of a continued British military presence (8). It was Abu Dhabi that came up with this proposal. Their fears for the future were justified, in the ruler's opinion, because there were many political problems with other regional powers that were unresolved at that time. For example, Iran was claiming sovereignty over



Bahrain, and Saudi Arabia had similar claims on parts of Abu Dhabi and Qatar.

### **4.3 The First Agreement**

Abu Dhabi's proposal was declined by the British Government. Instead, a local solution was introduced. In the light of British advice, Dubai and Abu Dhabi, the largest and wealthiest emirates among the Trucial states, declared on 18 February 1968 an agreement to establish a two-member-union. This agreement settled certain boundary disputes between the two emirates. It stipulated the formation of a union which would be responsible for foreign affairs, defence and internal security, welfare services, immigration and nationality. The union would handle the legislative power in all matters with which it was entrusted. In addition, the agreement restricted union competence to those matters listed above. Finally, the two rulers concluded their agreement by inviting their fellow Trucial states rulers to discuss this agreement and join the union. They also extended their invitation to the rulers of Qatar and Bahrain to join them in deliberating on the future of the area (9).

It can be seen from what has been said that this agreement was an ambiguous document. It promised no executive or judicial powers nor were any constitution or constitutional committees mentioned. The setting up of an infrastructure of a state was not included in this agreement. One can, therefore, safely conclude that the 18 February agreement was more or less a political initiative rather than a real union.

The length of the first agreement was short, it lasted for 7 days because it was replaced by a second agreement as we will see. Its terms were very vague, but it was the first step in a lengthy process towards a larger union.

Some initial observations may be made. Firstly, the agreement did not propose any name for the newly-created union. This may have been due to the haste with which the agreement was drawn up. Secondly, the proposed union was intended to be merely a "protecting state" in the sense that the union would not be involved in national affairs to any great extent. Thirdly, the agreement confined the new state's jurisdiction to certain fields, leaving the individual emirates free in all other areas. This was the first indication of a policy, which would be adhered to in the rest of the federative process, that favoured the units over the union. Finally, the only governmental branch mentioned in the agreement was the legislative branch, which was to be entrusted to the union. However, there was not any specific body or branch of the government which would take over this power. Was it to be in the hands of both rulers jointly or would a council administer it?

The wording of the agreement was clear in favouring a union among the seven Trucial states. The two signatories extended their invitation to include Qatar and Bahrain because of British pressure (10). Dubai and Abu Dhabi had in mind a union dominated by them and that would be out of the question if two such strong partners as Bahrain and Qatar were included.

#### **4.4 The Second Agreement**

The rulers of the Trucial States and their counterparts in Bahrain and Qatar answered the invitation without any hesitation. In fact, all of them were waiting for some such solution to relieve them from the growing stress laid upon them by the withdrawal decision. The nine rulers met in Dubai in the period of 25-27 February 1968. After a lengthy discussion they announced to the world an agreement which established a new nine-member-union.

Reactions from regional and international powers to the newly launched union differed. Denis Healey, the British Defence Secretary, welcomed the new initiative and said that this was:

" an encouraging demonstration of a constructive approach on the part of these Rulers to the problems with which they will be faced as a result of the decision to withdraw British forces from the Gulf by the end of 1971. These consultations, were arranged entirely at the initiative of the Rulers, and we were not involved..." (11).

Britain and the rulers were keen to show that the union was a local innovation and that its emergence was completely a local decision. Such policy was intended to encounter any accusation, by Arab nationalists in the area, of being a British-made federation.

Most of the regional powers welcomed the union with the exception of Iran and the radical Arab states. On the Trucial coast, the news was welcomed by officials, but a Marxist movement in neighbouring Oman, known as the People's Front for the Liberation

of Oman and the Arabian Gulf (PFLOAG), denounced the "faked union" and accused it of being "another British neo-colonial federation" (12).

The Dubai agreement (13) consisted of three chapters and seventeen articles. It stipulated the formation of a union amongst the signatories to be named the "Union of Arab Emirates" (Article one). In the second article the accord made it clear that the purpose of the union was: to consolidate relations among the emirates, to strengthen cooperation amongst them, to coordinate their plans for welfare and progress, to support their individual independence and sovereignty, to unify their foreign policy and to organize a collective defence. The agreement established a Supreme Council consisting of the nine rulers. It was to be responsible for laying down a "complete permanent charter" for the union, drawing up union policies and promulgating union laws (Article four). The presidency of the union was to pass from ruler to ruler in rotation. A "Union Council" and a "Federal Supreme Court" were to be established. The former could be the executive branch of the union but its decisions would not be final unless ratified by the Supreme Council. Article fifteen gave the individual emirates jurisdiction over local affairs which did not directly concern the union.

The document signed by the nine rulers was known as an "agreement" and not a "constitution" because of the emirates' lack of experience in the field, the absence of precedents in the area and the haste of the rulers to meet the deadline set by the British withdrawal. Nevertheless, the document became the legal base for a future union.

The 27 February agreement was clearly much more of a legal document than the 18 February agreement in a sense that it identified the major powers of the government and distributed them between the union and the emirates. It was proposing "confederation" rather than "federation". However, the functions of the proposed union, although more specific and much wider, did not place the union, *vis-a-vis* the emirates, in a more practical position than the first agreement had. The proposed "state" was not a political unit for which there had been any precedent in the political history of the area. Although the Dubai agreement announced that it would be in effect by the 30 March 1968, in reality the "Union of Arab Emirates" only ever existed on paper. The deliberations that followed its proposal indicated only too clearly that this was to be the case (14).

Each ruler insisted on his emirate's independence and sovereignty within the union. Even the five smallest and poorest emirates rejected a proposal to unite them into one larger political unit. They argued that such a proposal was "belittling them in comparison with the other rulers" and that "the size of an emirate, whether small or large, was irrelevant" (15). In order to strengthen their position, all they demanded that they all had one equal voice and that all Supreme Council decisions be taken unanimously. This was a major factor in the failure of the enterprise.

The agreement entrusted the Supreme Council with legislative power. It did not demand the establishment of a popular representative assembly because the fears on the rulers side of power sharing. The Union Council was supposed to be the executive organization even though the reality was that the

executive power was in the hands of the rulers. In the final analysis, the agreement was much more a "charter" than a "constitution" - that is to say, it was granted by the rulers and not established by the citizens themselves. In spite of the fact that the agreement established a "Supreme Court" (Article 13), this institution did not immediately take shape.

The process of setting up the machinery of the union started three months later on May 25<sup>th</sup>. It was clearly not going to be an easy task to unite the rival ruling families. The Supreme Council met four times and the provisional Union Council met five times during the period from 25 May 68 to 23 October 69, yet, all these meetings were fraught with suspicion and distrust. The members divided into two camps: Dubai and Qatar versus Abu Dhabi and Bahrain. It is beyond the scope of this thesis to discuss these meetings and the problems arising during them, therefore, we will concentrate on the major problems that affected the fate of the union: drafting a constitution and representation in the national assembly.

#### **4.5 Drafting a constitution:**

As mentioned above, the Dubai agreement assigned to the Supreme Council the task of laying down a "Complete Permanent Charter". The words chosen make it plain the way that the rulers were dealing with matters which could have important legal significance, viz. constitution-making. The projected document was to be "complete" and "permanent". This meant that unless it satisfied each ruler it would be incomplete and unacceptable. It

also was to be a "charter" not a "constitution". This seemed to indicate that the rulers preferred a loose legal document binding them together rather like a treaty. They were not ready to compromise their privileges and accept a formal binding constitution.

At its first meeting, the Supreme Council issued two resolutions. The first resolution was to appoint Dr. Abdul-Razzak al-Sanhuri, a prominent Egyptian public lawyer and constitutional expert, to prepare the charter over a period of six months. The second resolution established a committee of nine members to collaborate with the expert (16).

Al-Sanhuri appointed two lawyers to help him in his task. One of them, a Sudanese lawyer, visited the area with a questionnaire consisting of over 129 questions. Some of the rulers were suspicious of these long and detailed questions and for this reason a tri-committee was formed at the second meeting of the Supreme Council whose duty was to study the questions and to review the answers submitted to the co-expert by some of the emirates (17). The committee reached a decision to recommend a provisional consultative national assembly. It would be appointed for two years to discuss the charter. Two thirds of the assembly members were to be elected and the rest appointed (18). This suggestion did not take account of the political realities in the area and consequently was ignored.

Everything seemed to have come to nothing when the constitutional expert resigned from his commission because of illness, but the emirates' own legal advisers were successful in

convincing their rulers that they were capable of drafting a constitution themselves. It was in the third meeting of the Supreme Council (10-14/5/69) that the term "constitution" was introduced. The constitution was to be designated "provisional" because of the differences among the emirates and their desire to protect their respective interests. This word was intended to mitigate the impact of such an important legal document and to the cautious it was enough to state in the constitution that its provisions could be amended after a specific period of time. But it seems that the rulers were in favour of a rule amending the whole constitution and this in itself implies their unwillingness to be bound by a constitution in the first place.

The first resolution, issued at the end of the third meeting, was to form a new committee composed of eight legal advisers out of whom one was to be a national (19). The committee was to draft a provisional constitution within two months and then submit it to the constitutional expert. Dr. Waheed Ra'afat, an Egyptian constitutional lawyer and legal adviser to the Kuwaiti Crown Prince, was appointed as the new expert. He was to review the *ad hoc* committee proposal and send it together with his comments to the Supreme Council in a month's time.

The *ad\_hoc* committee finished its task in record time. Its proposal was composed of 126 articles contained in seven chapters. On 21 July 69 two copies of the draft were sent to the expert. Dubai and Qatar were keen to make their points clear to Dr. Ra'afat. The former sent its legal adviser to meet him and explain Dubai's commercial interests. Qatar preferred to send its observations in the form of a new constitutional draft. However,



the constitutional expert found it easier to present his own review and comments on the proposals in the form of a third draft of the constitution. His draft was composed of 164 articles contained in ten chapters. It seems that his proposal was much more informative, wider and detailed than the other two drafts. He did not agree on the term "provisional", rather he preferred not to use it (20).

The fourth meeting of the Supreme Council (21-23/10/69) was presented with three drafts of the future constitution. The time was limited and it was clear that the rulers did not want to spend it discussing legal matters. They therefore appointed a new committee to review the first committee and the expert's constitutional drafts. It consisted of eighteen members, two for each emirate, but was destined never to meet because of the disappointing end to the fourth meeting. Two emirates, Qatar and Ras-al-Khaimah, withdrew from the meeting in protest against a message delivered by the Political Agent in Abu Dhabi. The nine-member Supreme Council itself never met again.

Because of the joint efforts of neighbouring states, deputy rulers met in Abu Dhabi on 14 June 1970. Here the members agreed upon a new committee to review the constitutional drafts which held two meetings in Dubai. The second committee presented a new draft of the provisional constitution which was more or less a modification of the constitutional expert's proposal. The new draft was discussed at the second meeting of the deputy rulers on 25 October. However, the parties did not fully agree upon some provisions in it.

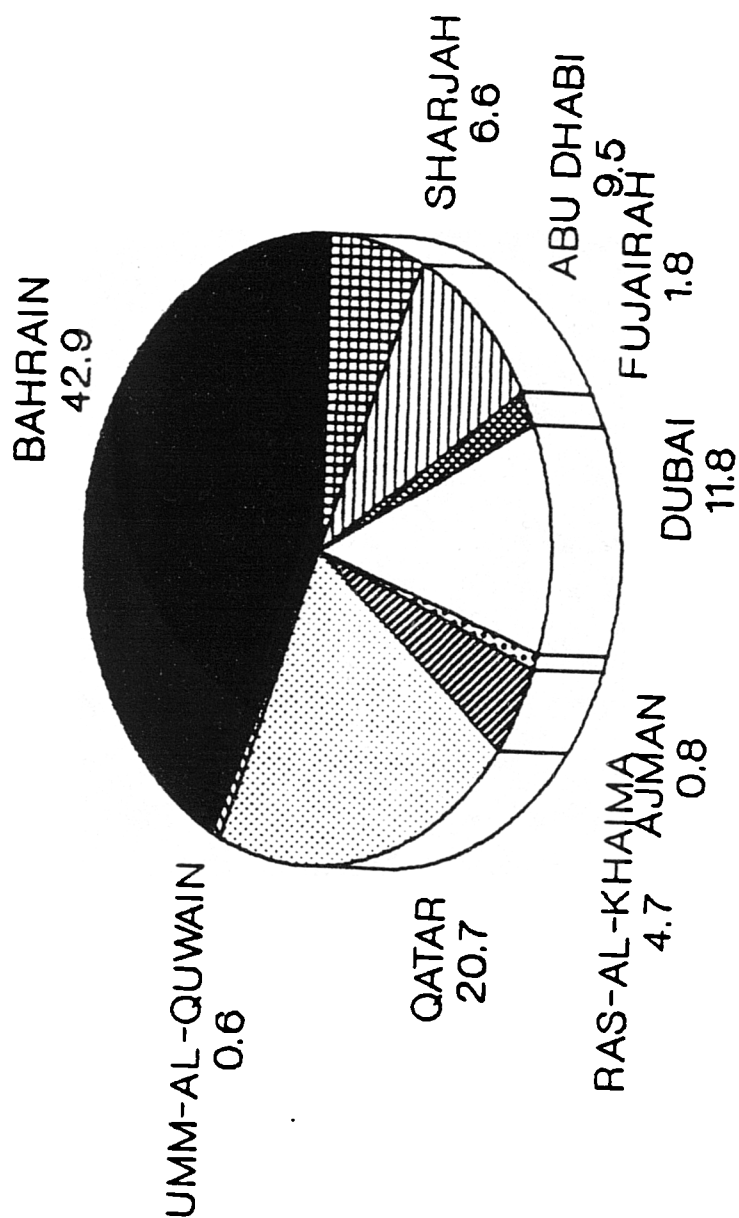
The major issues that had to be solved before a provisional constitution could be presented were three: the location of the union's permanent capital, voting in the Supreme Council and representation in the proposed national assembly (21). In brief, the first obstacle was created because each one of the powerful emirates was trying to accommodate the capital within its own territories and not give any of the rival emirates the chance to have it. The issue was politically motivated and legally presented. Even when they agreed on a resolution to have a "provisional capital" in Abu Dhabi and later the permanent one on the borders of Dubai and Abu Dhabi there was disagreement on whether to include this resolution in the body of the constitution or not. The second obstacle emerged because the five small emirates insisted on the principle of unanimity in Supreme Council decisions. The rulers and their advisers were hiding their personal motivations behind legal arguments.

#### **4.6 Representation in the Proposed Consultative National Council**

From the beginning all the emirates were somewhat daunted by the size of the Bahraini population. As figure 4.1 shows, Bahraini citizens represented 42.9 % of the union's total population. Therefore, the issue of representation was a crucial factor in determining the fate of the union.

# NATIONAL CONSULTATIVE ASSEMBLY: SEATS DISTRIBUTED ACCORDING TO 1968 POPULATION

(Chapter four)



(FIGURE 4.1)

As has been mentioned earlier, the issue of popular participation in the process of forming a new state had been totally overlooked. There had been no reference to this matter nor to the establishment of a body which would enable the union nationals as a whole to determine their own future. The Dubai agreement was a reflection of the fact that power continued to lie with the ruling elites. They alone were responsible for their citizens' future and would remain so. Indeed, the issue of a representative body was not even brought up until the third meeting.

Different names were proposed for the new body: Shura Council, National Shura Council, Provisional Consultative National Assembly, Consultative Federal Council, Consultative National Council. The latter was chosen by the Supreme Council (22).

As regard the size and quality of the population, Bahrain had the largest, best educated and most politically sophisticated citizens. The rest of the emirates fluctuated between a moderate size of population and a moderate level of education to a small population and a low level of education. All the factors were in favour of Bahraini domination in union affairs, yet, due to its weak economic and political position, Bahrain did not have the ability to utilize these advantages.

When discussing the issue of representation, Ras-al-Khaimah was the first to suggest the seats be divided equally among the emirates. The smaller emirates agreed on this principle, but Bahrain rejected it on the grounds that the purpose of the National Council was to represent the people not the emirates (23).

The *ad\_hoc* committee, which was formed to discuss the method and bases of representation, recommended equal representation and stated that:

"All the emirates should have an equal number of representatives in the assembly. However, Sharjah proposed that if a method of achieving a marriage between the principle of representation according to population, and the principle of absolute equality, can be worked out, it should be adopted. But discussion revealed that such a marriage is a difficult thing to realize; moreover, representation according to population is fraught with numerous practical difficulties, such as identification of the original nationals and real numbers of population" (24).

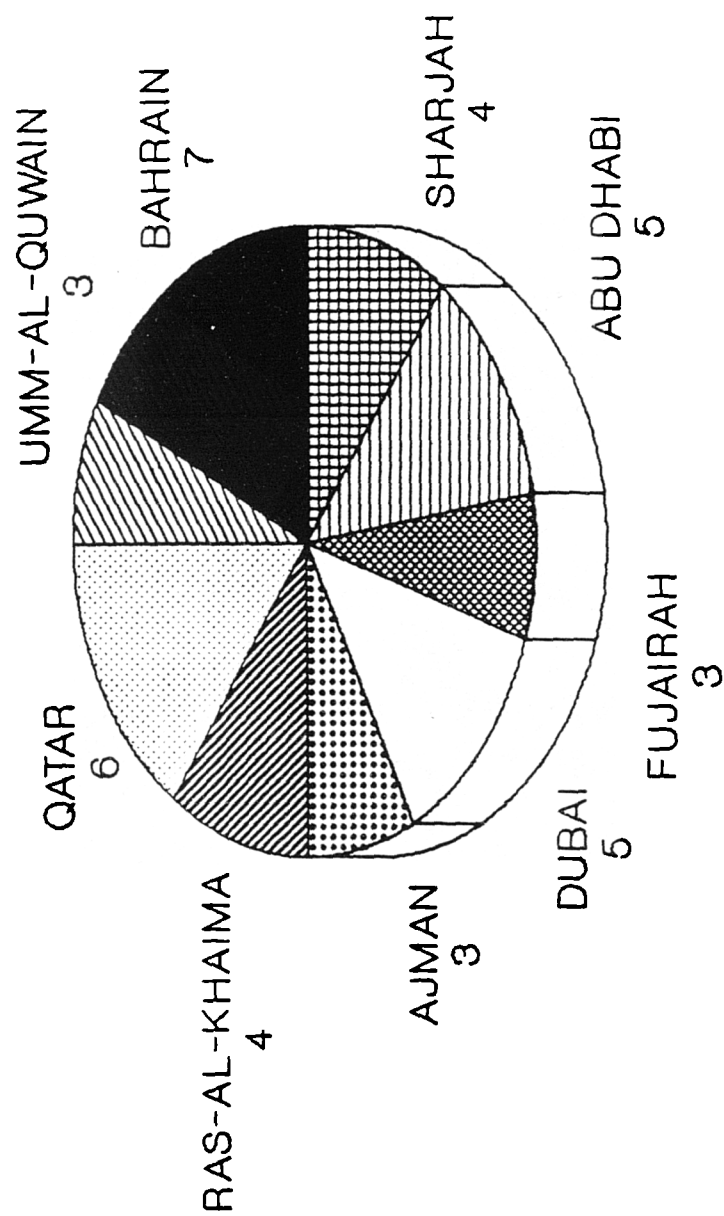
The last two points, that is to say the issues of the size of population and identification of nationals, were perhaps the real origin of the dispute.

Abu Dhabi proposed that Bahrain should have six seats and the rest of the emirates four seats each. This proposal was rejected by the smaller emirates straight away. The constitutional expert suggested in his draft a formula for distributing the seats (see figure 4.2). The seats were to number not more than fifty and should be distributed proportionally. No emirate should have more than eight seats nor should it have less than three. This proposal was accepted only by Bahrain.

One important factor in the negotiations is that Bahrain was passing through hard times. Threatened by Iranian expansion it saw the union as a way of escape. As a result, Bahrain was ready, at the fourth meeting to accept the formula introduced by the *ad hoc* committee. It issued a press statement declaring its willingness to comply with the equal representation

# FNC'S SEAT DISTRIBUTION PROPOSED BY THE CONSTITUTIONAL ADVISER

(Chapter four)



(FIGURE 4.2)

rule (25). The decision, which was included in Article 69 of the constitution draft, was to have a consultative national council consisting of 36 members, four for each emirate.

However, towards the end of 1970 the political situation was changing rapidly, especially in Bahrain. Iranian claims were finally settled through the United Nations in May 1970 (26). Relieved of that particular threat the Bahraini Government found itself faced with damaging strikes at home and was obliged to promise its people a kind of liberal constitution (27). All these circumstances prompted Bahrain to alter its position regarding representation in the National Council.

Bahrain started demanding a revision of Article 69. It said that its view point in the fourth meeting was mistaken and it now wanted to correct it. The Bahraini representative in the deputy rulers meeting stated that:

" We believe that the most significant thing which is supposed to concern the emirates and their people is the question of popular participation in the proposed system ... The Union National Council is one of the most fundamental elements of the new system and this council is either to be or not to be ... I am not asking for a parliament like the British or the American ones, but a council which represents the people according to the present situation" (28).

In accordance with its new position, Bahrain proposed an amendment of Article 69 to be read as:

" The Federal Government shall carry out an official census of the population of the emirates; accordingly, the number of nationals in each emirate shall be taken into account regarding the proportions

to represent the people in the Union National Council; the census shall take place no later than four years from the date when the Provisional Constitution shall be in effect" (29).

It seems that Bahrain was prepared to accept equal representation in the assembly for four years, but it wanted a constitutional guarantee that its demand for proportional representation would be met after the lapse of the interim period. However, this was not acceptable either to Bahrain's rival emirates (Qatar and Dubai) or to the small emirates. They kept insisting on equality in everything.

Due to this dissension among the rulers, the British Conservative government, which had been elected on 18 June 1970, appointed Sir William Luce (30) as the Foreign Secretary's Special Envoy to the Gulf. The British finally came to the conclusion that they had to be involved directly if the union was to succeed. (31).

Sir William Luce as Special Envoy visited the area four times. Having discussed the nature of the disagreements he sent Mr. Holmes, a British constitutional adviser, to settle what were clearly constitutional disputes. This time Qatar was the major objector. Mr. Holmes proposed a revision of Article 69 and of the bases for representation. He supported the Bahraini point of view in recommending revision after four years. Qatar stood firm in rejecting this proposal. It alleged that if Bahrain was more populous, then Abu Dhabi, Qatar and Dubai were much wealthier. Holmes proposed that the council should be formed on the ground of population size and each emirate's contribution to the union budget. A fourth proposal was to create a bicameral legislature.



Qatar, nonetheless, did not change its mind and insisted on equal representation (32). The fate of the British proposals were clear. A joint Kuwaiti-Saudi mission suggested a proposal similar to the Bahraini one, but it was decisively rejected by the emirates.

Another attempt to resolve the deadlock over the representation question was launched by Sir William Luce himself. He suggested that the National Council should consist of forty-one seats. The big four emirates should have six seats each, Sharjah and Ras-al-Khaimah four seats each, and the remaining three small emirates three seats each (see figure 4.3) (33). The fate of this proposal was no different from that of its predecessor.

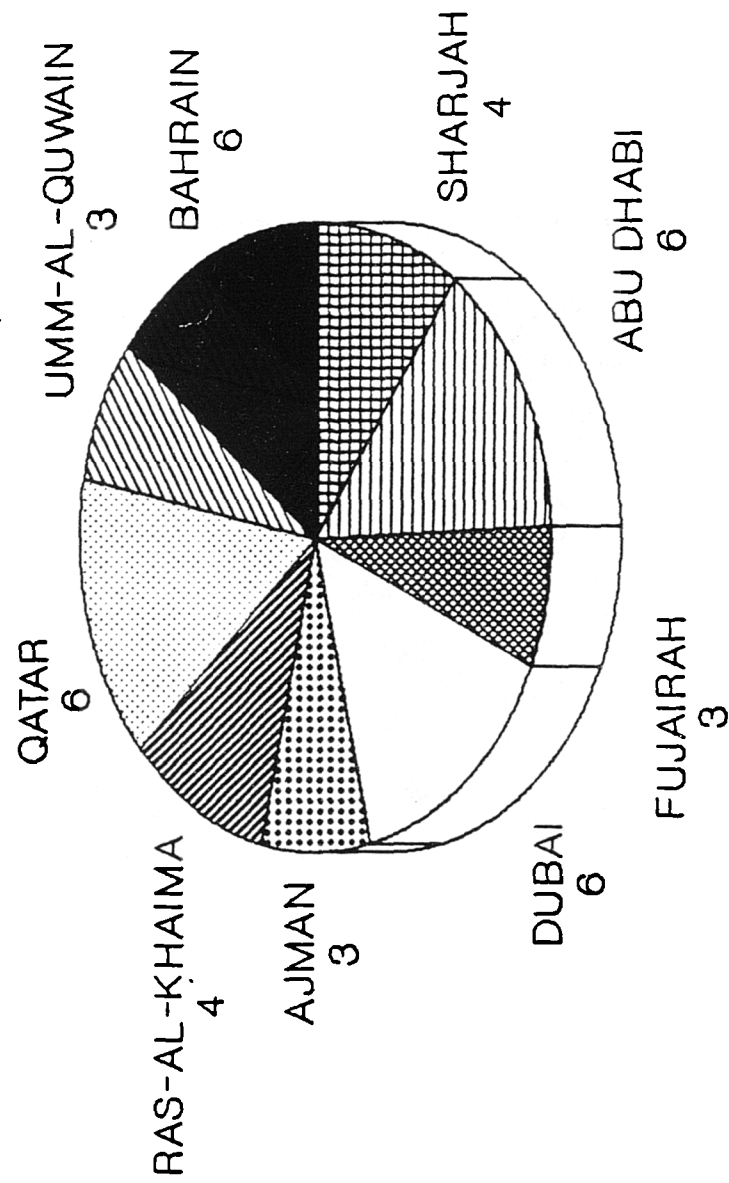
#### **4.7 The Failure of the Nine-member-union and the Emergence of The United Arab Emirates (U.A.E.)**

On 1 March 1971, the British Foreign Secretary, Sir Alec Douglas-Home, announced that the British Government would abide by the decision taken by the preceding Labour government and, therefore, would terminate its treaties with the Trucial States, Qatar and Bahrain by the end of the year. He offered them a treaty of friendship and some military assistance and arrangements (34). They all accepted the treaty and signed it later on (35).

The Trucial States Council held a meeting in Dubai between 10 and 18 July 1971 to discuss straightforward union among the seven emirates. A joint communique was "Union of Arab Emirates". The rulers signed a "Provisional Constitution" for the U.A.E.. It was issued at the end of the meeting announcing the birth of "United

# SEATS DISTRIBUTION PROPOSED BY SIR WILLIAM LUCE

(Chapter four)



(FIGURE 4.3)

Arab Emirates". The name of the new state was chosen so that it differed from that of the dying slightly different from that introduced by the second constitutional committee at the last deputy rulers' meeting on October 1970. Ras-al-Khaimah did not join the union because of differences mainly on the issue of voting methods in the Supreme Council and the number of its representatives on the Federal National Council (FNC) (36). The seats in the new assembly were to be distributed on the grounds of affluence and influence. Bahrain declared the termination of its special treaty relations with Britain on 14 August 1971, and Qatar followed in its footsteps on 1 September.

#### **4.8 Conclusion**

A more detailed discussion of all the actual and potential areas of contention among the individual emirates in the nine-member-union lies outside this work. For the purposes of this thesis, therefore, the constitutional and legislative difficulties were been singled out for discussion.

One might wonder whether all the legal and political battles occurring among the rival partners in the union were strictly necessary. Why did such conflict arise on the representation issue? Was there any justification for the emirates' fear of proportional representation ? Why did Bahrain insist on popular participation ? Did the remaining emirates adhere to their positions regarding the question of representation after 1971?

The simple reason for their hesitation to agree was lack of confidence on the part of the individual rulers and because they were not wholeheartedly committed to a democratic system of government. The emirates need not have feared such an impotent institution because the proposed assembly was to be "appointed" and "consultative" (37). This clearly indicated that it was to be born weak and powerless. The rulers could always secure their interests through the Supreme Council where the decisions had to be unanimous.

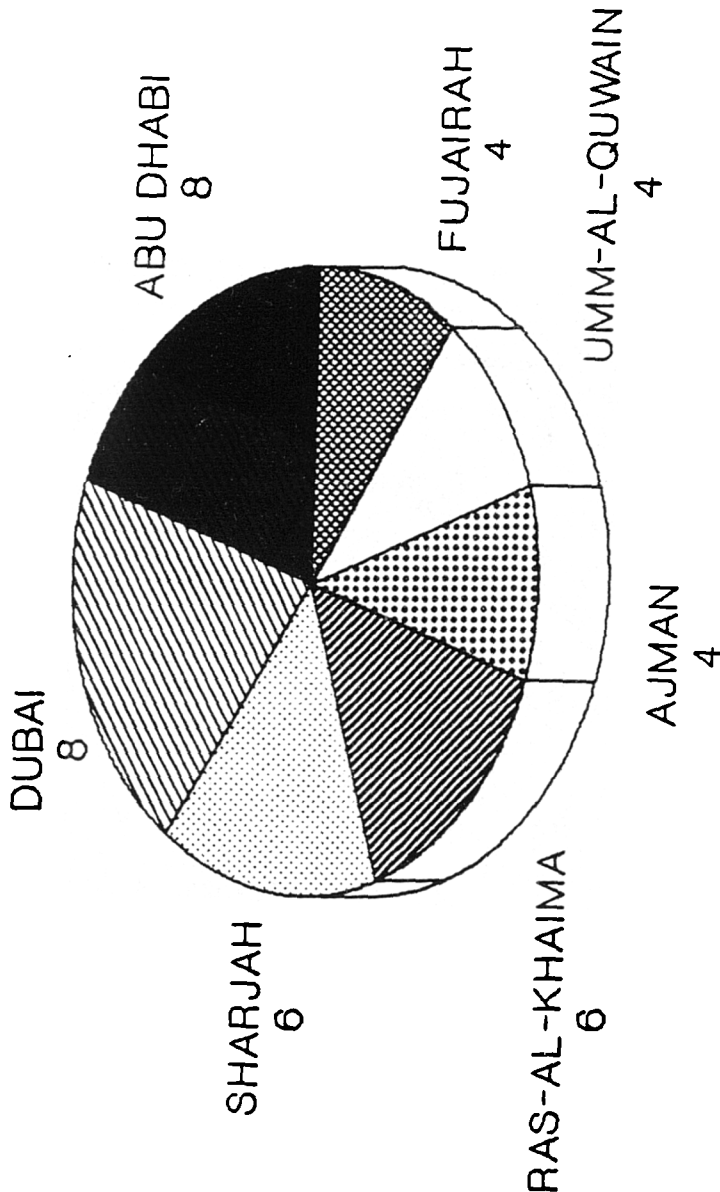
An example should make it clear how loath the emirates were to have a legislative body. Article 111 in the revised Provisional Constitution stipulated that a draft law should become a law when it had been accepted by the Union National Council or the Council of Ministers and ratified by the Supreme Council. Qatar's legal adviser objected to this wording and protested that the Article gave the assembly a legislative power which was in contravention of what had been unanimously agreed. The Article was amended accordingly and the Union National Council had only a consultative role (38). Yet, the rulers insisted on equal representation in it. It was probably more a matter of prestige and self-esteem than a legal dispute.

It should be pointed out that whereas the smaller states had been determined to have equal votes in the Supreme Council and equal seats in the Union Council, they accepted a different formula under the U.A.E. Provisional Constitution. The votes in the Supreme Council were to be on a majority basis, which must include the votes of Dubai and Abu Dhabi. Furthermore, the seats in the Federal National Council (FNC) were to be distributed

unequally (see figure 4.4). Then why did they hold to one opinion in the first union and accept the opposite view point in the second ? The only explanation that one can suggest is that in the first union there was, in the eyes of the rulers of these emirates, plenty of time before British withdrawal. It appears that they thought it worth manoeuvring and demanding equal rights. However, in the second union only a few months remained before the end of 1971 and they had no alternative other than to accept the formula presented by the two big emirates if they were to be allowed in. If they rejected it then they would face the future alone.

On the subject of the Bahraini and Qatari positions, Bahrain was not the best one to defend the cause of democracy and people's rights to participate in the decision-making process. The Bahraini ruling family shamelessly oppressed its political opponents and even deported their leaders. After 1971, Bahrain had a partly elected legislature but the government could not tolerate this legislature for more than twenty months. It seems that Bahrain was cynically exploiting the "proportional representation" principle in order to provide an excuse for not joining the union. Qatar, on the other hand, did not even have a council after 1971 until some few years later. Neither of the two states was really enthusiastic in trying to involve their citizens in decision-making.

FNC'S SEAT DISTRIBUTION ACCORDING TO  
UAE CONSTITUTION



(FIGURE 4.4)

Finally, it could be claimed that the formation of the union legislature was a smoke-screen to conceal the old rivalries among the ruling families and the lengthy, heated legal debates were conducted by advisers mindful of the rulers' interests. Undoubtedly, the interests of the people were sacrificed for personal gain. As A. Taryam wrote:

" The enthusiasm and desire for mutual cooperation which characterised the meeting were motivated by force of circumstances and not a genuine conviction of the need for joint work. ... When the impact of these circumstances began to lessen, the enthusiasm of some members began to wane, goodwill to evaporate, and the federation began to slump" (39).

**Footnotes:**

- 1 - Britain proposed to the rulers of the Trucial States a seven-point plan, prior to the collapse of the 1938 legislative reform movement in Dubai. The plan suggested the establishment of a Supreme Council and the unification of the education system, telegraph and mail services, and legal codes. A consultative assembly, *inter alia*, was also proposed. However, due to the outbreak of the Second World War this scheme was postponed. See Mohammed Al-Musfir, **The United Arab Emirates : An Assessment of Federalism in A Developing Polity**, Ph.D. Dissertation, State University of New York at Binghamton, 1985, pp. 63-64. Although Al-Musfir stated that the British suggested the establishment of a Supreme Council, he was totally mistaken when he added that it was to consist of the seven rulers. It is a simple fact that at that time, 1937, they were not seven.
- 2 - Khalida Quraishi, " The United Arab Emirates" in **Pakistan Horizon**, Vol. 26, No. 4, 1973, p. 11.
- 3 - Hassan H. Al-Alkim, op. cit., p. 7.
- 4 - J.B. Kelly, **Arabia, the Gulf, and the West**, Weidenfeld and Nicolson Limited, London, 1980, p. 48. See also D.C. Watt, " The Decision to Withdraw from the Gulf", **The Political Quarterly**, Vol. 39, 1968, pp. 315-318.
- 5 - Al-Alkim, op. cit., pp. 6-7.
- 6 - A. Cottrell stated, " Thus Britain has been paying a low cost for the returns it receives from its investments in the area." See Alvin J. Cottrell, " British Withdrawal from the Persian Gulf", in **Military Review**, Vol. 50, No. 6, June 1970, p. 15.
- 7 - Watt, op. cit., pp. 318-321. Watt even goes as far as to say that " the decision to withdraw from the Gulf was essentially taken for reasons that have nothing to do with the real gain or loss to Britain's financial position; it was a sop thrown to those whose main interests lay in resisting cuts to domestic social expenditure."
- 8 - See Kelly, op. cit., p. 49.
- 9 - **Arabian Gulf Documents (1968-1971)**, compiled by Riad El-Rayyes, London, 1987, pp. 25-26 (Arabic).
- 10 - Abdullah O. Taryam, op. cit., pp. 89-92. Actually Dubai had good relations with Qatar, and Abu Dhabi with Bahrain. Moreover, the latter was keen to join the union in order to save its territory from the Iranian claims.



- 11 - " Gulf Amirates Agree to Federate", in **Survey of British and Commonwealth Affairs**, Vol. 2, 29/3/68, p. 311.
- 12 - Fred Halliday, " Class Struggle in the Arab Gulf", in New Left Review, Vol. 58, Nov, 1969, pp. 35-37. For more details on the leftist opinion on the union question see Documents of the National Struggle in Oman and the Arabian Gulf, The Gulf Committee, London, 1974 (especially pp. 10, 21, 25, 34-36).
- 13 - Arabian Gulf Documents, op. cit., pp. 27-29.
- 14 - Ahmad Khalifah Al-Suwaidi, the influential Abu Dhabi representative, said, almost one and a half years later on 12 October 1969, that his emirate and Bahrain were of the opinion that although the Dubai agreement had been signed, the union had never existed. ibid., p. 328.
- 15 - It was a scheme proposed by Qatar to unite these small emirates in one unit to be called "United Arab Coast Emirate." See Taryam, op. cit., p. 92.
- 16 - Arabian Gulf Documents, op. cit., pp. 86-87.
- 17 - The committee consisted of three representatives from Abu Dhabi, Qatar and Bahrain. See Waheed Ra'afat, " About the Union of Arab Emirates in the Gulf", in Egyptian Journal of International Law, Vol. 26, 1970, pp. 30-32 (Arabic).
- 18 - Arabian Gulf Documents, op. cit., pp. 210-211.
- 19 - They were: Saleh Farah (Abu Dhabi), Dr. Husain Al-Baharna (a Bahraini national), Ahmad Al-Bitar (Dubai), Zuhair Al-Najdawi (Qatar), Ysri Al-Dowaik (Sharjah), Kamal Al-Dijani (Ras-al-Khaimah), Jawdat Al-Barguthi (Ajman), Naji Jawad (Fujairah). Umm-al-Quwain did not appoint any representative to the committee. Ibid., p. 324.
- 20 - Ra'afat, op. cit., pp. 99-105.
- 21 - Wheed Ra'afat, " About the Collapse of the Nine-member-union of Arab Emirates in the Gulf and the Establishment of a Seven-member Union instead", in Egyptian Journal of International Law, Vol. 28, 1972, p. 234-236 (Arabic).
- 22 - Arabian Gulf Documents, op. cit., p. 316.
- 23 - Ibid., p. 317.
- 24 - Taryam, op. cit., p. 121.
- 25 - Arabian Gulf Documents, op. cit., p. 394.
- 26 - UN Secretary General, Mr. U Thant, sent his special envoy to Bahrain to assess the wishes of the Bahraini people. He reported that Bahrainis were "unanimous in wanting an independent sovereign state". See Neville Brown, " Britain

and Gulf : Don't Go Just Yet Please ! The Wisdom of Withdrawal Reconsidered. ", in New Middle East, No. 24, Sept, 1970, p. 45.

- 27 - Ralph Izzard, " The Fight for Federation " in Middle East International, April 1971, p. 35.
- 28 - Arabian Gulf Documents, op. cit., p. 537.
- 29 - Ibid., p. 549.
- 30 - Sir William was not a stranger to the area. He was previously Governor-General of Aden (56-60) and Political Resident in the Gulf (61-66). He was of the opinion that the decision to withdraw " was taken without prior consultation with the rulers..., and apparently for reasons irrelevant to our and their interests". However, he insisted that "... the decision to withdraw ... in no way affects British influence or interests". He was of the belief that there was not a single power in the region which could fill the vacuum after British withdrawal. See his articles in The Round Table: "Britain in the Persian Gulf", July 1967, and "A Naval Force for the Gulf", October 1969; and in Survival: "Britain's Withdrawal", Vol. 11, 1969.
- 31 - It was clear from many interviews with the rulers that they were becoming discontented with the union. Shaikh Rashid, ruler of Dubai, said in an interview with The Times on 14/7/70 that "the whole coast, people and rulers, would all support the retaining of British forces in the Gulf". He was of the opinion that "nothing other than a confederation" was possible. Earlier, in an interview with The Times on 9/10/68, Shaikh Zaid, the ruler of Abu Dhabi, had said that he favoured a nine-member-union, yet, he would be prepared to "support a union of seven Trucial Shaikhdoms alone or ... a union of Abu Dhabi with three or four of them."
- 32 - Arabian Gulf Documents, op. cit., pp. 501-509.
- 33 - Izzard, op. cit., p. 35.
- 34 - For details see Keessing's Contemporary Archives, 13-20 March 1971. Some of the rulers were unhappy with this decision, especially as it came from their Conservative allies. Shaikh Rashid was, as he said in an interview with The Times on 3/3/71, "disappointed". He was sure that without Bahrain there was a 99 per cent chance of a union among the other eight emirates.
- 35 - For the Treaty of Friendship between the U.K. and the U.A.E. see Cmnd. 4937, Treaty Series No. 35 (1972). For the Parliamentary debates in the House of Commons regarding the U.A.E. independence see Hansard (1971), Vol. 827, pp. 944-949. Tamm, op. cit., pp. 160-163.
- 36 - Heard-Bey, op. cit., p. 363.

37 - Mahdi Al-Tajir, the influential Dubai representative, stated that "the draft of the Provisional Constitution gave the Supreme Council a wide range of jurisdiction while giving the Union National Council only limited jurisdiction. Therefore, there was no point in discussing people's representation in a useless nominal council." See Arabian Gulf Documents, op. cit., p. 546.

38 - Ibid., pp. 494-495.

39 - Taryam, op. cit., p. 94.

### PART THREE

In part 3 of the thesis we examine the 1971 U.A.E. Constitution ( the basic characteristics, division of power), the constitutional position and set up of the Federal National Council, its membership, the socio-economic and political background, the constitutional framework of the role of and functions of the FNC (legislative, political, financial) and analyse the major political and constitutional cases in which the legislature has a role. Throughout the following chapters there is an attempt to give a comparative analysis by relating them to the historical development and the socio-economic background of the U.A.E., including a general perspective of the role of the legislature in developing countries. Part 3 consists of four chapters.

Chapter 5 The 1971 U.A.E. Provisional Constitution.

Chapter 6 The Constitutional Framework of the Role of the U.A.E. legislature.

Chapter 7 The Practical Working of the U.A.E. legislature.

Chapter 8 An Analysis of the Major Political and Constitutional Cases.

## **CHAPTER FIVE**

### **THE 1971 U.A.E. PROVISIONAL CONSTITUTION**

#### **5.1 Introduction**

In the previous chapter the evolution of the Nine-member-union was discussed in terms of constitutional change and development. From the outset the direct participation of the people in the shaping of the state was not considered feasible. There was no place for them in the constitution-making process and the new Provisional Constitution was the result of committee meetings and legal discussions among legal advisers also. The result was the 1971 Provisional Constitution of the U.A.E. (hereinafter the Constitution).

The purpose of this chapter is first to examine the main principles of the U.A.E.'s constitution, second the working of the federal system, the various authorities within the union and third the question of a permanent constitution.

#### **Distinctive features of the U.A.E. Constitution:**

We have seen in chapter four that the process of drafting the U.A.E. Constitution was accelerated in order to meet the deadline

set by the British and as a result many constitutional issues and related controversies remained unresolved.

Papua New Guinea had a similar experience when two deadlines set by the Australian colonial power were not met because of lengthy constitutional negotiations. The final solution was to pass over the intended interim period and simply declare independence. In the case of Vanuatu, the chief minister actually invited foreign officials to attend the independence ceremony, while the constitutional negotiations were still in progress. (1)

The U.A.E. Constitution contained several distinctive features which deserve mention before we move on to study the structure of the state. First, the Constitution did not explicitly revoke the pre-1971 political system or by its terms dismantle their legal framework. On the contrary, Article 148 of the constitution expresses the rule that "all matters established by laws, regulations, decrees, orders and decisions in the various member Emirates of the Union" were protected with effect upon the coming into force of the Constitution. Such announcement granted a kind of protection for the legal organization of the member emirates which would be difficult to amend or change in later years. The Constitution did not seek to repeal the existing *status quo*. It was intended to protect and consolidate the *status quo* in the area. As it did not come into effect through extra-legal means (e.g. by coup, revolution or the rulers' relinquishing of their powers to the masses) the Constitution was more or less bound to accept the traditional system of rulership in the emirates and approve its continuation. In short the U.A.E. Constitution was not designed to rationalize the distribution of power nor to introduce

"representative democracy", as known in the Western democracies, within the union. Instead it accepted the existing constitutional position of the rulers but sought to provide additional legislative and political improvements.

In sharp contrast to the U.A.E. Constitution, the experience of constitution-drafting in continental Europe since the eighteenth century had been modified to curb the executive powers of government with provisions regarding the importance of the rights of the individual in the face of arbitrary rulings. On the other hand, the Eastern bloc constitutions in the wake of the Second World War pursued the line of "popular democracy" which was given a particular meaning, namely, popular type of government, a system wherein a single ruling party seeks to protect and defend the rights of the masses through its legislature. The first category was more or less, as Edward McWhinney put it, "professorial constitutions", while the second was almost nominal. (2) The U.A.E. Constitution was intended to preserve and secure the spirit of traditional rule while introducing a modern structure.

It may be concluded that the technique employed in making the U.A.E. Constitution, as we have explained in the previous chapter, is to a great extent influenced by the British model of constitution-making. British practice in the non-European colonies where the constitutional system was "normally devolved from ... the parent authority (above)" and the system tended "to have an elitist or expert, and certainly non-popular, root of political and legal sovereignty".(3)

However the U.A.E.'s constitution was not issued under an Act of Parliament. Unlike the Indian Constitution of 1950 and the Irish Free State Constitution of 1920 with constituent assemblies set up by Acts of Parliament, (4) the U.A.E.'s constitution was established under the direct authority of the rulers of the emirates and not by imperial laws. The constitution owes its authority to Royal edict. Nevertheless, the formation of the U.A.E., although not achieved without some consultation with the British, was a new start and a break with the past.

It is important to mention that like the Constitutions of Kuwait and Bahrain, the U.A.E. Constitution regards Shari'ah as a main source of legislation in the Union (Article 7). The adoption of Shari'ah may be considered as a continuity of the legal situation in the emirates prior to 1971. Such a trend in constitution-making introduced changes to the existing system without entirely rejecting the past.

The significance of Shari'ah, as we have seen in the introduction, was stressed in several Union legislation such as Law 10/1973 setting up the Supreme Court, Law 6/1978 setting up the Union Courts of First Instance and Appeal courts, Law of Civil Transactions and Penal Law. This tendency was emphasised in the U.A.E. by the establishment of Faculty of Shari'ah and Law in the U.A.E. University. It seems that the future trend in the emirates is towards codifying Shari'ah principles.

· Tribal values were to a certain extent adopted in the 1971 Constitution. For example, the preservation of the rulership in each emirate and the creation of the Supreme Council which



represents an exclusive club. Moreover, these values directed the constitution-makers towards establishing the Federal National Council. This Council is intended to be the modern resemblance of the traditional *Majlis*. In fact, the National Council exemplifies the persistence of the traditional method of consultation. The Constitution, therefore, preserved one kind of traditional pressures, viz. the *Majlis* system.

The above mentioned position applies at the federal level. At the local level, the Constitution reaffirmed the existence of the traditional institutions in each emirate (Article 148). Indeed, every emirate has nowadays its own *Majlis* where the shaikh meets his fellow citizens. Shari'ah role is also maintained in the local system of courts in those emirates which did not relinquish their jurisdiction in this field, namely Dubai, Ras-al-Khaimah and Umm-al-Quwain. Shari'ah Court, for instance, have residuary jurisdiction in most matters both in Dubai and Ras-al-Khaimah. (5)

## **5.2 The basic features of the Constitution**

The U.A.E. Constitution is contained in a single written document. This follows the tradition of modern constitutions which are usually written. The second noticeable feature is the federal nature of the constitution. This may also help to explain why a written constitution was required.

As we have seen the individual emirates have been ruled for centuries by unwritten customs and traditions, but faced with the task of building an entirely new constitutional system they agreed

to revise their past legal framework. The Constitution, as mentioned in the previous chapter, was the first written legal document carrying the special status of constitution in the geographical area.

One unusual feature of the Constitution is its "provisional" nature. The preamble to the text reads "... until the preparation of the permanent Constitution for the Union may be completed we proclaim .... our agreement to this provisional Constitution", while article 144 actually specifies five years as being a reasonable interim period.

The explanation for a "provisional constitution" has been considered by some writers. The main reason is that a provisional constitution provides a learning process for the citizens and serves as a transitional step towards "modern democratic rule." (6) This, however, is a rationalisation of what lies behind the provisional nature of the Constitution. The truth of the matter is that the degree of mistrust and lack of enthusiasm among the rulers of the nine-member-union is such that the present Constitution is as far as the seven rulers are at present prepared to go.

A provisional Constitution was the inevitable solution if the new federation was to be first in place and if the fledgling Union was to survive. As McWhinney stated "... it is not sensible to try to resolve today's temporary problem by creating a long-range solution in permanent, constitutional form: today's happy remedy may be tomorrow's continuing burden that you have to live with as gracefully as possible" (7). The rulers adopted a similar point of view. The U.A.E. Constitution, therefore, in its present form has

proved to be the only acceptable one in the eyes of the political leadership of the country.

Another feature of the Constitution is its rigidity. In other words, it cannot be amended as simply as ordinary legislation but certain key points were entrenched. There are different and stiffer stipulations concerning any amendments and these are laid down clearly in the text itself. First, the constitutional body that has the right to issue Constitutional amendments is different from the one that has the power to amend laws. Only the Supreme Council has the right to amend the Constitution, while in the case of the ordinary laws the Council of Ministers has that right. Whereas the Constitution does not stipulate any conditions for amending ordinary laws, it insists that the "topmost interest of the Union" must be consulted before any constitutional amendment is made, a term which is firm if somewhat vague. As a final safeguard, a special two-thirds majority in the Federal National Council is required to pass the amendment. (8)

The rigidity of the Constitution may be more of theoretical value than real, as amendments have been called for, no more than five times in the past nineteen years. These amendments, moreover, have been on the whole simple formalities, such as the inclusion of Ras-al-Khaimah into the Union, allocating it six seats in the National Council, and the extension of the Constitution's validity after the end of its interim period. The only substantive amendment was that issued in 1976 repealing Article 142 which gave the individual emirates the right to set up local forces. Unfortunately this amendment, which was aimed at strengthening the federal government, has since been disregarded.

It should be remembered that two major systems of government in the world are the parliamentary system and the presidential system. In the traditional parliamentary system balance is maintained between the executive and the legislature through co-operation between the two institutions. The whole cabinet is formed from and is responsible to the legislature. In the traditional presidential system, however, the two institutions are quite separate. Ministers under this system are not members of the legislature and they are responsible to the president. (9)

Although Dr. S. Ibrahim (10) argues that the U.A.E.'s system is a mixture of the two systems, there are good arguments to question this analysis. Thus it might be concluded that the constitutional system of the U.A.E. can be classified neither as parliamentary nor as presidential. First of all, the Constitution does not to a considerable extent recognise the principle of separation of powers. It does not, as is shown later, allocate a certain function to a specific body. Secondly, the Constitutional system of the country has not known the dual-heads of the executive as in some parliamentary systems. Moreover, executive and legislative powers are not handled by a single institution but are divided among several bodies. (11)

Many observers disapproved of one feature of the U.A.E. Constitution, namely, the method of its adoption. For some it was too much like a "grant" from the rulers to their subjects. This argument has some weight as explained by A. Taryam, was "that constitutions which are granted come from a ruler who holds all power and sovereignty in his own hands so that the making and not making a Constitution is wholly subject to his will". (12)

Following French political theory which propounds that constitutions may be arrived at in one of four ways: by a contract, by a plebiscite, by the will of a constituent assembly and by grant, they argued that as none of the first three had been followed then the new U.A.E. constitution must come into the fourth category.

However, this may not be an entirely fair assessment in the circumstances. After all the rulers had no choice but to accept the Constitution since they were under pressure regionally and internationally. To form the new state with its own constitution was almost the only option in the face of the unknown future. (13) In addition, as the rulers are not in a position to revoke their "grant" ( i.e. the Constitution), then in the final analysis it is *sui generis*.

de Smith, in his book Constitutional and Administrative Law (fifth edition), has accurately identified the three factors that have the greatest influence on the form and content of any fledgling constitution. They are: " ... the forces at work when the constitution is established and amended,... common sense considerations of practical convenience, and ... the precedents available to politicians and their advisers who draw up the constitution" (14)

In the case of the 1971 U.A.E. Constitution, one can safely conclude after discussing its historical background that the first was the strongest factor while the third also played a relatively important part. Undoubtedly the wishes of the rulers were the prime influence on the form and content of the constitution. They were unwilling to create a federal state stronger than their

individual emirates, because this would mean relinquishing the greater part of their absolute power. They were determined to have weak federal institutions and not to share power with their subjects through political participation. The final result of the legal deliberations was a Constitution which embodied all their wishes.

It should be remembered that with regard to the previous constitutional precedents in the Gulf area, Kuwait shares many social characteristics with the U.A.E., but it is a unitary state where a single family rules and its constitution allows political participation through a freely elected legislature. Both conditions were unacceptable to the emirates' ruling elites in 1971. The constitutions of the other surrounding Arab countries, such as Syria, Iraq and Yemen, were rejected as models because these countries were republics ruled by ideological parties. The U.A.E. constitution in the final analysis is without precedent in the area.

The U.A.E. Constitution places great emphasis on certain aspects of the state, such as its ethnicity, that is Arabness, its religion, that is Islam, and its economic structure. The economic ideology it embodies is more or less a liberal one (see Articles 21 and 39), although community interests are zealously safeguarded (see Articles 14 and 20).

### **5.3 The Federal System as under the U.A.E. Constitution**

The U.A.E. Constitution is attempting to address the problem of unifying the diverse political ambitions of seven rulers in a single state in 1971 was too idealistic to be achieved. The

emerging state was to be a federation rather than a confederation or simple alliance. This much was clear from the preamble to the Constitution which read: "desiring to create a closer links between the Arab Emirates in the form of an independent, sovereign, federal state". The formation of a federal state was interpreted by one commentator as a colonial attempt to fossilize the *status quo* and protect the interests of the ruling families and foreign powers. (15)

Federation causes far reaching implications. First, the Union represents the new state in international law which means that the member emirates have lost their external sovereignty, save for a few administrative contracts protected by the Constitution. The Union has exclusive powers in the field of foreign policy, responsibility for the conclusion of international agreements and treaties, the appointment of diplomatic representatives and the declaration of war. (16) Second, the Constitution stipulates that the people of the Union are one people holding one nationality. Third, citizens of the Union come under two authorities one central and the other local, but the central authority has supreme jurisdiction over them. (17) Fourth, the supremacy of the federal Constitution and laws over local laws and legislations is guaranteed by the Constitution. Significantly the Constitution does not tackle the issue of secession which should be an important feature of any federal agreement. (18)

One basic feature of a federal system is the division of power between central and local administration. Drawing on the example of the American Constitution and the Basic Law of Federal Germany, the U.A.E. Constitution, in Article 120 lists the areas in which the union has exclusive legislative and executive

jurisdiction. They range from foreign affairs, defence, nationality, health and education to currency and postal services. Article 121 enumerates the matters in which the Union has exclusive legislative jurisdiction. They include *inter alia* labour relations, banking, insurance and litigation procedures in the courts. Article 122 allows the individual emirates to retain powers in all remaining areas.

The writer is of the opinion, like Dr. Abul-Majd (19), that the Constitution gives the Union unequivocal precedence over the individual emirates. Yet, to wield its power effectively the Union must have the efficient governmental machinery which at present it lacks.

In practice the U.A.E.'s federal system faces difficulties which threaten to render it a federation in name only. The major difficulty is the lack of independent financial resources. The Constitution guarantees that the natural resources of the individual emirates shall remain their own. In return it requires the emirates to participate in the federal budget. In fact, only three emirates pay their share of the budget. The second major difficulty is self-interest. The Supreme Council, which is composed of the seven rulers, is the highest authority in the Union. If a federal policy is proposed which might jeopardize the interests of one or more of the members, a conflict naturally arises. (20)



## **5.4 Institutions under the U.A.E. Constitution**

The Constitution the U.A.E. did not cling to the doctrine of separation of powers. As a result, there are not three but rather five branches of the Union. (21) They are: the Supreme Council, the President of the Union and his deputy, the Council of Ministers, the Federal National Council (FNC), and the judiciary. The legislative and executive powers are mainly distributed among the first three authorities while the fourth plays a relatively minor role. The (FNC) will be discussed in the forthcoming chapters.

### **5.4.1 The Supreme Council**

The Supreme Council consists of the seven rulers or their deputies in the event of their absence. The Council, therefore, reflects the independent nature of the emirates because each ruler is a member by virtue of his post in the emirate he represents. It is not at the consent of the entire Union population that he is a member of the Council. (22) The Council represents the autocratic element in the U.A.E.'s political system. It is in some ways comparable to the *Bundesrat* in the 1871 German Constitution. Here the princes of the German states (Laender) were represented in the upper house by virtue of the posts they held in the states. Their membership of the *Bundesrat* was to preserve their prestige and to allow them a say in the Empire affairs. (23) But the emirates differs in that the members of the U.A.E. Supreme Council have a rather more influential role in Union affairs than did the members of that *Bundesrat*.

The Supreme Council under the terms of Article 47 of the Constitution is responsible, *inter alia*, for:

- formation of the general policy of the Union;
- sanction of the Union legislation (laws, budget, final account, decrees, etc.);
- ratification of international agreements and treaties;
- approval of the appointment or resignation of the Prime Minister;
- approval of the appointment or resignation of the President and judges of the Supreme Court;
- election of the President of the Union and his deputy; and
- approval of new members of the Union.

Decisions in the Supreme Council may only be passed on substantive matters by a majority of five, of whom two must be Abu Dhabi and Dubai. In procedural matters the decision may be passed by a simple majority. The "veto vote" of Abu Dhabi and Dubai is something that was reluctantly accepted by the weaker emirates at the time of the foundation of the new state.

From the foregoing it is clear that the Supreme Council retains vast powers in the legislative and executive realm. It was intended to play a more integrative role in the Union, yet because of its composition this can never be the case. The rulers, as mentioned above, will always resist strengthening central government and will block any attempt to lessen their individual autonomy because it is considered as a threat to their powers. The Council, furthermore, meets rarely and this in itself complicates the running of state affairs. (24) The Council is supposed to meet once every two months. However, this does not occur in practice. For instance, in the period of Dec. 1971 to 1977 the Council met

only nine times. It did not even convene once in the period of June 1984 to December 1985. (25)

#### 5.4.2. The President of the Union and his deputy

The posts of president and deputy were reserved for the rulers of Abu Dhabi and Dubai respectively, to reflect the importance of both the two large, wealthy and influential emirates. Although both rulers are members of the Supreme Council, they derive separate authority and status from what is a distinct Constitutional position in the Union hierarchy. In theory the president and his deputy should be elected from among all members of the Supreme Council. The recent death of Shaikh Rashid, ruler of Dubai, raised hopes that the Abu Dhabi / Dubai monopoly might be broken. The new ruler of Dubai, however, was allowed to retain all his father's posts and has therefore become vice-president of the Union which indicates that essentially primogeniture has survived.

The role the president plays in Union affairs is even more active than that played by the Supreme Council. By the terms of Article 54 of the Constitution he is responsible, *inter alia*, for:

- signing and supervising Union laws, decrees and decisions;
- appointing the Prime Minister or accepting his resignation;
- appointing Union diplomatic representatives to foreign states;
- approving the credentials of foreign diplomats posted to the Union;

- representing the Union at home and abroad;
- declaring war should occasion arise, (with the consent of the Supreme Council); and
- appointing high-ranking Union officials.

Certain problems have arisen because the position taken up by the President *vis-a-vis* Union affairs and the division of power between central government and the individual emirates is almost at odds with that of his deputy. The president appears to be pro-Union and demands more powers for the federal government while his deputy is anti both ideas. Because of this severe difference of opinion the Union has been on the brink of collapse several times. The co-operation of the two most influential emirates is of crucial importance to the survival of the state. Indeed such cooperation made the Union to last for more than twenty years.

#### 5.4.3 The Council of Ministers

The Council of Ministers is the bureaucratic body of the Union. It consists of the prime minister, his deputy and a number of ministers. The only condition laid down under the Constitution is that a minister should be a citizen of the Union known for his competence and experience (Article 56). Resolutions are passed by a simple majority.

Ministers are forbidden to engage in commercial, professional or financial affairs, or to be a party to commercial dealings with the Union, or to be a member of the board of

directors of any financial or commercial institution (Article 62). Furthermore Article 62 provides that the ministers, while in office, are forbidden to hold any post in local government or in the National Council.

In fact Article 62 has been violated by several ministers. They (e.g. the Minister of State for Finance Affairs and the Minister of Justice) are members, sometimes chairmen, of boards of directors in different banks and commercial companies. Furthermore, some of the ministers, especially those from the ruling families ( e.g. the Minister of Finance the Minister of Defence), preside over local government departments in their respective emirates.

The Council of Ministers is responsible, *inter alia*, for:

- following up the implementation of the general policy of the Union;
- initiating drafts of federal laws, decrees and decisions;
- drawing up the annual general budget; and
- the appointment or dismissal of Union employees.

Constitutional lawyers writing on the subject of the U.A.E.'s constitutional system disagree as to whether the Council of Ministers is a full executive branch of government or not. Dr. A. Tabtabai considers that the Council plays such a trivial role in political matters that it can be said to have only a small share of executive power and none of its essence. (26)

Dr. S. Ibrahim, on the other hand, is of the opinion that although the Council's tasks are mostly of an administrative nature, it still retains jurisdiction over political matters such as international treaties and declaration of war, in concert with the Supreme Council. He, therefore, sees the Council of Ministers as wielding very real and extensive executive power. (27)

The evidence discovered by the researcher in this matter is that whatever the extent of the Council's power in theory, in practice the Council represent a full or semi executive branch. It has hitherto been the only part of the executive branch to take a really active role in government. If we put constitutional provisions aside, the Council symbolises Union authority.

The practice with regard to ministerial appointments is that the Prime Minister, after consulting the rulers, presents his government to the President for approval. The Prime Minister, however, does not have a totally free hand in choosing his potential colleagues. Ali Khalifa described the process in his own words:

".... recruitment to this body (is) part and parcel of the federal balancing process, reflecting the actual distribution of power not only among the member emirates, but between competing power elites within the emirates themselves. Hence, political considerations rather than professional ability often provide the most salient criterion for the distribution of ministerial posts" (28)

In order to please all these competing factions at federal and local level new ministries are specially created or existing ones are artificially divided to swell the cabinet. (29)

#### 5.4.4 The Judiciary

The Federal judiciary functions at three levels: the Courts of First Instance, the Appeal Courts and Supreme Court. Local justice is administered in either Civil or Shariah courts. (30)

Out of the Constitution's sixteen articles relating to the federal judiciary and the emirates, seven are concerned with the Supreme Court. This reflects the importance with which it is invested in the eyes of the constitution-makers. (31)

The Supreme Court is composed of a president and a number of judges, not exceeding five. The judges are appointed by the President with the consent of the Supreme Council. In theory, Supreme Court judges are immune from dismissal during their term of office (See page 310). However, they are removable by the Supreme Council. Their decisions are final and binding upon all. The jurisdiction of the Supreme Court extends, *inter alia*, to settling disputes among member emirates, examining the constitutionality of the Union and local laws, interpreting the Constitution, trying ministers and senior officials and settling legal disputes between federal and local courts.

All of the Supreme Court judges are foreigners due to the lack of qualified indigenous. Of the twenty judges appointed to the Court since 1973, eleven have been Egyptian, six Syrian, one Jordanian, one Sudanese and one Tunisian. (32) It has been suggested that the composition of the Supreme Court might affect its decisions and independence. The judges might come under

pressure of various kinds - for instance, the threat not to renew their contracts unless they toe a certain line, or the promise to extend their contracts if they support a certain point of view. (33)

The Constitution permits the local authorities in the emirates to transfer all judicial matters to the federal courts if they so choose. Four emirates have taken advantage of this provision. They are Abu Dhabi, Sharjah, Ras-al-Khaimah and Fujairah. The remaining three retain their local courts.

## **5.5 Conclusion**

In 1971, the U.A.E. laid down the framework for their federal state in the form of a written constitution. It was a provisional document, intended to last for five years until December 1976. After nearly twenty years this constitution remains in force and promises to endure for at least another decade because it works as a compromise.

In the opinion of one commentator, the constitution did not introduce a new structure to the emirates. Dr. Abdul-Khaleq Abdulla argues that the 1971 Constitution "affirmed the structures that were already in existence during the colonial period and gave them a high(er) degree of power". He sees the federal apparatus as "mere replicas of those originated by the British in the 1950s" (34)

In this, however, he might be challenged on the ground that the governmental structure has been very much simplified by him and that many new elements have been introduced into the political arena. The Supreme Council, for instance, may have



certain features in common with the Trucial States Council, but it cannot be labelled a "mere replica". In addition, the Council of Ministers, Federal National Council and the federal judiciary are all total new innovations.

The balance between federal and local authorities in a new state with feudal roots is difficult to strike successfully. The fine legal provisions contained in the Constitution sprang more from the minds of its makers than from the socio-political realities of the society. The Constitution, notwithstanding, was the bottom line that the all the rulers agreed upon, although it was understood that it would be replaced by a permanent constitution in five years' time.

Near the end of the five years and in pursuance of Article 144, the president of the Union, Shaikh Zaid, issued a federal directive (no. 2 of 1975) on the 26<sup>th</sup> June 1975 in obedience to which a constituent committee met to prepare and draft a permanent constitution. It consisted of 28 members from the seven emirates. The committee finished its task within nine months and submitted a draft of a permanent constitution to the Supreme Council (35) the adoption of which would mean:

- the weakening of the authority of the emirates and the strengthening of the powers of central government;
- the removal of the veto granted to Abu Dhabi and Dubai;
- the clarification of Union powers and revision of their distribution; and
- the strengthening of the National Council's role.

The draft was rejected by the Supreme Council, most forcibly by Dubai and Ras-al-Khaimah. The Supreme Council decided instead to amend Article 144 and extend the life of the Provisional Constitution for another five years. (36)

The Constitutional framework of the U.A.E., therefore, has been the same since December 1971. Very little change has been introduced into the power structure. The trend towards extending the powers of local governments and their apparatus at the expense of the central government is predominant nowadays.

The major champion of federal power and the role of the central government is the Council of Ministers. This is only natural in view of its composition and the political backgrounds of some of its most active members who advocate a strong federal system among the emirates. The National Council also plays a significant role in upholding federation and its constitutional status within the political system of the U.A.E. needs, therefore, to be studied and explained.

**Footnotes:**

- 1 - Yash Ghai, "The Past and The Future of Hong Kong's Constitution" in **Supplement to the Gazette** (University of Hong Kong), Vol. 38, No. 1, May 1991. pp. 21-22.
- 2 - Edward McWhinney, **Constitution-making: Principles, Process, Practice**, University of Toronto Press, Toronto, 1981, pp. 3-9.
- 3 - Ibid. p. 36.
- 4 - The 1937 Irish Constitution was passed by the Dail then by a referendum thus indicating a complete break with the imperial past. In the case of India, the Indian lawyers insisted that the Constituent Assembly took measures to assert its authority and indicate a complete break with the colonial period. Issa Shivji, **The Legal Foundations of the Union in Tanzania's Union and Zanzibar Constitution**, Dar es Salaam University Press, 1990, pp. 68-73.
- 5 - Ballantyne (86), op. cit., p. 60.
- 6 - Ali Ebrahim Al-Hosani, **Constitutional and Judicial Organisation in the United Arab Emirates**, unpublished Ph.D. Thesis, University of Exeter, 1989, p. 105.
- 7 - McWhinney, op. cit., pp. 62-63.
- 8 - Sayyed Ibrahim (75), op. cit., pp. 149-142.
- 9 - See Ghai (88), op. cit., p. 57.
- 10 - Ibrahim (75), op. cit., pp. 101-106.]
- 11 - For a similar point of view see Khalil, op. cit., pp. 187-191.
- 12 - Taryam, op. cit., pp. 198-199. See also Adel Al-Tabtabai, **Federal System in the Arab Emirates: A Comparative Study** (Arabic), Matbat al-Kahirah al-Jadeedah, Cairo, 1978, p. 83, and Ibrahim (75), op. cit., p. 154.
- 13 - Yahya Al-Jamal, " The Constitution as an Integrative Instrument in the U.A.E.", in **Modern Arab Federative Experiences: U.A.E. Experience** (Arabic), Centre of Arab Unity Studies, Beirut, Second ed., 1985, p. 580. Dr. Muhsin Khalil argues that none of the four traditional classifications can be applied to the U.A.E. constitution because it is a provisional constitution. He argues that the constitution in the U.A.E. case is the product of a contract among the seven rulers of the emirates. See his book, op. cit., pp. 130-133.

- 14 - de Smith & Rodney Brazier, **Constitutional and Administrative Law**, Penguin Books, London, Fifth edition, p. 19.
- 15 - Abdul-Khaleq Abdullah, **Political Dependency: The Case of The United Arab Emirates**, unpublished Ph.D. Dissertation, Georgetown University, 1984, p. 187.
- 16 - Ahmad Kamal Abul-Majd, **Constitutional System of the United Arab Emirates** (Arabic), Arab Education, Science and Culture Organization, 1978, p. 38. Also Shams M. Ali, op. cit., pp. 327-337.
- 17 - Al-Jamal claims that the Union has no direct jurisdiction over the citizens. In this he is contradicted by the text of the Constitution and with what is the case in practice. Al-Jamal, op. cit., p. 590.
- 18 - Al-Owais wrote that one of the characteristics of the U.A.E. federal system is that no emirate can secede from the Union. However, this is not the actual stand of the Provisional Constitution. There is no article in it which explicitly prevents the secession of one of the Union members. The draft of the Permanent Constitution has, however, adopted an anti-secession provision in its first article. See Hadif Rashid Al-Owais, op. cit., p. 204.
- 19 - Abul-Majd, op. cit.
- 20 - Al-Owais, op. cit pp. 204-205.
- 21 - Al-Jamal, op. cit., p. 590.
- 22 - Ibid., p. 591.
- 23 - Robert G. Neumann, **The Government of the German Federal Republic**, Harper & Row Publishers, New York, 1966, p. 119.
- 24 - Al-Owais suggests that among the reasons for not meeting more often is the lack of a constitutional provision deciding the frequency of Supreme Council meetings. However, such a provision is in fact embodied in the Standing Order of the Supreme Council which stipulates that the Council shall meet once every two months. The problem would seem to be more a lack of faith and commitment to the federal body. Al-Owais, op. cit., p. 187.
- 25 - See Abdul-Rahim Abdul-Latif Al-Shaheen, **Problems of Administrative Bodies in a Federal State, Comparative Study with Special Reference to the U.A.E.** (Arabic), unpublished Ph.D. Thesis, University of Cairo, 1990, p. 319.
- 26 - Al-Tabtabai, op. cit., p. 254.
- 27 - Ibrahim (75), op. cit., p. 265.

- 28 - Ali Mohammed Khalifa, op. cit., p. 59.
- 29 - Taryam, op. cit., p. 208.
- 30 - Al-Owais, op. cit., pp. 195-196.
- 31 - Al-Tabtabai, op. cit., p. 313.
- 32 - Al-Owais, op. cit., p. 343.
- 33 - Al-Tabtabai, op. cit., p. 317.
- 34 - Abdullah, op. cit., p. 192.
- 35 - Mohammed A. Al-Rokn, **Constitutional Comparative Study: The Role and Powers of the Legislature Under the U.A.E. Constitutions; Background and Analysis**, LL.M. Dissertation, University of Warwick 1987, p. 34.
- 36 - Ibid., pp. 34-39.

## **CHAPTER SIX**

### **THE CONSTITUTIONAL FRAMEWORK OF THE ROLE OF THE U.A.E. LEGISLATURE UNDER THE 1971 CONSTITUTION**

#### **6.1 Introduction:**

In the previous chapter we have seen from the discussion of the basic features of the U.A.E. constitution that the power of the federation as a whole is still to a great extent eclipsed by the power of the individual emirates. Such position reflects the desire of the rulers to dominate the decision-making process and their consideration of the federation as a threat to the rulers powers. However, the Federal National Council (FNC), as a branch of the federal government, plays an important part in the constitutional system of the country.

This chapter will attempt to analyse the structure of the Council. It will explain membership, method of selection, the composition , legal set-up and summoning of the legislature.

#### **6.2 Uni or bicameral Legislature:**

The first issue is whether the U.A.E. constitution may be modelled to have a bicameral or unicameral legislature. In a federal

state the legislature usually consists of two chambers. The first represents the member states on a basis of equal representation while the second represents the citizens of the federation on the basis of proportional representation. The policy of electing the same number of representatives for each state reflects the fear that the smaller states may have of being dominated by the larger and more powerful states. However, this policy is not a universal one. In India, for instance, the seats of the Upper House (Rajya Sabha) are distributed on the basis of one seat for every million people (1). In the Lower House the seats are distributed proportionally. The size of the population of each state determines the number of its seats. However here, as under some constitutions, a maximum is laid down for the number of members of the house.(2)

The U.A.E. Constitution may be said to have adopted a bicameral legislature in that the Supreme Council represents the upper house, where the states are equally represented, and the FNC the lower house, where the citizens are proportionally represented.

This point could be challenged by the researcher on several grounds. First, the U.A.E. constitution does not state that it favours a bicameral system for the legislature. Second, the factor which controls the number of each emirate's representatives in the FNC is not only population. Third, although the emirates are equally represented in the Supreme Council, yet this equality is confined strictly to the number of the representatives. In terms of power the two large emirates, Abu Dhabi and Dubai, have gained in effect a veto while the rest have not. Fourth, and most importantly, the Supreme Council's functions are not restricted to

legislative matters. It has a considerable measure of executive power.

The National Council consists of forty seats (3) which are proportionally distributed among the emirates according to their influence, affluence and population. By this rule the idea of equal representation, which had been called for by the smaller emirates in the previous nine-member-union, has been disregarded. The seats are distributed as follows:

Abu Dhabi	8.	Dubai	8.
Sharjah	6.	Ras-al-Khaimah	6.
Ajman	4.	Umm-al-Quwain	4.
Fujairah	4.		

This method of distribution has two consequences. On the one hand, it pleases the powerful parties by giving them a degree of supremacy over the rest. On the other, it offends the rest because it changes their previous situation in that they are no longer considered as equal rivals. Nevertheless, they have reluctantly accepted the formula in the hope that it will eventually be rectified in a permanent constitution.

But should a new member favour to join the Union, will the formula be applied to it? Who will dictate the number of seats to be allocated to it? As we have seen in chapter four, Ras-al-Khaimah did not join the Union on 2 December 1971. When it decided to do so on 10 February 1972, the Supreme Council amended the first Article of the Constitution by adding a paragraph which reads as follows:



"In the event of the acceptance of a new member joining the Union, the Supreme Council of the Union shall determine the number of the seats which will be allocated to that member in the National Council, being in addition to the number stipulated in Article 68 of this Constitution." (4)

The present constitution then lays down that the Supreme Council shall determine how many seats in the Council shall be allocated to the new member, since this is a political issue. In theory there is no restriction on the number of seats that the new member can have, but by suggesting a limit the Article has laid down an obstacle in the way of the new member in order to push him into a weak position and allays the fear of domination among the smaller emirates by restricting the size of the new member. However, the situation remains hypothetical in that no new member has so far applied to join the Union.

As the case in Kuwait, Bahrain and Qatar, the U.A.E. Federal National Council is a single legislature assembly whose seats are distributed proportionally. As in most Third World countries, the FNC cannot claim free legislative powers although its role in the political system must not be underestimated. It has been in existence for almost twenty years (1972-1991) and continues to function under the constitution. There were four councils in this period: the first from 1972 to 1976, the second from 1977 to 1981, the third from 1982 to 1986 and the fourth from 1987 to 1991. It is worth mentioning that unlike the Kuwaiti and Bahraini parliamentary experience, the FNC was not suspended since its establishment. Its survival for such a period of time indicates that it has a positive function in the system.

### **6.3 Membership of the Federal National Council:**

We now turn to consider the following matters: the method of selecting of members, their qualifications, their social backgrounds, privileges, turnover and contest for their membership.

#### **6.3.1 Qualifications for Membership of the Council:**

The constitution stipulates the following conditions for the membership of the Assembly:

1. He must be a citizen of one of the emirates of the Union, and permanently resident in the emirate he represents.
2. He must be not less than twenty-five years old.
3. He must enjoy civil status, good conduct, reputation and no previous conviction for a dishonourable offence.
4. He must have an adequate knowledge of reading and writing Arabic.

Membership requirements may now be discussed as follows:

1- Citizenship: When analysing the first condition certain points are worth discussing.

The first is one raised by the FNC constitutional adviser. He argues that the condition requires the member to hold the nationality of his own particular emirate. In his view this is in total contradiction with Article 8 of the constitution which states:

"The citizens of the Union shall have a single nationality which shall be prescribed by law."

It would be better to stipulate that the member shall be a U.A.E. citizen instead of a citizen of an emirate (5).

The writer believes that the first condition does not indicate explicitly that each emirate has its own nationality. Such an interpretation might have been valid before 1971 when every emirate had its own nationality and passports. Now the term "citizen of one of the emirates" can be understood as a moral link between the member and the emirate which has nominated him (6). However, it is preferable that such a condition be crystal clear in support of federal entity.

Secondly it should be pointed out that the first condition requires the member to be permanently resident in the emirate he represents. Such a stipulation conflicts with Article 77 of the constitution which provides that the FNC member shall represent the whole union citizens (7). Although most of the FNC members now consider themselves as representative of the people, it is better to state that the member shall be a resident of the emirate that selected him.

The question of whom the FNC member represents has been the subject of controversy among constitutional writers. The researcher's opinion is that representation does not exist in the first place because the members are not elected and therefore cannot claim to be representing the people. Such inference, however, does not diminish the independence of individual members. Article 77 may be understood therefore as a directive to

the members not to be exclusively loyal to their emirates and to favour the interests of the whole union citizens (8).

It may be assumed that being a citizen of the U.A.E. is sufficient for selection to an FNC post. However, not all the citizens are eligible to be FNC members. U.A.E. citizens fall into two categories: citizens by origin and naturalized citizens.

Citizens by origin are defined by the law (9) as either constituent citizens or original citizens. Constituent citizens, according to the Nationality Law of 1972, are those who had lived in one of the emirates prior to 1925 and are of Arab origin. No explanation has been given for the selection of the year 1925; it may be because that was the year of the fall of the last Islamic Caliphate in Turkey. The Gulf States used to have a moral linkage with the Caliphate. The condition of Arabness was added to the Nationality Law in 1975. The residence period required for the constituent citizens in the U.A.E. ( 47 years) is the longest in the area.

Original citizens are those who acquired the citizenship through *JUS SANGUINIS*. Any one born to a U.A.E. father would be a U.A.E. citizen, regardless of the place of birth. The father must be an original citizen at the time of birth. Exceptionally, a baby can have U.A.E. original citizenship if he is born to a U.A.E. mother under certain circumstances: if his father is unknown or if his father has no citizenship or if his father's citizenship is unknown. Save for one exception, the U.A.E. Nationality Law does not accept the place of birth (*JUS SOLI*) as a warrant for acquiring citizenship. The only exception to this rule is in the case of a foundling child.

Articles 5, 6, 7 and 8 of Nationality Law provides that Naturalized citizens are those who have met certain conditions laid down by the law. An applicant for U.A.E. citizenship must have been living in the country for a long period of time. The residency period required by the law differs according to the origin of the applicant. He must also relinquish his previous nationality.

From the above summary one can assume with confidence that only citizens by origin are eligible to be nominated to FNC membership. Naturalized citizens are deprived of the right to be members of the legislature. The inequality between the two groups is only in the field of political rights and does not extend to civil and social rights.

The question arises as to whether there is permanent restriction. One possibility is that there is a time limit for the prohibition. The U.A.E. is not the only state in the region that has adopted such a restrictive nationality law. All the GCC member countries have similar provisions with some variation, however, the prohibition of political rights for the naturalized citizens in the U.A.E. is much wider than the rest.

In Kuwait, for instance, a naturalized citizen has to wait for thirty years before he can vote or stand in an election (10). The Constitution of Bahrain requires the lapse of at least 15 years before a naturalized citizen could stand in an election (11). With the exception of naturalized citizens of Omani, Qatari and Bahraini origin, there is no time limit in the U.A.E. Nationality Law on the exclusion from political rights (Article 12).(12) It is a permanent ban. It is restricted neither to a certain period of time nor to a

certain number of generations. It is possible to see the practices authorised above as a clear violation of human rights which really create second-class citizens in the society.

2- Other qualifications: The second condition for FNC members is age. The member must be not less than twenty-five years old on the day of his selection. Only the Qatari Constitution has a lower age condition for its Consultative Council ( 24 years). The Kuwaiti and Bahraini constitutions stipulate thirty as the minimum age for their MPs.

The fourth condition in Article 70 states that the member should have an adequate knowledge of reading and writing, but not any specific degree of education. If we look at what the educational level of U.A.E. society was in 1971 we will appreciate that such a condition reflected the reality of that society. Yet, this condition should now be amended to take account of the development of education after twenty years and a formal degree in education should be required.

### 6.3.2 Election or Appointment:

By and large, members of a legislature claim to represent the people. They generally justify this claim on the grounds that they are directly elected by the people. Election, hence, has become a universal rule for selecting the members of the legislature. Under authoritarian and one-party systems, however, elections may be manipulated to make the system look democratic. Moreover, elections do not always produce the most capable and efficient

members of the society, especially in a newly independent state which has no previous constitutional experience and/or lacks a high percentage of literacy. Such circumstances are likely to result in a legislature full of incapable members who have been elected because of their reputation rather than their merits.

Dr. Y. Al-Jamal rightfully argued against this school of thought and asks what the alternative is? Is it the appointment method ? What guarantees are there that this method would not produce even less suitable members than the election system ? Would not appointed members be more opportunist and subservient towards those in power ? He came to the conclusion that:

" Trial and error and testing the members will reveal their real substance. Testing them time and again is the true academy for educating the people, assuring democratic development and developing their political consciousness. " (13)

The practice of nominating members of the legislature has been abandoned in almost all Third World countries. However, Hong Kong can be considered an exception to this rule up to the 1991 legislative elections. Under its constitution all legislators were nominated by the executive, a practice justified on the grounds that the small business community in Hong Kong would lose its privileged position in free elections. Another excuse was the characteristic apathy of the Chinese with regard to political participation. (14)

The argument for retention of the nomination system in Hong Kong seems to be urged by socio-economic factors. Jill Cottrell suggests that:

" the reluctance to accept direct elections is connected with the desire to maintain the current social and economic system: that direct elections would encourage the growth of parties which would be tempted to appeal to the voters on the basis of schemes of social welfare which would be incompatible with the continuation of the capitalist system." (15)

In the Arab Gulf States, parliamentary elections were held in Kuwait and Bahrain. However, in the case of the U.A.E. Constitution, Article 69 provides that each emirate shall be free to determine the method of selection of citizens to represent it in the FNC. The position of the constitution is not clear cut. It falls short of declaring the method of choosing the FNC members whether by election or appointment. Moreover, the Article does not specify who is to make the decision on behalf of an emirate. A number of questions arise: Is it the ruler ? Or the ruling family ? Or the citizens ? The rulers have taken advantage of this latitude to concentrate the power of selection in their own hands.

The ambiguity of Article 69 has been explained on a variety of grounds. A. Al-Hosani, in his unpublished doctoral thesis, suggests four reasons: (1) election as a basis for selection was rejected during the nine-member-union discussion; (2) citizens had no past experience in the election process; (3) it was difficult to define which citizens are eligible to vote because the emirates were not strict in their nationality laws prior to independence; and (4) the foundations for an electoral system ( e.g. education, political experience) were far from sound (16).

The first reason is a genuine one while the rest can be easily refuted. The absence of political awareness among the citizens is an excuse adduced by the ruling families in order to deny the people political participation. Furthermore, the problem of defining



the indigenous people is no reason to deny them opportunity to have a say in the running of their society. The small size of the population in 1971 is enough to refute such allegations.

Because of the vagueness of the wording of Article 69 all the rulers choose to appoint their emirate's representatives in the FNC. None of the emirates choose to elect their representatives. The appointment method has been defended by the same arguments used to reject the election method. R.M. Batteek takes the view that a ruler would never appoint his emirate's representatives haphazardly or presumably in bad faith. Because of his contact with the citizens, the ruler will appoint the most capable and genuine individuals as representatives of the emirate (17).

The researcher claims that consensus exists among the rulers on the method of selecting FNC members. First, no one of them would embarrass the others by adopting a method of selection other than appointment because if an emirate tried to select its representatives by election, or even partial election, a popular demand would erupt in other emirates to follow the same path. Also, if this occurred, the FNC members would be of two categories: those appointed by the rulers and those elected by their constituents. Second, a more important reason is that the rulers do not want to risk their constitutional prerogative (i.e. selecting the FNC members) and relinquish it to the people. Thirdly, the rulers, recognize that the appointment method guarantees them two privileges: the sole choice of who will represent the emirate and that the FNC members will be answerable to them rather than to the federal entity. In practice the rulers use their prerogative as a

means of winning loyalty among the important segments in the emirates. Ali Khalifa emphasise this point by stating that:

"To these rulers, appointing members to this federal body not only meant having a loyal leverage at the federate, but also allowed more room in the process of distribution of political favours" (18).

In not stipulating the method of selecting the members and leaving it to the will of the rulers, Article 69 proves crucial to the U.A.E. constitutional system. One has to admit, however, that the method of appointment has not greatly affected the public opinion regarding the FNC nor it deter the members from being active in their posts.

Public opinion would probably prefer an elected legislature. The FNC does not seem to have the support of a large segment of the citizens because of it being unelected council. In interviews conducted in the period 20-26 January 1987 the majority of the interviewees were of the opinion that the Council reflected to a large extent their demands but would be far better in its duties after the inclusion of more university graduates among its membership (19).

Although FNC members are appointed, they are nevertheless keen to play their role and demand the enhancement of their powers. Many of them even demand a change in the method of selection. The second President of the FNC is reported as having said:

" The absence of elections does not mean the absence of democracy; democracy is a spirit rather than a rigid process. " (20)

Recently two members of the FNC declared in an interview that it is necessary to review the method of selection (21). Khalifa M. Khalifa (Ajman) said that it is essential now to introduce some amendments to the political system of the U.A.E. which will lead to wider participation. One of the most important amendments is to compromise between the methods of appointment and election for the selection of FNC members. Rashid Al-Owais (Sharjah) was of the same opinion.

The journey towards a full free system of elections in the U.A.E. is a long term one. There are two possible routes which might be followed. The Council members could be elected in two stages: a ruler will select candidates amounting to five times the number of his emirate's seats in the FNC and those selected will elect by a secret ballot the required number of representatives from among themselves (22). The second way, practised in Bahrain, is that the citizens elect half of the members and the ruler appoints the remaining half. The first way will obviously be preferred by the rulers. The partial elections period must not be left open. A time limit will have to be stipulated, otherwise the rulers will stick to this method and delay full free elections. These two ways may be reckoned as a veneer democracy. However, they are better than the existing system.

### 6.3.3 Membership of the Council in practice:

On the question of membership and citizenship it must be noted that not all eligible original citizens have the chance to be nominated for FNC posts. When analysing the practice of

appointing members to the Council it emerges that there are three groups among the citizens by origin excluded *de facto* from the membership. They are:

- members of the ruling families,
- women, and
- minorities.

i - Members of the ruling families: The ruling families in the Gulf area like to place their authority above local politics. They have created no precedents in which individual shaikhs have relinquished their privileges in order to join a consultative legislature.

The researcher believes that by avoiding participation in a semi-democratic forum, the ruling families removes any opportunity for questioning the legitimacy of their position.

The best example of this attitude lies in the Kuwaiti constitutional experience. Kuwait had an active, freely elected National Assembly, yet no one from the ruling Al-Sabah family attempted to run for a seat in the legislature. The same practice was observed in Bahrain which enjoyed an elected National Assembly in the period 1973-1975. With the exception of one shaikh, known as the red shaikh, no member of the ruling Al-Kalifah family stood for election (23). M. Al-Moqatei explained this practice in Kuwait and called it a "constitutional customary rule". He stated that not to participate in the elections

" preserved the integrity of the Royal Family and protected them from being connected with (an)

acrimonious political campaign. It was also intended to keep the election free from any actual or moral pressure by the Royal Family." (24)

Such justification was criticized by a leading constitutional writer, Dr. Adel Al-Tabtabai, on the grounds that the same reasons which prevented the ruling families from participating in the national legislature should prevent their appointment to a ministerial portfolio. A minister would be even more open to the sanction of criticism or accusation than a member of a legislature (25). Nevertheless, one must not forget that it is against the socio-political realities of Gulf societies to expect ruling families to withdraw from executive power.

In the constitutional experience of the U.A.E. the same practice has occurred. In the four councils that have been in existence over the period from 1972 to 1991 there have been 111 FNC members in total. Only one of them was from the ruling family in his emirate. He is a member of the Al-Sharqi ruling family in Fujairah, which is not influential in U.A.E. politics. This exception is not sufficient to contradict the rule but rather seems to affirm it.

ii - Women: In Arab societies the question of female suffrage has been more complicated than in the West. On this point the Shariah has been interpreted as being both anti and pro women rights. Although many Arab states have granted their female citizens political rights, it is still a controversial issue in some.

A woman's right to vote or be elected for the legislature was and still is a disputed matter in some societies. In western societies women were only granted the suffrage at the beginning of

this century ( e.g. Finland and Norway 1913, Denmark 1915, U.S.A. 1920, Britain 1928, France 1944, Switzerland 1971) (26).

In the Gulf area no country has granted women the right to vote. Although women participated in the Bahraini municipal elections of 1926, they were later deprived of this right by the 1973 constitution (27). The issue of women participation has been debated more in Kuwait than in any other of the Gulf states. Many petitions have been presented to the National Assembly for and against the right of women to vote. Kuwaiti women have not achieved this right for several reasons: the nature of the Constitution and the electoral system, the fierce campaign by the opposing camp, the lack of a strong feminist movement and the overwhelming fact that the majority of Kuwaiti women and public opinion are not in favour of women's involvement in politics (28).

Article 70 of the U.A.E. Constitution does not specify the sex of the citizens eligible for FNC membership. Some writers (29) are therefore of the opinion that women have the right to be members of the Council. Such a view may be very liberal, but it is also unrealistic and an example of wishful thinking.

U.A.E. women may not be constitutionally deprived of being appointed to the FNC. However, it is important to understand the society a constitution governs. Women did not and do not have an influential political role in the society of the emirates. It is no wonder the FNC has had no woman member in the past twenty years.

iii - Minorities: U.A.E. society is to a considerable extent a homogeneous society. Most of its citizens by origin are Sunni

Arabs (see chapter 2). There are, however, some minority groups amongst the original citizens. They are considered minority because of their ethnic origin or religious sect.

There are Sunnis of both Persian and African origin. The former migrated to the emirates at the turn of the nineteenth century. They claim to be of Arab origin. The latter are the descendants of African slaves brought by Arab traders from the east coast of Africa. Both groups nowadays are to a great degree integrated into the majority.

There is a small community of Shia Muslims in the U.A.E. The members of this sect are either of Arab origin ( Bahraini and Saudi) or of non-Arab origin (Persian and Indian). The Shia are concentrated in Dubai and Sharjah. Those who are considered to be U.A.E. citizens by origin are largely integrated in the society.

As been discussed in the theoretical chapter, the legislature in several Third World countries is used as a channel of integration. It is probably the only political institution where different segments of the society will meet and express their demands. Such a practice may enhance the political participation of the people and increase support for the regime.

The U.A.E. legislature has not been utilized to promote integration amongst different groups in the society. Among the 111 members who have served in the FNC in the past twenty years only three members could be regarded as belonging to a minority group. One was from Ajman and represented Persian Sunnis and two were from Dubai and represented Indian Sunnis (30). However, these three members were not appointed because of their ethnic

origin but rather because of their mercantile importance in the emirates. In addition they are fully assimilated in the majority and have ceased to consider themselves as non-Arabs.

It is obvious that no original citizen of African or of Shia origin has been appointed to any of the four councils. Although there is a kind of dissatisfaction amongst these groups, yet no one publicly questions their exclusion from the FNC.

In spite of living in the country for almost a century and being original citizens by law and participating in the administration of the federal and local government, minority groups in the U.A.E. have not fully participated in the political arena.

#### **6.4 Socio-economic Backgrounds of the FNC Members:**

Jean Blondel, In his book Comparative Legislatures (1973), rightly points out that legislatures, whether in Third World or Western democracies, seldom reflect the diversity of the society. They are not a mirror image of the population. Blondel recognizes a universal truth when he states that:

" Legislatures are unrepresentative and the only question which arises is how vast is the distortion between the composition of the country and the composition of its legislature." (31)

Of the same opinion is Michael Gallagher in his study of the " Social Backgrounds and Local Orientations of Members of the Irish Dail" (1985). He emphasizes that:



" Virtually all research into the composition of legislatures shows that parliamentary representatives collectively do not have the same sociodemographic characteristics as the population which elects them."  
(32)

Gallagher claims that legislators in Britain, West Germany, Singapore, Bangladesh, Zambia and Tanzania are elites, " drawn disproportionately from high-status and high-income occupations (33)". Workers and women are underrepresented in these parliaments.

Legislators tend to be generally better educated than the majority of the population. Education is a major factor in the election of legislators in many legislatures such as in Sri Lanka and Tanzania (34). Members of legislatures, furthermore, appear to be wealthier than the average citizens.

However, it is highly risky to assume that the social background of MPs will automatically correlate with their political orientation. Blondel warns writers on the subject of the composition of legislatures against rushing to establish such a linkage. He stated that:

" At least until an acceptable theory of the relationship between "attitudes" (and background) and behavior has been developed, we need to be very careful about attempting to extrapolate the characteristics of members to those of legislators (35)."

Some of above general assumptions may be made as generalisations of the FNC membership. Having examined the socio-economic backgrounds of the members, one can conclude that the FNC is not truly representative of U.A.E. society as a whole.

It is understandable that the socio-economic realities of every emirate affect the selection of its members. Abu Dhabi is largely a tribal society where tribal ties are strong and not diminishing as in the rest of the emirates. Therefore, almost half of its representatives in the four councils were tribesmen. In other words, they were selected because of their tribal affiliation. One can easily recognize representation of the major tribes of Abu Dhabi in FNC, such as the Al-Mazroui, the Al-Mansori and the Al-Hamli. Such practice may be interpreted as a sign of the survival of the traditional tribal values and pressure groups in the society.

In Dubai representatives are drawn largely from mercantile families. The emirate is the commercial centre of the U.A.E. In the first three councils merchant families held six seats out of eight. In the fourth Council the number has been reduced to five. The most important mercantile families, such as the Lootah, the Nabodeh, the Al-Tayer, the Al-Habtoor and the Al-Ghurair, are represented in the FNC.

In the rest of the emirates two factors determine the selection of the emirate's representatives; their families' importance and their economic position in the emirate. Sharjah members, for instance, are basically selected because of their social backgrounds. They are from the most important families in the emirate, such as the Al-Owais, the Taryam, the Al-Jarwan, the Al-Mahmoud and the Bin Jarsh. In one particular emirate, Ras-al-Khaimah, the economic position of a citizen is the main criterion for his selection and therefore the representatives of the emirate are the most wealthy members of the society.

The FNC may be unique with regard to the imbalance of occupations amongst its members. For instance, there is a complete absence of workers and peasants in the Council not only because this group does not represent a significant percentage of the nationals nowadays, but also because manual workers and peasants had no important role in local politics in the past and therefore one cannot expect them to be actively involved in present-day politics.

A second observation on the occupations issue is that, unlike in other countries, professionals and government bureaucrats are severely underrepresented in the Council. In the present Council there are not more than six members who could be regarded as professionals or civil servants. They are: two lawyers, one civil servant, one physician, one teacher and one academic.

A distinctive feature of the FNC is that it is dominated by the commercial element ( i.e. small and big businessmen). This category includes landowners, contractors, directors of companies and importers and exporters. In none of the four councils did the number of seats occupied by this category fall below 25 seats (62.5%).

With regard to the educational level, a survey conducted by A. Al-Hosani showed that the number of university graduates is steadily increasing. In the first council there were only two members holding BA degrees (5%). In the second and third the number increased to 10 (25%) and 16 (40%) respectively. In the present Council the number has risen to 18 members (45%) (36).

The writer, however, has some doubts about the figures provided by Al-Hosani since J.E. Peterson records that in the second session of the third council there were four university graduates (37), and certainly in the present Council the number of university graduates does not exceed 14 members. The explanation may be that Al-Hosani's figures include those holding secondary school certificates.

In spite of such discrepancies it is obvious that the number of educated members in the FNC is increasing. This reflects the inclination of the rulers to adjust their appointment criteria to the changing social realities in the society.

To sum up, a typical FNC member tends to confirm the universal generalisations. He is of the elite in the sense that he is economically wealthier and more politically influential than the vast majority of his fellow citizens.

### **6.5 Deciding the Validity of Membership:**

Constitutions differ when dealing with the question of how the validity of membership shall be confirmed. There are three ways of dealing with such a question.

The first way is to hand the matter to the legislature so that it can independently decide the validity of the mandate of individual members. If a result of the elections was contested then the legislature will look into it. This method is justified on the grounds that it preserves the independence of the legislature by

preventing the intervention of the other sections of the government in its affairs (38).

This method has some shortcomings especially under a party system. A legislature may abuse its power and declare the results of electing a member null and void not on legal grounds but rather for political reasons. The constitution of the Fourth French Republic (1946) adopted this method. In practice, the National Assembly abused its power and dismissed eleven MPs in 1956 and replaced them with their political opponents. The Fifth Republic Constitution (1958) avoided this temptation by handing this power over to a Constitutional Council (39).

The second way is to give the power to determine the validity of the membership to the courts. Here the contest over membership is viewed as a legal dispute rather than a political one. It is therefore important to place such a dispute in the hands of a legal and neutral body ( i.e. the court). Since 1868 in Britain the power to question the election of a MP is in the hands of the Election Court. Two judges decide the fate of the member. However, their judgement is rarely called upon in present days (40).

Some constitutions adopt a middle course. They give the courts the power to discuss the dispute and then submit a report on its findings to the legislature. The latter will then give the final decision over the dispute. This method has been adopted by the Egyptian Constitution of 1971 (41).

In theory, the U.A.E. Constitution has adopted the first method by assigning, in Article 76, the task of deciding the validity of membership to the FNC itself.

The Standing Order of the Council explains the procedures for contesting membership as follows:

- 1- The challenge should be delivered to the president of the Council within thirty days of the contested member taking the constitutional oath.
- 2- The president of FNC shall refer the contest to the ad hoc committee. The latter shall instruct the concerned member in writing to defend his position.
- 3- The ad hoc committee has the right to summon both parties in the dispute.
- 4- The committee shall present its report to the Council within one month.
- 5- The FNC shall decide on the contest within a month. The decision to nullify the membership shall be passed by the majority of the members.

In examining these procedures one may ask who has the capacity to challenge the membership of a certain member and on what basis. How will the FNC deal with a ruler one of whose members has been contested?

Although the Standing Order specifies the procedures in some detail it does not spell out who can initiate the contest. There are two opinions as to who is entitled to challenge the appointment of a member.

The first considers that the objector must have the legal capacity to initiate his objection. In other words he must fulfil the

conditions stipulated by Article 70 and have reasonable grounds to be selected instead of the respondent. The second asserts that Council members have the right to challenge a colleague's membership (42).

The writer sees difficulties in both scenarios. First of all how can an appointed member be challenged? His selection lies in the hands of his ruler not the people. This means that any contest over his membership will implicitly challenge the ruler's will. Neither the FNC members nor ordinary citizens would presume to do that.

Secondly, the member is selected by criteria known to the ruler only. Therefore to fulfil the conditions required by Article 70 is not enough to give a citizen the right to challenge the membership. The term "reasonable grounds" is vague and cannot be taken seriously.

Thirdly, FNC members cannot use this power because they were not given it. In addition, they represent their own emirates and cannot dictate the membership of other emirates. No ruler would accept his emirate's members contesting the choice of another ruler.

From the foregoing discussion it can be concluded that essentially the appointment of a member is political rather than legal. Therefore contesting FNC membership has no place in practice even though this power has been ambiguously mentioned in the constitution.

The Standing Order articles regarding this power are more hypothetical than real. No member of the FNC in the past was

challenged. The validity of legislature membership may be subject to challenge in the U.A.E. if there were free elections for the FNC seats.

### **6.6. Immunities and proscribed occupations for FNC members:**

It is important for the independence of a legislature that its members should be given immunity from coercive pressures while they are acting in their capacity. There are two main privileges that a legislator may enjoy: (1) free speech in the legislature and (2) immunity from prosecution (43).

In the context of the U.A.E. Constitution, Article 81 states that Council members shall be free to express their views and opinions in the Council and its committees. No member shall be held liable in this respect.

In the FNC, a member shall not be held liable for his ideas and views but his actions. He can express himself freely but he is not free in assaulting and battering his colleagues. In addition, his privilege is limited to the Council and its committees. He could be held liable for his speech outside the Council (44).

The FNC member, furthermore, has an immunity against criminal charges or civil arrest. The Constitution provides that except in the case of *flagran delicto*, no penal measures may be taken against him while the Council is in session except with the authorisation of the Council itself. The FNC must be notified of any such measures taken against a member while it is out of session.



One of the FNC members rights is a salary (45). Each one has an annual salary of Dhs. 180000 (\$49,315). This is generous in comparison with that of the majority of citizens, yet much lower than that paid to those employed in high federal occupations (i.e. civil servants). However, considering the task they are doing and the time they spend in carrying it out this salary is more than adequate.

In addition to granting certain immunities to legislators, constitutions tend to bar them from occupying certain posts or participating in certain commercial activities. This is justified on the grounds that it preserves the independence of the legislature.

The Kuwaiti and Bahraini constitutions, for example, bar their legislators from holding any public posts other than ministerial portfolios. They also ban MPs from being appointed to the board of directors of any company while they are in their mandate. Furthermore, these two constitutions prohibit their legislators from participating in specific commercial transactions such as those involving government concessions, renting or buying public properties and selling or letting properties to the government, except by public auction or tender.

Article 71 of the U.A.E. constitution stipulates that FNC members are barred from holding public posts. 'Public posts' in the U.A.E. constitutional system means any public occupation for which its occupier gets a salary from the federal state.

The prohibition has been rationalised on the ground that public posts are incompatible with the duties of an FNC member. He must be free from any intervention or guidance from his

superiors (46). Unlike in Kuwait and Bahrain, the prohibition in the U.A.E. extends to include ministerial portfolios. The Executive has no members in the U.A.E. legislature.

A member is barred from federal occupations but not from local posts. He can be an FNC member and at the same time occupy a post in his emirate such as municipal administration, banking or in the ruler's court (Diwan). This situation has been criticized as reinforcing the loyalty of the Council member to his emirate at the expense of his loyalty to the federal entity (47). Secondly, the same justification has been advanced in the case of local public posts as has been applied to federal public posts. Conflict of interests and pressures of superiors will probably exist in both cases (48).

Finally, the U.A.E. Constitution does not bar a member from being appointed a member of a board of directors. In this it is content to follow the example of the Kuwaiti and Bahraini constitutions.

### **6.7. Turnover of Membership within the FNC:**

The turnover of members and the length of their service over the period of a particular legislature is a rough guide to the stability of membership. It is important to have a stable membership because it leads to improvement in performance and increased expertise.

Peverill Squire, in his study of "Career Opportunities and Membership Stability in Legislatures" (1988) conducted on U.S.

state legislatures, suggests two ways to measure membership stability.

" The first and most often employed is turnover: the number or percentage of new members, usually calculated at the beginning of a session. The second measure is average years of member service in the legislature. ... The reason the two are not the same is subtle but significant. Two legislatures could have the same turnover rate and have different average years of consecutive service- for instance, if one body has the same seat turning over each election and the other body loses members from a different set of districts each time. The former legislature would have a higher mean member tenure than the latter." (49)

Some writers (50) are of the opinion that a high rate of turnover has some advantages. They claim that the legislature will not be an exclusive club. The high turnover will eliminate the emergence of a parliamentary class and therefore bolster democracy. Others assume that new members will be more responsive towards constituent demands than the incumbents (51).

There is an impression that membership in old democracies is more stable than in new emerging states. In Britain, for example, out of the 650 MPs elected in the 1987 General Election only 144 (22%) were serving for the first time (52). Similarly, in the U.S.A. In a study of the U.S. state legislatures, Niemi and Winsky provided data showing that the mean values of membership turnover in the period of 1931-1940 was 50.7 per cent for the Senate and 58.7 per cent for the House of Representatives. This percentage drastically declined through the years. It became 24.1 per cent for the senate and 28 per cent for the House (53).

In the developing countries the rate of membership turnover tends to be very high. In the 1985 Tanzanian elections, 58 per cent

of legislators were newcomers. The same applied to another one-party state, Kenya, where almost half of the incumbents were turned over at every general election (54). The high turnover was observed in the last Kuwaiti elections where 56% of the 1985 Assembly members were new to the job (55).

Squire categorized the legislatures in terms of their membership turnover into three types. (1) The career legislature which provides its members with respectable financial incentives in order to encourage them to stay in service for a long period. (2) The springboard legislature which is seen merely as a stage towards political advancement. (3) The dead-end legislature which neither offers its members financial gain nor advances them politically (56).

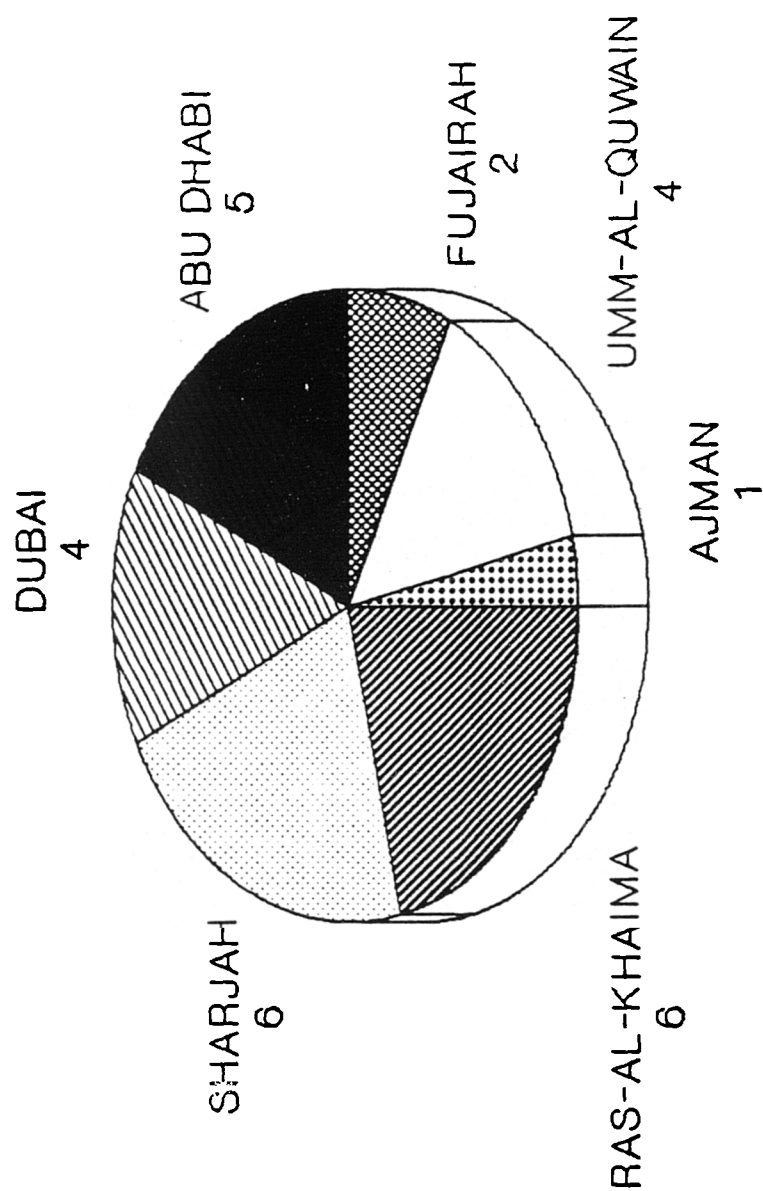
Although FNC members are not elected, an analysis of the members of the four councils reveals that the practice in the U.A.E. does not greatly differ from that of Third World legislatures.

With regard to the rate of turnover one can see from figures (1,2,3 ) that it is very high. The third council had the lowest turnover (47.5%), but it was still a high percentage. In the second and fourth Councils the rate was over two thirds of the members, 70 per cent and 67.5 per cent respectively.

Why does such a high rate of turnover exists in a non-elected legislature? The writer would suggest that the turnover has been exploited by the rulers for the purpose of local politics.

## Membership Turnover in FNC by Emirate SECOND COUNCIL

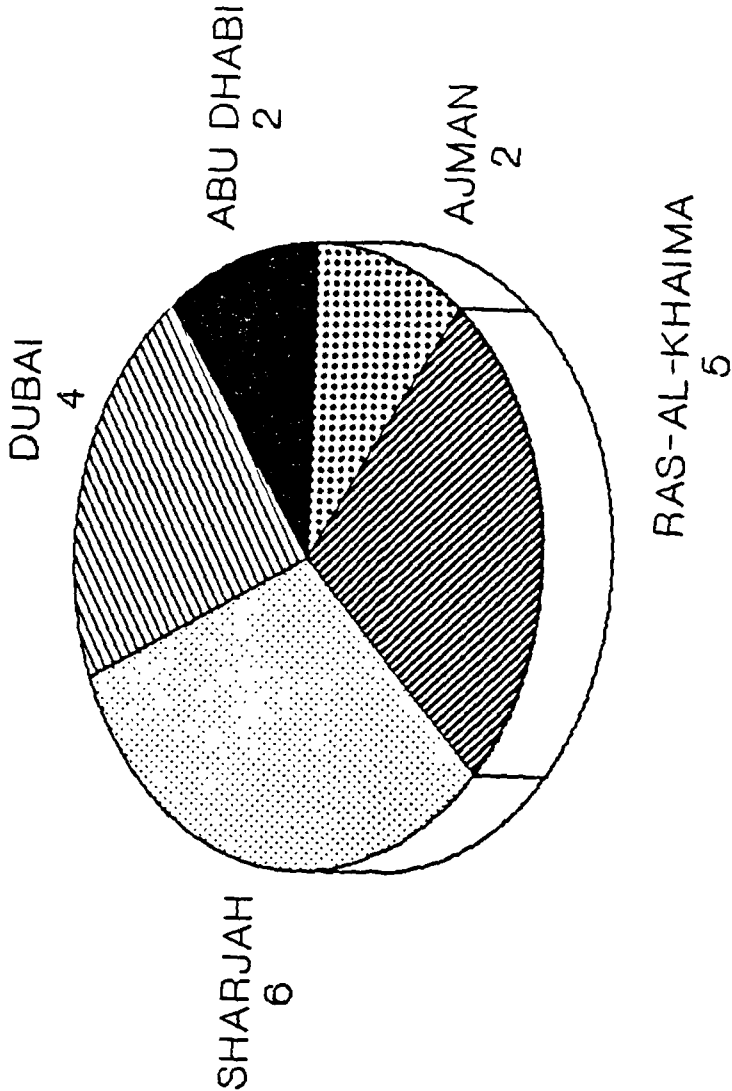
[Chapter six]



(FIGURE 6.1)

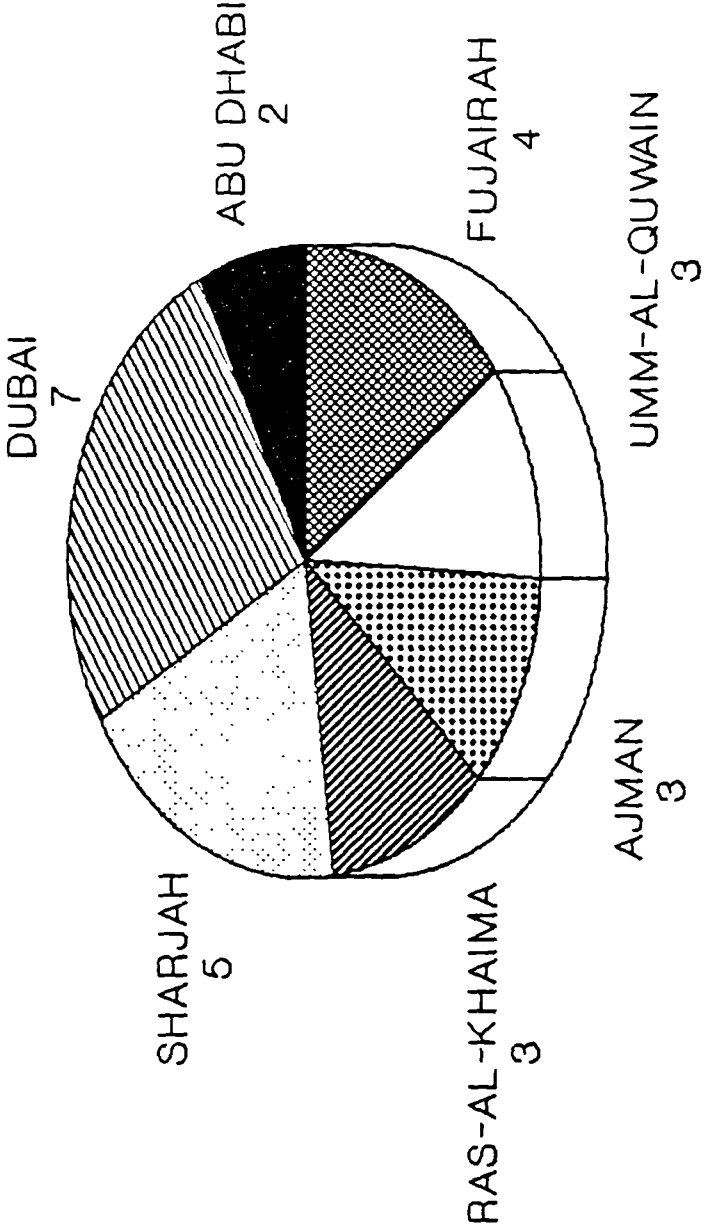
**Membership Turnover in FNC by Emirate  
THIRD COUNCIL**

(Chapter six)



**(FIGURE 6.2)**

**Membership Turnover in FNC by Emirate  
FOURTH COUNCIL**



**(FIGURE 6.3)**

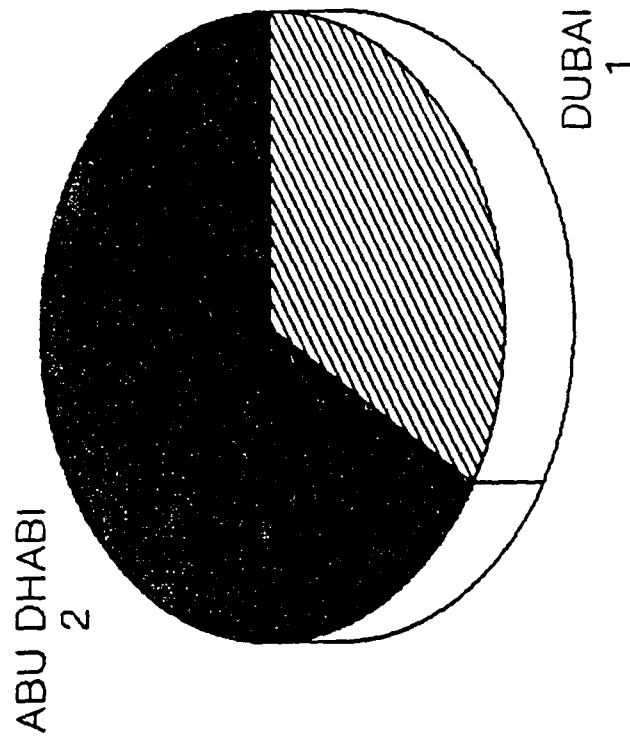
In every emirate there are conflicting interests and a large number of second-class politicians. The ruler rotates his emirate's seats among the most influential families or tribes so as to gain their patronage. Another factor is that none of the rulers is willing to create a hard-core political elite in the Council.

Regarding the average years of service in the FNC, figures (4,5,6,7) show that more than 73 per cent of the members have served in one council. The average is therefore four years. Just three members out of 111 members have served in all four councils.

Abu Dhabi members were the longest serving. Just over half of them served for at least one term. In contrast Sharjah members were the most likely to be turned over. Only one member out of 23 served more than one term. The turnover rate amongst Sharjah members is 95 per cent. Incidentally, it is not common practice to inherit seats in the U.A.E. legislature. In only two cases, one in Ajman and the second in Fujairah, did a son replace his father as a member of the FNC. Three cases of a brother inheriting his brother's seat were observed in Dubai, Ras-al-Khaimah and Umm-al-Quwain. It seems that the rulers did not want to give a single family in their emirates the chance to acquire a political base (57).

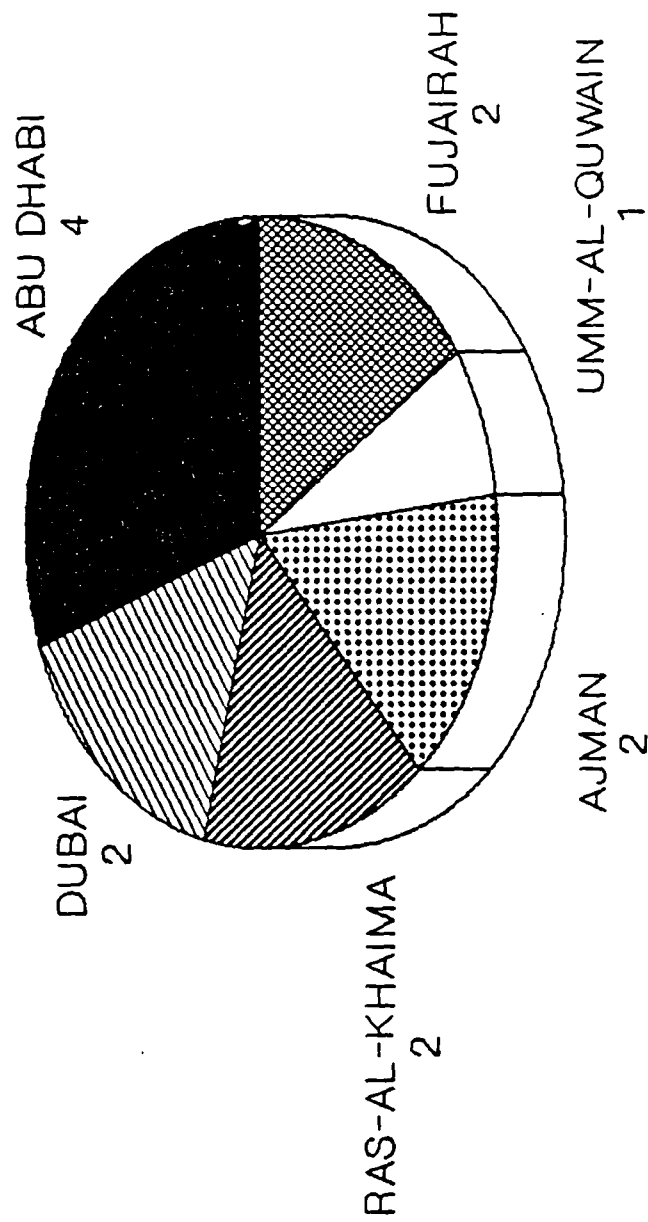


## AVERAGE YEARS OF SERVICE IN THE FNC BY EMIRATE (FOUR TERMS-20 YEARS)



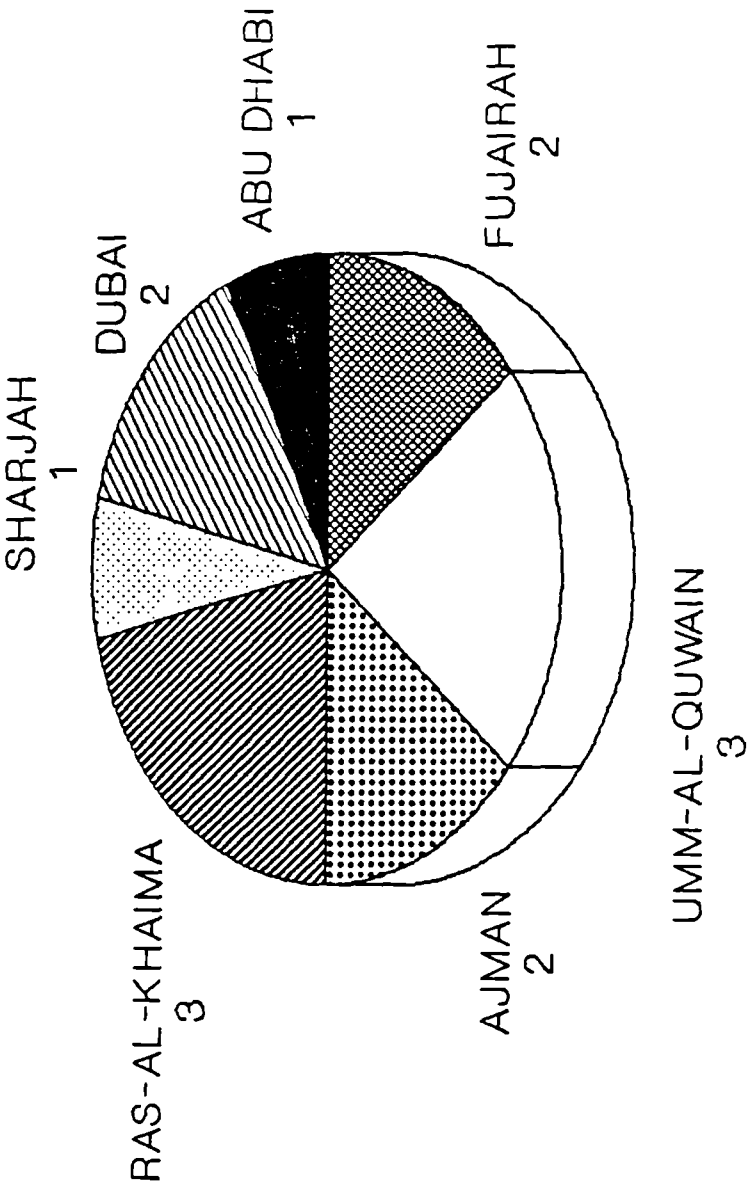
(FIGURE 6.4)

## AVERAGE YEARS OF SERVICE IN THE FNC BY EMIRATE (THREE TERMS-15 YEARS)



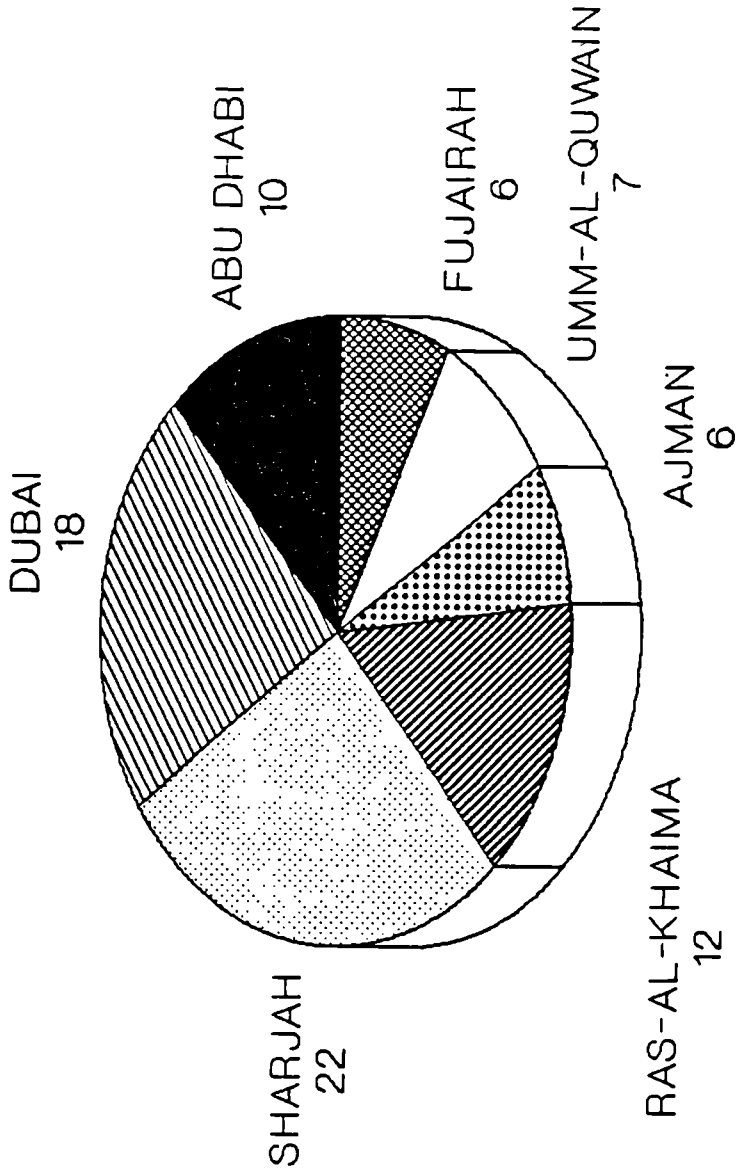
(FIGURE 6.5)

**AVERAGE YEARS OF SERVICE IN THE FNC  
BY EMIRATE (TWO TERMS-10 YEARS)**



**(FIGURE 6.6)**

**AVERAGE YEARS OF SERVICE IN THE FNC  
BY EMIRATE (ONE TERM-5 YEARS)**



**(FIGURE 6.7)**

### **6.8. The Formal Structure of the Council:**

This part will of the chapter deal with the constitutional arrangements regarding terms, summoning, presidency and committees of the FNC. Further it will analyse practice and assess whether the constitutional provisions have been implemented *ad verbum*.

#### **6.8.1. FNC terms and sessions:**

A legislature, whether elected or appointed, is not supposed to be in session permanently. It must have a specific term of duration. It must be dissolved and then re-elected or re-appointed. The term of duration differs from one political system to another.

Article 72 of the U.A.E. Constitution provides that the term of membership in the FNC shall be two years, starting from the first meeting. The Council will determine a renewal for the remaining period of the interim stage. The Provisional Constitution of the country was intended to last for five years, expiring at the end of 1976.

The first council met on 12 February 1972 which meant that its term would end on the same date after two years. Article 72, which reads " .. when this period expires, the Council shall determine the renewal for the time remaining until the end of the transitional period", is ambiguous as to who has the power to renew the FNC term after the lapse of the two years. It is unclear

whether the word "council" refers to the Supreme Council or the National Council.

There is a division of opinion on this question. Two opinions are advanced. The first is adopted by the constitutional adviser to the FNC. He argues that the word "council" in the article does not refer to the FNC. The FNC cannot extend itself by its own decision either before or after the lapse of the two years. He insists that an error occurred in the typing of the script of the constitution and the word "Supreme" was not included in the text. He, consequently argues that the Supreme Council has the power to renew the FNC term (58).

The second opinion is put forward by a Kuwaiti constitutional lawyer opposed to the foregoing interpretation. He argues that the Supreme Council as a federal body has no power in this regard. The Council cannot collectively renew the term of the FNC without conflicting with Article 70 of the constitution. He suggests that individual emirates have the power to renew the FNC term (59).

My own researches based on an investigation of the nine-member-union documents, offers a middle way between the two views expressed above. The 1971 U.A.E. constitution was almost identical with the 1968 proposed constitution of the nine-member-union. Article 72 of the former resembles Article 73 of the latter, save for one word. It seems that an error had occurred, not in omitting a full word but rather a dot. The sentence in the 1968 constitution " The Council shall be renewed" became in 1971 as " The Council shall determine the renewal" (60). The writer therefore

assumes that the intention was to renew the FNC term by the will of the emirates.

Article 72 thus divides the term of the FNC into two terms, the first to last for two years and the second till the end of the interim period. In practice no decision has been issued in the past twenty years, either by the Supreme Council or by individual emirates, which renews the FNC term after the prescribed two years ends. The term of the FNC has become a *de facto* five years.

#### 6.8.2 Summons and adjournment:

The FNC term is divided into sessions. Each session lasts for not less than six months. This period of time is less than the period adopted by the Kuwaiti, Bahraini and Qatari constitutions (eight months).

Constitutions differ as to who has the right to summon the legislature, whether it is the executive or the legislature itself or both or head of state. Some constitutions hand this power to the legislature in order to secure its independence (e.g. U.S.A., Switzerland). Few constitutions grant the matter of summoning the legislature to the government as does Qatar's. Most modern constitutions have taken a middle way whereby the government has the power to summon the legislature on specific dates but the legislature may summon itself under certain conditions (61).

The U.A.E. constitution falls into the third category. It grants the Head of the Union the power to summon the FNC by a decree. However, if the Council is not summoned before the third week of

November, the FNC then can summon itself on the 21st of that month.

The FNC may be summoned for an extraordinary session by a decree issued by the President of the Union. The Council has not been granted this power. Unlike the position under the Kuwaiti and Bahraini constitutions, FNC members cannot ask for an extraordinary session (62).

The meetings of the FNC can be adjourned by a decree issued by the President of the Union with the consent of the Council of Ministers. The adjournment period is restricted to one month. It must not be used more than one time in a session, except with the approval of the FNC (63).

In practice these provisions are not fully observed. With regard to the issue of summoning, the Council has usually been summoned by a presidential decree on dates later than these laid down by the constitution. The first session of the first council was supposed to be held prior to 30-1-72 in accordance with Article 78, but it was summoned on the 12-2-72. The same thing happened with the next councils. It has now become a rule that the Council shall be summoned later than its constitutional date.

The fourth council (1987-1991) was summoned for its first session of the second term right at the beginning of March 1990 instead of November 1989. The FNC did not sustain the situation and declared in its reply to the presidential speech that it would like the government to observe the dates set up by the constitution for summoning the Council. Consequently, the first deputy of the FNC president announced that the FNC would summon itself on



the 21st of November 1990 in compliance with Article 79 of the constitution (64). It was the first time in FNC history that it was not summoned by a presidential decree.

With regard to the question of adjournment, the FNC was adjourned on six occasions for one month (65). The writer was told by a source in the FNC secretariat that the major reason for these adjournments was that November is usually the month for hunting and the President of the Union, who likes to open the FNC sessions in person, is always busy in this month. The best solution was to adjourn the session.

It is important to mention that the FNC meets twice every fortnight. Since the minimum period of a session is six months, the Council will meet at least 24 days in the whole session. It is admittedly a poor record for a legislature.

### 6.8.3 The FNC Bureau and Committee system:

The Council is free to elect its president on the first sitting of each term. He will be elected by a majority of votes in a secret ballot. If this majority is not secured in the first round then election will be repeated between the first two members. The same procedures are applied in the election of the first and second vice-presidents. However, if the position of the president is vacant then an election will be held to select a new one. The first vice-president will not replace him automatically.

The president is responsible for representing the Council, presiding over its meetings, presenting the annual budget of the FNC, and observing the work of the Secretariat (66).

The Council will also elect two controllers for one session. With the President and two vice-presidents, they will form the Council Bureau. The Bureau will be responsible for settling procedural matters, selecting FNC delegates who will represent the Council inside and outside the country, and supervising the administrative work of the Council.

In practice, the posts of the FNC were virtually contested in every Council except the first. The first president, two vice-presidents and controllers were uncontested in their election. The second president was not elected in the first round and neither were the two vice-presidents. The third president and his deputies won their seats in the second round. In the fourth council the positions were contested.

Although it is not specified in the constitution who shall occupy these posts, political realities in the U.A.E. direct the election process. The two important emirates, Dubai and Abu Dhabi, dominate the most important positions. Out of four presidents Dubai has supplied three (first, third and fourth), while the fourth was from Sharjah. In addition, out of eight vice-presidents Abu Dhabi has supplied five and Dubai one. Ajman and Sharjah were the only small emirates to held a post and they have had one post each.

The FNC has eight committees with seven members in each. A member can participate in only two committees. The committees are:

- Committee for internal and defence affairs,
- ,, ,, financial, economic and industrial affairs,
- ,, ,, legislation and legal affairs,
- ,, ,, education, media and information affairs,
- ,, ,, health, work and social affairs,
- ,, ,, foreign affairs, petroleum, agriculture and fishery,
- ,, ,, for Islamic affairs and public utilities, and
- ,, ,, inspecting contestation and grievances.

Each committee elects its president. A committee cannot directly contact a minister to discuss matters concerning his ministry but has to address him through the FNC president. The task of the committee is to ask for information from public bodies and departments, to discuss what has been referred to it by the Council and to present within three weeks its report to the FNC.

The researcher has noticed that new members tend to participate more effectively in two committees than the longer standing members. In the present council, for instance, thirteen out of seventeen members participating in two committees were newcomers. Most of them are from small emirates and are well-educated members. It seems that members of the small emirates

want to compensate for their small number in the Council by becoming involved in more than one committee.

### **6.9 Conclusion:**

The conclusion to this chapter may be shortly stated. The U.A.E. legislature is a unicameral council whose seats are proportionally distributed. Its members are appointed by the rulers although the constitution does not dictate any specific method of selection.

It seems that tribal values have intertwined with the constitutional provisions in order to establish a *modus vivendi*. The process of consultation in the traditional *Majlis* was open to everybody in the society. The new institution of consultation which was adopted by the 1971 Constitution, viz. the Federal National Council, had to be acceptable to the tribal culture so that it could survive. As we have seen in chapter 2, the tribal criteria for leadership does not include the method of election. The appointment method does not, therefore, degrade the FNC in the eyes of the public or its members because it is a traditional system.

The members are selected from among citizens by origin. They represent the minority elite in the society. The membership of the council secure the dominance of this minority. They are male Arabs from dominant merchant, tribal and co-operative families in the emirates. In fact, the practice of selecting FNC members and their socio-economic background highlights the prevalence of the old structure of the society and the continuity of traditional way of

consultation. The FNC therefore, like its counterparts in other countries, is unrepresentative of its society. Furthermore no one can contest the membership of the Council.

Membership of the FNC is highly unstable in terms of turnover and average years of service and as a result there are a number of inexperienced members in each term. Furthermore, the FNC must be considered a dead-end legislature. It might provide its members with some financial incentives, but it cannot serve as a springboard for their political ambitions in the system. Aside from one member who became minister of agriculture, no FNC members have been recruited for higher governmental posts.

Finally, there can be no doubt that, because of lack of previous constitutional experience, some provisions of the constitution regarding the legislature have not been fully adhered to in practice.

**Footnotes:**

- 1 - See A. R. Mukherjea, **Parliamentary Procedure in India**, Oxford Press, Second edition, 1967, p. 8
- 2 - The Indian Constitution states that the number of Lower House members will not exceed 500. Ibid., p. 8.
- 3 - Ahmad K. Atawi wrote that the number of members of the FNC is 120 which is totally untrue. See his book **The Establishment and Development of the U.A.E.** (Arabic), Al-Muassah Al-Jami'yyah lil Dirasat wa Nnasher, Beirut, 1981, p. 118.
- 4 - Constitutional amendment No. 1 of 1972. See also Supreme Council resolutions Nos. 2 and 3 of 1972.
- 5 - Ibrahim (75), op. cit., p. 277.
- 6 - See Adel Al-Tabtabai, **Legislatures in the Arabian Gulf States** (Arabic), Journal of the Gulf and Arabian Peninsula Publications, Kuwait, 1985, p. 188.
- 7 - See Ibrahim (75), op. cit., p. 278.
- 8 - Abul-Majd, op. cit., p. 33.
- 9 - Federal Law no. 17 of 1972 amended by Law no. 10 of 1975 regarding nationality and passports.
- 10 - Mohammad Al-Moqatei, **A Study of the Kuwaiti Constitutional Experience (1962-1986)**, unpublished Ph.D. thesis, University of Warwick, Coventry, 1987. p. 170.
- 11 - Jerkhi, op. cit., p. 377.
- 12 - Sayyed Ibrahim, **Nationality Law in the U.A.E.**, (Arabic), Ministry of Information, Abu Dhabi, 1978, pp. 103-105.
- 13 - Yahya Al-Jamal, **The Constitutional System of Kuwait** (Arabic), Kuwait University Publications, Kuwait, 1970-71, pp. 233-234.
- 14 - Ghai (91), op. cit., p. 26.
- 15 - Jill Cottrell, "One Country, Two Systems: The Constitutional Future of Hong Kong" in Mohendra P. Singh (ed.) **Comparative Constitutional Law**, Eastern Book Co., Lucknow, 1989. p. 93.
- 16 - Al-Hosani, op. cit., p. 156. Also Al-Tabtabai, op. cit., p. 182.

- 17 - Ramadan Mohammed Batteek, op. cit., p. 116.
- 18 - Khalifa, op. cit., p. 92. Dr. Sayyed Ibrahim reported that because of the appointment of its members, the FNC was not invited to the founding meeting of the Arab Parliamentary Federation (APF) on 19/6/74. The FNC opposed its exclusion and sent a letter explaining its constitutional position. It stated that the appointment method was not proscribed by the U.A.E. constitution. In addition, the APF included amongst its founders two non-elected legislatures. The FNC was accepted as a full member of the federation in the next meeting on 12/3/75. See Ibrahim (86), op. cit., pp. 107-111.
- 19 - **Al-Khaleej**, quoted in Al-Hosani, op. cit., p. 160. In a recent survey of opinion in the Arab world carried by the Egyptian newspaper, **al-Ahram**, 90 per cent of those questioned from the U.A.E. were in favour of the introduction of democracy in their country. For survey findings see **The Times** 24/5/1991 and **al-Ahram** 23,24/5/1991.
- 20 - This was quoted in Enver M. Koury, op. cit., p. 93.
- 21 - **Al-Khaleej**, Sharjah, 3/12/1990. In the same direction, the second vice-president of the FNC, Dr. Salem Al-Mahmoud, demanded that the Assembly must be given more powers in order to function better, see his interview in **Al-Islah**, Dubai, issue no. , January 1991.
- 22 - In 1986 Shaikh Sultan, the ruler of Sharjah, suggested that his emirate's representatives in the FNC might be selected by this method. However, this idea has not been applied yet. See Sarah Searight, op. cit., p. 13.
- 23 - Abdo Baaklini, " Legislatures in the Gulf Area: The Experience of Kuwait, 1961-1976" in **International Journal of Middle East Studies**, Vol. 14, 1982, p. 373.
- 24 - Al-Moqatei, op. cit., p. 92.
- 25 - Al-Tabtabai (85), op. cit., pp. 180-81.
- 26 - Al-Moqatei, op. cit., pp. 127-28.
- 27 - Al-Tabtabai (85), op. cit., p. 177.
- 28 - M. Al-Moqatei has studied extensively the question of women's right to vote in Kuwait in his unpublished Ph.D. thesis. He presents different points of view with regard to this question - Muslim jurists, feminist movement leaders, educated personalities and MPs. He has also brought out various field studies on women's suffrage. He indicates that 67% of the Kuwaiti electorate are against granting women the right to vote. See pp. 125-166.
- 29 - See Al-Hosani, op. cit., p. 158. Also Ibrahim (75), op. cit., p. 67.

- 30 - Abdullah Ameen (a Persian Sunni) was a FNC member representing Ajman in the period 1972-1986. Two members of the Lootah family (of Indian Liwatiya origin) are members for Dubai. The first is Hilal Ahmad Lootah who has been a FNC member since 1972. The second is Abdul-Rahman Ali Lootah who is a member of the fourth Council (1987-1991). For the Lootah's origin see Abdul-Khaleq Abdulla, op. cit., p. 88, and also J.E. Peterson, **The Arab Gulf States. Steps Toward Political Participation**, Praeger, New York, 1988, p. 96.
- 31 - Blondel, op. cit., p. 77.
- 32 - Gallagher, op. cit., p. 373.
- 33 - Ibid., p. 375.
- 34 - For Sri Lanka see Oberst, op. cit., pp. 762-65 and for Tanzania see Donge (89), op. cit., p. 55. The same thing applies to Western democracies. In the 1987 British parliamentary elections, for example, 62 per cent (408) of the elected MPs had university degrees. Half of them (206) graduated from two universities, Oxford (115) and Cambridge (91). See Byron Criddle, "Candidates", in David Butler & Dennis Kavanagh, **The British General Election of 1987**, Macmillan Press, London, 1988, p. 202.
- 35 - Blondel, op. cit., p. 77. Joel Verner observed when studying the Guatemalan National Congress that many background characteristics were shared by the leftist and rightist members. For instance, age, place of birth, education and governmental experience were not major characteristics which indicated the political attitude of the legislators. See his article "The Guatemalan National Congress: an Elite Analysis" in Weston Agor (ed.), op. cit., p. 320.
- 36 - Al-Hosani, op. cit., p. 161.
- 37 - Peterson, op. cit., p. 97.
- 38 - Ibrahim (75), op. cit., pp. 280-81.
- 39 - Al-Jamal (71), op. cit., pp. 261-62
- 40 - Hartley explains why election petitions are seldom heard nowadays. He suggests two reasons: 1) inter-party consensus not to challenge elections won by the opponents and (2) the high costs of any dispute. See T.C. Hartley and J.A.G. Griffith, **Government and Law. An Introduction to the Working of the Constitution in Britain**, Weidenfeld and Nicolson, London, 1975, pp. 49-50.
- 41 - Ibrahim (75), op. cit., p. 281.
- 42 - For the first opinion see Batteek, op. cit., p. 168. The second opinion is the one adopted by the FNC Secretariat.



- 43 - Britain was the first to secure free speech in its Parliament. Article 9 of the Bill of Rights in 1689 reads: " That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament." See Hartley, op. cit., pp. 244-45.
- 44 - Ibrahim (75), op. cit., pp. 295-97.
- 45 - Federal Law no. 2 of 1983 amended by Law no. 16 of 1984 regarding the salaries of the FNC members.
- 46 - Ibrahim (75), op. cit., pp. 292-93.
- 47 - Al-Tabtabai (85), op. cit., p. 238.
- 48 - Abul-Majd, op. cit., p. 69.
- 49 - Peverill Squire, " Career Opportunities and Membership Stability in Legislatures " in **Legislative Studies Quarterly**, Vol. 13, No. 1, 1988, p. 66.
- 50 - Donge (89), op. cit., p. 51.
- 51 - Olson, op. cit., p. 92.
- 52 - Criddle, op. cit., p. 191.
- 53 - Richard G. Niemi and Lura R. Winsky " Membership Turnover in U.S. State Legislatures: Trends and Effects of Districting " in **Legislative Studies Quarterly**, Vol. 12, No. 1, 1987, pp. 115-119. In the 1982 Irish elections only 13 per cent of Dail incumbents were defeated, see Gallagher, op. cit., p. 385.
- 54 - Donge (89), op. cit., p. 51 and Harrop, op. cit., p. 34.
- 55 - Al-Moqatei, op. cit., p. 92.
- 56 - Squire, op. cit., p. 72.
- 57 - Gallagher reported that 25 per cent of the 166 deputies of the 1982 Irish Dail were related to present or former deputies. See Gallagher, op. cit., pp. 380-81.
- 58 - Ibrahim (75), op. cit., pp. 325-29.
- 59 - Al-Tabtabai (85), op. cit., pp. 204-06.
- 60 - The two Arabic word are " **يُجَدِّدُ** " which means shall be renewed and " **يُحَدِّدُ** " which means determine.
- 61 - Ibrahim (75), op. cit., p. 330 and Al-Tabtabai (85), op. cit., p. 209.
- 62 - Al-Tabtabai (85), op. cit., pp. 212-13.
- 63 - Ali, op. cit., p. 398.

- 64 - **Al-Khaleej**, Sharjah, 18/11/1990.
- 65 - Ibrahim (86) states that over the period 1972 to 1986 the Council was adjourned by a decree just three times. However, the index of the Official Gazette records that the Council was adjourned six times. See issues no. 42 (11-76), 99 (12-81), 117 (10-82), 132 (83), 146 (12-84) and 157 (85).
- 66 - Ali, op. cit., pp. 431-32.

## **CHAPTER SEVEN**

### **THE PRACTICAL WORKING OF THE U.A.E. LEGISLATURE UNDER THE 1971 CONSTITUTION**

#### **7.1 Introduction:**

Generally, elected legislatures may be said to have two primary functions: to represent the people and as an elected legislature to authorise taxation and expenditure. The former means it has the right to speak for the people having committed its deliberations and decisions to the whole nation for approval (1). As for the latter, for example, the English Parliament was originally established specifically to sanction taxes needed by the Monarch (2). The form of legislature which has come to exist in the western democracies has many other functions, such as educating and informing the public, controlling the executive, and framing legislation.

After discussing the membership and formal structure of the FNC in the previous chapter, this chapter explains and analyses the functions of the U.A.E. legislature. The focus will be on the three broad constitutional functions usually assigned to legislatures: legislative, political and fiscal. Also the link between the exercise of power and its accountability to the electorate.

## **7.2 Legislation (law-making):**

In the British model of legislature, historically Sovereign power is vested in the Parliament. It was the prerogative of the monarch to make laws, but by the seventeenth century, Parliament, after a long constitutional struggle, succeeded in wresting this power from the crown. The British Parliament emerged as the supreme law maker in the U.K. However, in the nineteenth century when the government started to expand its activities, and the power of Parliament to make laws was reduced. In theory Parliament sought to exercise control over the executive. But in reality Parliament was subject to executive influence.

It is obvious that the power to enact laws also conveyed the power to rule the country as we will see later when we discuss fiscal powers. Under strict presidential system, legislation is the privilege of the legislature. However, such absolute right did not exist in reality. Many developments occurred in the presidential system which enabled the executive to participate in the legislation process (3).

The parliamentary system is based on the co-operation between legislature and executive, with the government taking the initiative in instituting Bills. The government is unique in its ability to authorise formal expenditures or taxations. Indeed under a parliamentary system the government tends to dominate this function. Griffith observed that:

" When Parliament is called the Legislature what is meant is that no body or person can issue an order, rule, regulation, scheme or enactment having the force of law without Parliamentary authority. But it does not follow that Parliament is responsible for the whole of

the legislative process. In other words, "to legislate" may mean either to authorise the action which turns a legislation proposed into a law or to carry through the whole legislative process. In this latter sense legislation today is more a governmental than a Parliamentary function (4). "

It seems that in this respect there is little distinction between Parliament and government.

Some constitutions distinguish between two kinds of legislation: that which has been made by the legislature and that which has been made by the executive as in France. The 1958 French Constitution gives Parliament the power to legislate in many subjects (Article 34) and the government has the power to make laws in other matters (5). A Bill may be introduced by an individual or by the government, and it may be a public or private Bill.

Some countries (e.g. France) gave the task of drafting Bills to those experienced in the subject involved, and those experts are not necessarily lawyers; some are civil servants. Others (e.g. Sweden) place the matter in the hands of a drafting commission, which includes one or more lawyers or legal experts. Institutions have been established specifically to review the legal aspect of projected Bills (e.g. Conseil d'Etat in France and Law Council in Sweden) and in some cases there are special departments in the ministry involved entrusted with doing the job (e.g. Germany) (6).

A number of general observations may be made about the legislative process from the experience of different political systems:

- Most of the Bills originate with the government. This can be justified on the grounds that the government is more equipped with recruitment potential and has greater access to expertise and information than the legislature.
- Government Bills are adopted by legislatures at a very high rate.
- It is rare that the government fails to pass its Bills.
- The rate of adopting non-government Bills is low (7).

It should be remembered that these observations are not always true. For instance, in the U.S.A., which adopts a presidential system with separate and co-equal branches of government, the rate of presidential Bills (i.e. executive Bills) adopted by the Congress is very low (8). Most of the Bills are introduced by administrative agencies, interest groups and individual representatives and citizens. One characteristic that the U.S.A. system shares with other systems, however, is that Bills sponsored by individuals face more difficulties in passing through Congress than governmental ones (9).

It is obvious from the preceding analysis that legislation, despite being an important function of the legislature, is not under its exclusive jurisdiction because the executive contribute substantially in this function.

Legislation under the U.A.E. Constitution confirms with the above general observations except that the initiation stage of the legislative process is wholly under the jurisdiction of the government. There is some similarity to the French Constitution of

1814 which gave the King the right to participate in the legislative power and Bills were only to be introduced by government. In effect the two houses of Parliament were stripped of this crucial process. This gap was corrected in the 1830 Constitution which returned the power of instituting Bills to the Parliament (10).

The Constitutions of Kuwait and Bahrain granted the members of the National Assembly the right to initiate Bills. However, the Bill must be adopted by not more than five members (Art. 109, Art. 71). Moreover, no Bill shall be enacted unless passed by the legislature (Art. 79, Art. 42).

Under the U.A.E. Constitution, the legislative process passes through four stages: introduction, debate and discussion, ratification and promulgation. The third and fourth stages are under executive jurisdiction. The Union President and the Supreme Council have the power to ratify laws discussed by the legislature.

Regarding the initiation of Federal Bills, Article (60) and paragraph 2 of Article 110 provide that the Council of Ministers hold a monopoly over this important stage. The legislature has no competence in the field of initiating Bills. Each ministry submits its Bill to the Council of Ministers for approval before passing it to the FNC.

It seems that the Constitution restricts the role of the FNC in the debate and discussion of Bills introduced by the government to the extent explained by Article 110:3a:

"If the Federal National Council inserts  
any amendment to the Bill and this amendment is not

acceptable to the President of the Union or the Supreme Council, or if the Union National Assembly rejects the Bill, the President of the Union or the Supreme Council may refer it back to the National Council. If the Federal National Council introduces any amendment on that occasion which is not acceptable to the President of the Union or the Supreme Council, or if the Federal National Council decides to reject the Bill, the President of the Union may promulgate the law after ratification by the Supreme Council."

### Mechanisms of law-making in the U.A.E.

It should be remembered that there is no opportunity under the 1971 constitution for a private member Bill. Law-making in the U.A.E. commences with a Bill which originates in a department in the relevant ministry, then is approved by the Council of Ministers which submits it to the FNC. In the legislature the Bill will be referred directly to the *ad hoc* Committee. The committee may consult the legislative committee, seeking its opinion on the wording of the Bill. The *ad hoc* committee will present a report containing the original draft and its amendments. The report will be debated later on in the FNC. Every member has the right to discuss each Article of the Bill. All amendments must be introduced in written form before the FNC meeting although the Council may consider any amendments produced during the meeting. Finally, the Council shall vote on the Bill. The voting on draft-law is by roll call. A majority is required for rejecting or amending a Bill.

If the government disagrees with the FNC rejection or any amendment introduced to the original draft, the Bill will be referred back to the Council so that it may be reconsidered. If the FNC insists on its view point then the President of the Union has the power to override this decision and promulgate the law (11).



The Constitution permits the Council of Ministers in urgent cases, with the consent of the Supreme Council and the President, to promulgate laws in the absence of the legislature. The executive must notify the FNC about these laws at the beginning of its next session. The legislature has no power to vote on these laws.

From the above explanation of the constitutional arrangements for legislation in the U.A.E. some conclusions may be drawn.

First, the legislature may not be involved in the first step in the life of a law i.e. initiation. Second, it may discuss, debate and amend or reject a Bill but what it does lack is mandatory power. Third, as will be shown, the government may take advantage of the period that the FNC is out of session and promulgate unchallenged laws under its power to promulgate laws in urgent matters. In short, it seems that according to the Constitution the role of the FNC as far as legislation is concerned is to a large extent consultative. The practice, however, showed that the FNC rejected to be only a debating society.

It may be asked whether the role of the legislature in the U.A.E. has been reduced to a mere *pro forma* ratification of government Bills and how far the government seizes the opportunity to use its power when the Council is not in session?

For an answer to these questions one has to look in detail at the experience of the FNC over the past twenty years. Research has been undertaken to consider the Bills introduced to the Council, look at a case study of a recent penal law Bill, and examine how

the period between two sessions has been used for promulgating new laws.

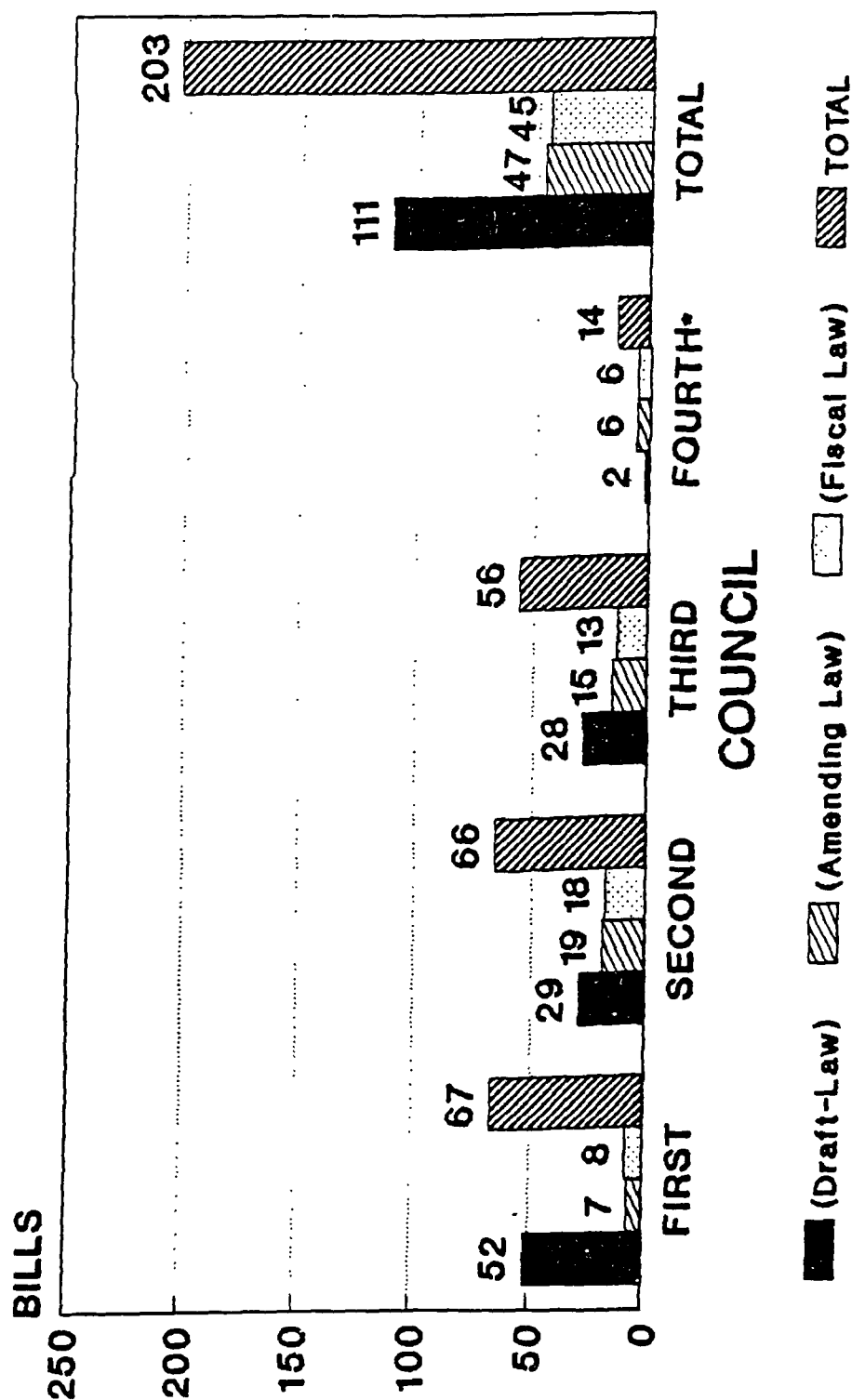
#### 7.2.1 - Bills introduced to the Council:

In the period between 12 February 1972 and 12 July 1989, two hundred and three draft-laws were initiated by the government and introduced to the FNC (see figures 1,2). These may be divided into three categories: one hundred and eleven new Bills, forty seven Bills amending existing laws and forty five fiscal Bills. Sixty-seven Bills were introduced in the first Council, sixty-six in the second, fifty-six in the third and fourteen in the fourth. The reason for the small number of Bills in the present council is that the period of study covers only the first one and half years of its life.

The Bills passed without amendments numbered ninety-three, Bills passed with amendments numbered one hundred and five and Bills rejected by the Council numbered five. This means that over half the Bills were amended by the Council and this indicates that it did not hesitate to use its power to its full extent. In addition, the Council rejected a very small number of Bills, obviously anxious to avoid clashing with the government at an early stage.

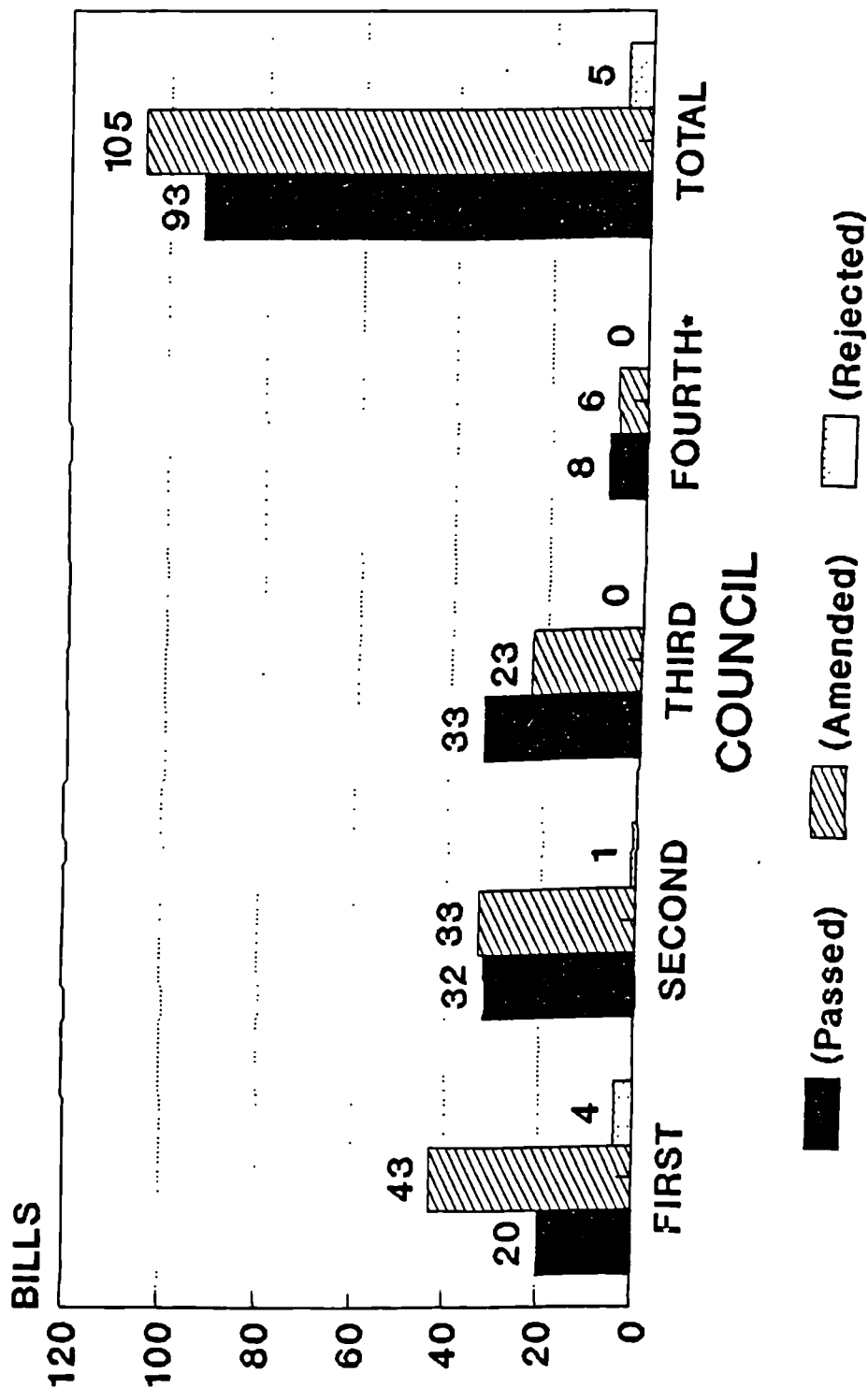
Out of the 111 new Bills presented, seventy-four were amended; in other words, two thirds of them were not passed as easily as the government would have wished. Even in the case of Bills amending standing laws the percentage of those passed unopposed was less than 46 per cent. This indicates that the FNC does not merely rubber stamp government projects, yet, its power to revise is very limited.

# BILLS INTRODUCED TO THE FNC IN THE PERIOD BETWEEN 12-2-72 TO 2-7-89



\* Covers the period from Jan 88 to July 89  
Figure 7.1

# **BILLS INTRODUCED TO THE FNC IN THE PERIOD BETWEEN 12-2-72 TO 2-7-89**



\* Covers the period from Jan 88 to July 89

**Figure 7.2**

In the case of fiscal Bills the Council tends to pass them easily. Only six Bills were amended out of forty-five. In the case of the third council all thirteen fiscal Bills introduced to it were passed without any amendments. With the exception of the second council, the FNC seems inclined not to get involved in financial matters. This may be because of the technical nature of fiscal Bills.

It is worth noting that not every Bill passed by the FNC comes into force immediately. For instance, the Law of Social Security, passed after being amended in late 1976, was not ratified by the executive and actually promulgated till July 1981. Another example is the Law of Military Service, which was passed in the fourth session of the second term in early 1980, but has still not been promulgated.

### 7.2.2 - A case study of the Penal Law Bill:

One example of law-making in practice is the Penal Law Bill. The Penal Law Bill has been described as " the most debated legal document in the history of the U.A.E." (12) It took the government thirteen months to reach a compromise with the FNC so that it could promulgate the law. The Bill was introduced to the Council at its meeting on 19/3/1985 and was finally passed at the meeting on 8/4/1986 (13). The purpose of this case study is to examine the procedures for scrutinizing the Bill before being promulgated into law.

The original Bill recommended severe penalties, such as the death sentence and life imprisonment. At the first meeting to

discuss the Bill everything went smoothly and the council discussed 148 Articles out of 458. At the second meeting, however, a strong opposition was made against the Bill. The two major points of contention were that (1) the Bill lacked a separate chapter defining the legal terms it employed and (2) the Bill dealt unsatisfactorily with crimes against state security.

The first point referred to is the ambiguity of many technical terms in the Bill which needed clarification so that no one could misuse them. The Minister of Justice replied to the opposition that a definition chapter would be acceptable in the case of small Bills, such as those concerned with juvenile law, but that to define every term in the Penal Law Bill would require a huge continuous effort and volumes of books.

The second point was that the crimes described as crimes against the security of the state were not clearly defined and the penalties were very harsh. A member of the Council with regard to this point said that:

" Accepting the draft-law as it is, means that we are asking the citizens to keep silent and not to talk, debate or express their views in matters interrupting the progress of their country."

In spite of the minister's defence of the Bill, the FNC decided by a majority of its members to postpone the debate to the next meeting.

It became clear later on that the main obstacle to the passing of the Penal Law Bill was the question of crimes against state security. The Bill was debated at eight meetings before it was finally passed in April 1986.

Two major amendments were introduced to the original Bill. The first concerned the Clauses dealing with crimes against the state. The members were of the opinion that to tighten up state security would definitely lead to the violation of the citizens' human rights. They therefore succeeded in omitting articles 149, 169, 183, 184, 202 and 203. These articles took a hard line against those expressing views or spreading information about the country (14). The second amendment was the omission of the Clauses dealing with alcohol-related crimes. The FNC recommended these crimes to be addressed in a separate law. After a long struggle the government agreed to all the concessions demanded by the FNC, and the Penal Law was finally promulgated in 1986, amended according to the wishes of the Council. The FNC, after all, is not only a debating society.

### 7.2.3 - The practice of promulgating laws when the FNC is out of session:

We have already seen that the U.A.E. Constitution gives the Council of Ministers the power to initiate and promulgate laws in the period between two sessions of the FNC. However, the usage of this power depends largely on the nature of the relationship between the executive and the legislature. The executive tends to abuse its power in periods of tension with the FNC.

As we will see in the next chapter, the second council tried to fulfil its duties and even to expand them. It held a joint session with the Council of Ministers in early 1979. The outcome of this meeting was not acceptable to the rulers. Consequently, the

Council of Ministers was reshuffled by the Supreme Council. The remaining period in the life of the second council was tense and the new government virtually ignored its role.

Due to the strained relationship between the two bodies, the executive used its constitutional power to promulgate four laws when the council was out of session in the summer of 1980: the Central Bank Law (15), the Press and Publication Law (16), the law establishing the General Emirates Petroleum Corporation (GEPC) (17) and the law amending the Legal Profession Law (18).

In accordance with paragraph 4 of Article 110 of the Constitution the Council of Ministers informed the FNC about these in its first meeting of the next session on the 16/12/80, and although the FNC had no power to contest these laws it nevertheless protested against their promulgation in the summer.

The protest was based on the same paragraph of Article 110 which grants the executive the power to enact legislation in urgent matters. None of the four promulgated laws could be said to be of an urgent nature. The FNC stated in a protest letter to the Council of Ministers:

" It has become clear to the FNC that the four laws promulgated in its absence have no expedient character which may justify the overstepping of the Council's jurisdiction. What may prove this case is that the FNC suggested the promulgation of these laws some years ago. .... For all these considerations the FNC finds it necessary to raise its opinion objecting to the promulgation of these laws in its absence. .... The FNC is keen to show that this objection does not emanate from a desire to monopolize the power or laying down restrictions and obstacles. The drive behind the objection is the adherence to the constitutional bounds and respect of different powers."



Although no response was issued by the Council of Ministers, yet the government did not resort afterwards to abuse its constitutional power in such explicit was.

The above example is an extreme case where the executive may be said to have abused its powers and the legislature defended its position in the legislative function. The legislature wanted to make clear its concern about the usage of this power. The aim was to restrict the exploitation of such an exceptional power.

However, when relations between the executive and the legislature improved the executive did not expand its power to promulgate laws when the legislature was not in session. For example, in the summer of 1983 only one law was issued by the executive while none was promulgated in the summer of 1984.

### **7.3 The political function of the FNC:**

We now turn to examine the political functions of the FNC and the procedures used to scrutinise legislation.

In theory, one of the roles of a legislature is to guarantee government accountability towards the people, not to rule (19). A legislature in theory is supposed to exercise control over the executive and be a check on the administration. It can employ various devices carrying out its role. It can table a question, call a public debate, assemble a select committee, interpellate, recommend or register a vote of no-confidence.

The U.A.E. Constitution has not adopted all these methods in dealing with the political function of the FNC. This section will study the methods actually resorted to by the constitution and their implementation in practice.

### 7.3.1 - Parliamentary Questions:

Parliamentary questions have a variety of functions. They may be considered as inquiry instrument through which information is exchanged between legislature and government, or control instrument used to reveal the government's mistakes (20). The use of the question as a technique in controlling the executive differs from one constitutional system to another. It may be related to an internal matter in a particular constituency, it may be related to national affairs and government services in the state as a whole, or its range may be extended to include all government policies at home and abroad. The question may require a formal or informal answer. Where some matters are concerned advance notice must be given (21).

The technique of question is important for both the member and the minister. It makes room for the member of the legislature to participate in discussing public affairs and to convey his constituency's problems to the government. On the other hand it affords the questioned minister a valuable opportunity to explain to the public his policy or his department's daily work.

Some commentators on constitutional matters suggest that the question is a personal privilege and no one other than the

questioner can intervene, even to ask for more clarification (22). Some constitutions adopt this view and do not consider supplementary questions (e.g. Kuwait), but some include other members and in so doing to accept the supplementary questions (e.g. India).

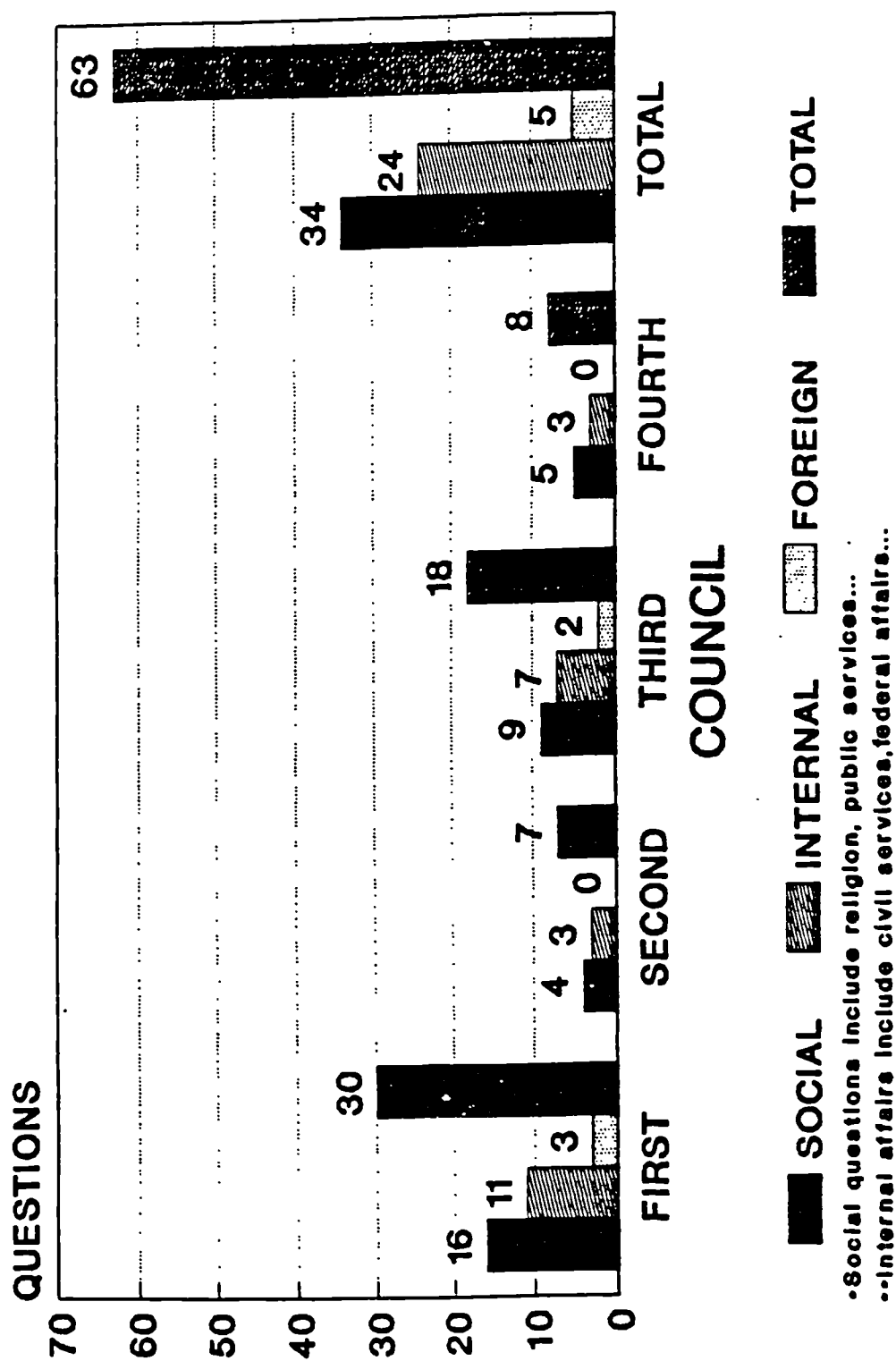
The U.A.E. Constitution grants the members of the Council this device. It prescribes in Article 93 that:

".... The Prime Minister or his deputy or the competent Minister shall answer questions put to them by any member of the Assembly requesting explanation of any matters within their jurisdiction."

The Standing Order of the Council lays down the procedure. The question must be addressed by only one member. In addition, the question cannot be informal but must be written, brief and specific. The Council Bureau has the right to rule out any question and the member can protest against that. The FNC provides for no supplementary question either to the addressing member nor others.

In practice only sixty-three questions were tabled by FNC members during the period of 1972-1989 (see figure 7.3). More than half of them were concerned with internal social matters such as compensation for citizens, housing for low-income citizens, and the building of local hospitals and schools. The first and third councils attracted most of the questions and it was a small group of members who dominated the use of this device.

# QUESTIONS ADDRESSED BY THE FNC MEMBERS IN THE PERIOD 1972-1989



(Chapter seven)

Figure 7.3

There were only five questions on foreign policy. Internal affairs were widely discussed during the third council because it sat at the time of the economic recession of the 1980s. Members concentrated their questions on matters such as foreigners' residence in the country, the state of the economy and the delay in the promulgation of some necessary legislation. Ministers, however, tried to evade such questions by providing the FNC with written answers.

Questions have not been common practice in the U.A.E. legislature because of their ineffectiveness. They have never covered all governmental policies. Most of them have dealt only with local issues. In short, the question method in the FNC has not been a control device but rather an inquiry instrument.

### 7.3.2 - Public debates:

The legislature may act as a forum for public debate or opposition. This method is suitable for a general subject pertaining to state affairs. Members of the legislature may discuss a subject, seeking clarification from the government. This method differs from that of the question in that it deals with government policy as whole rather than with a specific incident. Public debate opens the door to contributions from among all the members. It may raise many questions leading to interpellation or a vote of no-confidence in a minister. This being so, it is clear that public debate is one of the most important and efficient instruments in the hands of the legislature and as a result it has been surrounded by more complicated procedures than any other devices.

Griffith and Ryle, in their book Parliament: Functions, Practice and Procedures (1989), (23) argued that under the system of "parliamentary government" the two Houses of the British Parliament can be considered neither as a governing institution nor as a law-making body. They claimed that the basic role of the Parliament is to be a debating forum. Although the government has a majority in the Parliament, it does not usually seek a total control of public debates because this device, in the authors' view, is very important for the legitimation of the Minister's policies and actions.

However, being a debate forum does not necessarily mean that the Parliament lacks influence. The legislature does not operate in a vacuum and its influence depends on the voters whom the government cannot ignore. (24)

The U.A.E. Constitution has adopted such a method of controlling the executive. Article 92 states:

"The Federal National Council may discuss any general subject pertaining to the affairs of the Union unless the Council of Ministers informs the Federal National Council that such discussion is contrary to the highest interests of the Union. The Prime Minister or the Minister concerned shall attend the debate. The Federal National Council may express its recommendations and may define the subjects for debate. If the Council of Ministers does not approve of these recommendations, it shall notify the Federal National Council of its reasons"

and Article 113 of the Council Standing Order provides:

"The Government can, itself or on the occasion of a question addressed to it, ask for a public debate on a subject related to Union affairs. "

From the previous provisions it is clear that public debate in the FNC is restricted to Union affairs and that the Council deals with federal rather than local issues. It is a method which may be used by both the legislature and the executive. The former may use it to broaden the frame of discussion while the latter may manipulate this method to explain its policies. By adopting the dual usage of this device, the U.A.E. constitution has taken a different route than that taken by the surrounding systems (e.g. Kuwait and Bahrain) which have restricted public debate to their National Assemblies.

Both the Constitution and the Standing Order lay down the conditions for the practice of this instrument by FNC members. In the first place there must be a request for a public debate signed by five members. This reflects the importance of this method. Second, it must be understood that the presentation of a request does not necessarily mean that a debate will be held. The Council must give its consent. Third, the Council of Ministers must be informed about the request immediately. The Council of Ministers has the power to object to the debate of any subject which it considers " contrary to the highest interests of the Union ".

Dr. Adel Al-Tabtabai criticised the third stipulation. He argues that the executive will abuse its power and define the highest interests of the union in its favour. He further argues that the stipulation is a loose concept which can easily be extended to include most subjects and deprive the FNC its power to call for a public debate (25).

However, experience has not confirmed Dr. Al-Tabtabai's arguments. During the first three councils the government has not objected to more than five subjects (26). This implies that the government has not abused its power in this field and has allowed the legislature to discuss matters raised by the members.

The researcher has looked at the subjects accepted for public debate in the FNC during the first, second, third councils and the first term of the fourth council (see figure 7.4). The survey reveals several points. First, during this period one hundred and forty-eight subjects have been debated in the Council, almost half of this number during the first council. Second, the subjects have ranged over almost all governmental activities. This indicates the variety of the members' interests. Third, the overwhelming majority of subjects have been generalised and in only six cases have issues related to a specific area or emirate been addressed. Fourth, FNC debates have been open to the public except in seven cases. Meetings in camera started in the second council with the debate on foreign migration and its consequences for the population. Other subjects discussed behind closed doors have been security policy, the financial situation of the federal government, work policy and media and information policy.



# PUBLIC DEBATES IN THE FNC IN THE PERIOD OF 1972-89

COUNCIL	Ed	S	HW	H	I	E	U	F	A	In	Ec	Tr	J	Cs	T
FIRST	7	4	6	4	4	3	1	2	3	8	11	3	4	8	68
SECOND	2	2	6	4	1	3	1	0	3	1	7	2	2	1	35
THIRD	3	2	2	3	2	0	2	1	2	2	6	1	4	0	30
FOURTH	3	2	1	3	0	0	1	0	2	0	0	1	1	1	15
TOTAL	15	10	15	14	7	6	5	3	10	11	24	7	11	10	148

ED:Education  
 HW:Housing & Work  
 I:Information  
 U:Union affairs  
 A:Agriculture  
 Ec:Economy  
 J:Justice  
 S:Social Affairs  
 H:Health  
 E:Electricity  
 F:Foreign Affairs  
 In:Internal Affairs  
 T:Transport  
 CS:Civil Services

Public services, such as education, health, electricity, housing and social security, were the obvious subjects for debate in the Council. They scored 45 per cent of the total. On the other hand, foreign policy and federal matters have been least discussed. Foreign policy has been debated three times under the first and third councils, with the FNC upholding existing policy after discussion. Federal matters, such as the emirates' contribution to the federal budget and the financial situation of the government, have seldom been discussed. This suggests that the legislature tends to discuss matters concerning the welfare of the citizens rather than question political matters of union policy.

Public debate in the U.A.E. legislature may result in a recommendation on how to proceed, an expression of satisfaction with the response given by the concerned minister, or the formation of a committee to investigate or follow up the subject. In just thirty-nine debates the Council was satisfied with the answer provided by the minister. The FNC has issued recommendations in over two thirds of the subjects it has debated. It is clear that the Council has wanted to voice its opinion publicly in most of the matters it has discussed. It has not supported governmental policy unreservedly; has often taken an independent stand.

The fourth council, especially, sought to be more independent than its predecessors. It issued recommendations in ten subjects out of fifteen. Moreover, it formed three committees to investigate subjects as a result of public debates.

The Constitution requires the attendance of the Prime Minister or the concerned minister at a public debate. However,

this constitutional rule was not observed on several occasions and the FNC accordingly protested vigorously. In the first council, for example, no minister attended the first seven meetings of the Council and the FNC was obliged to send a letter of objection to the Council of Ministers demanding the presence of the concerned ministers at public debates. At the following meeting seven ministers were present (27). On another occasion the Council even went so far as to threaten the government by issuing the following decision:

" The FNC has observed regretfully the continuous absence of the government in the Council meetings which is contrary to the rulings of the Constitution. This is calculated to paralyse the Council's duty. The Council cannot but decide to adjourn its meetings to a time determined later ." (28)

Discussion and public debate has been frank and sincere. Members have called explicitly for economic and political reform in the country. One member, on the subject of the delay in fixing the federal budget, said:

"I have here some notes on the delay in not issuing the budget till the middle of this year. God knows when it will be issued. I think that this delay represents an unusual deficiency in the state economy. It is an irregular phenomenon which must be solved in some way. .... A budget must be issued. .... We are spending without knowing the exact budget of the union ." (29)

Another member criticised the way that the government was handling the financial situation. He was reported as saying:

" It has been said that the reduction in the budget and the cancellation of some approbations is for the benefit of the citizen. I believe that this is untrue. .... Why does the government burden the citizen with its problems ? ... The government does not support him nor does it provide him with a chance of

work. What is desired for the citizen ? Has he to migrate to other countries to earn his living or to ask for social alms ? This is totally unacceptable ." (30)

The openness of FNC members has not been restricted to matters over which they have responsibility but has extended to areas in which they have no jurisdiction. Under Article 91, the Constitution requires the government to notify the Council about international treaties and agreements it concludes with other states or international organisations but the FNC cannot pass a vote over these treaties. The legislature may issue observations on them.

The Council has not been totally constrained by the provisions of the constitution. It has discussed, for example, in public debate on 7/5/1985, the Economic Agreement among the GCC countries. There was fierce criticism of this agreement. A member voiced his criticism as follows:

" The U.A.E. does not make reservations on any agreement regardless of its harm because the agreement is not studied but signed. It is signed because there are certain pressures exerted on us. ... Those who made their reservations are in a powerful position ... but we are told to do so and not to do so and when to sign and not to sign." (31)

A recommendation was passed that all future agreements be presented to the Council to look into and discuss, in order to help the relevant ministry and thus benefit the U.A.E. The government took this recommendation into account.

### 7.3.3 The use of procedure known as "Recommendations":

The term "recommendation" refers to " an action which is advisory in nature, rather than one having any binding effect." (32)  
It can be described loosely as a non-binding suggestion.

This is the least efficient device for controlling the executive but may be seen as a means of assessing the elite's opinion with regard to a specific policy.

The U.A.E. Constitution grants the Council unrestricted right to express recommendations as to its wishes and demands relating to any public issue. These recommendations emerge after public debate, in answer to the presidential inaugural address or following discussion of a draft-law.

Recommendations are addressed to the executive but they are not mandatory. The Council of Ministers may reject them. However, the executive should notify the legislature of its reasons if it does.

In practice recommendations are issued on a variety of subjects, such as education, water and electricity, internal and external affairs, social affairs, the economy and commerce.

This frustrates FNC members who long to be actively involved in state affairs. A member during the 1985 economic recession complained:

" To whom are we going to address the recommendation ? The situation has become desperate. ... There is no government. The best thing

we can do now is to issue a strongly worded statement of resentment concerning the internal situation.... We must not become partners of the government in the destruction of our future. There are future generations who will ask us about these things. Mr. President, there is no hope in recommendations even if we proposed a solution." (33)

#### 7.3.4 Interpellation and Vote of no-confidence:

Interpellation has been defined as

" a request made through the President of either house to a Minister by a private member for an oral explanation of some matter for which the minister is responsible." (34)

Interpellation in some cases suggests an element of impeachment and can be interpreted as criticism and rebuke of the minister. Some constitutions restrict the use of this method by requiring a fixed number of members to move interpellation (35).

The Constitutions of Kuwait and Bahrain have adopted this technique, although it was rarely used in practice. Like the position of the Qatari Constitution, this device does not exist in the U.A.E. In fact the denial of the Council the right to challenge ministers is a reflection of the *status quo* in U.A.E. society. For decades the citizens were not accustomed to impeach the authorities. The need not to adopt such a technical device is in harmony with the nature of the Constitution which gives precedence to the executive over the legislature.

The vote of no-confidence is another technique of controlling the executive. The U.A.E legislature is denied this mechanism. The constitution-makers of the U.A.E. Constitution were sensible when

they did not give the FNC this instrument. A legislature denied the power to investigate, impeach, interpellate or even initiate Bills is *a fortiori* not to be given the power to demand the resignation of a minister.

#### **7.4 The financial function of the U.A.E. legislature:**

Financial scrutiny is historically an important element in the scrutiny of government. This is one of the most ancient functions and the most fundamental role of the legislature. Historically, it derived from the legislative and political functions of the English Parliament. The function has developed from simple tax ratification and authorisation to comprehensive control over the state's financial affairs.

One of the most significant matters that the legislature deals with in this function is the state budget, which is crucial to the activities of the government. It is also empowered to sanction any additional expenditure on the part of the government. The government must present annual accounts to the legislature in order that it may scrutinize its financial activities. It is also the function of the legislature to ratify taxes and loans.

The budget may be defined:

"as a sort of tabular conspectus of estimated public expenditure and income over a given period, generally a year." (36)

Constitutions vary as to the arrangements they provide for a national budget. In some countries the government submits a

budget in the form of a Bill and the legislature sanctions it according to ordinary Bill procedures. In others, the government submits a budget in the form of a financial programme or draft proposal for which there is a different procedure (37).

Here the question arises as to how far an individual member of the legislature can influence the budget or to what extent opposition groups can put forward a Bill which has a major financial implications? Some constitutions grant each member the right to propose any sort of amendment to the budget. Other constitutions give the member the power to suggest a reduction in the national budget but not an increase in it. Some constitutions prevent the members introducing any changes to the budget without the consent of the government or President (38). The fact remains, however, that despite a certain amount of variation among constitutional systems in dealing with the budget, there is a general consensus that the sanction of legislature gives the budget its legal validity and allows the government to raise revenue and spend money.

In the U.A.E. Constitution Article 129 provides that:

"The draft annual budget of the Union, comprising estimates of revenues and expenditure, shall be referred to the Federal National Council at least two months before the beginning of the financial year, for discussion and submission of comments thereon, before the draft budget is submitted to the Supreme Council of the Union, together with those comments, for assent."

Although the Constitution ordains that the budget shall be issued in the same way as a law, it nevertheless makes some



special reservations. As previously mentioned, the FNC has the power to approve, reject or amend ordinary Bills. In the case of a draft budget, however, the powers of the FNC are restricted to discussion and comment. Therefore, the role of the Council *vis a vis* the budget is not to sanction it or to give it legal validity but rather to act in a consultative capacity. Furthermore, government may transfer sums or spend money not provided for in the budget. It must cover this action by law, but in case of urgency it could arrange the foregoing by a decree and notify the FNC afterwards.

The Constitution covers such areas as taxation, duties and loans, by providing that they shall not be imposed, levied or contracted except by virtue of law. These financial matters are not excluded from the Council's jurisdiction. Their Bills are treated as ordinary Bills. The FNC, therefore, has the power to accept, reject or amend these financial Bills.

Regarding the annual final accounts, which comprise the actual revenue and expenditure of the state in a year, the Constitution provides that:

"The final accounts of the financial administration of the Union for the completed financial year shall be referred to the Federal National Council within four months following the end of the said year, for its comments thereon, before their submission to the Supreme Council for approval".

The significance of the final accounts is that they show how the state income has been spent over the last financial year. However, the outcome of the above provision is that the final account is treated exactly as the budget. The Council is restricted to comments. It is noteworthy that the Constitution provides for

the establishment of an independent department to audit the accounts of the government. This body is known as the "audit department" (39).

The reality has not lived up to the constitutional provisions. The U.A.E. budget was issued several months late and ever since the early 1980s has consistently appeared almost a year later than the time agreed by the Constitution. In fact Article 129 has never been fulfilled in practice.

The final accounts of the state have never been submitted to the legislature within four months as Article 135 stipulated. They have invariably been presented to the FNC three or four years late. For instance, the final accounts for the years 79,84,85 were introduced to the Council in the years 84,88,88 respectively.

With the exception of few critical articles in newspapers and magazines and protest from FNC members, nothing happens when there is a violation of the constitution in the above mentioned cases.

To be fair, it must be admitted that the FNC did not accept this situation and publicly criticized it on several occasions. It even issued at the end of one of its meetings a statement which read:

" The FNC after discussing the policy of the government in preparing the annual budget of the Union ... would like to express its worry about the unusual delay in preparing the Union budget for this year which is in total contradiction with Article 129 of the Constitution. The Council expresses its dissatisfaction with all negative signs that have accompanied this delay. The Council recommends an earnest account as to the causes of the delay so as to provide a remedy to the situation and a correction to the progress." (40)

### **7.5 Conclusion:**

It is clear that the 1971 U.A.E. Constitution was intended to create a legislature with no formal constitutional powers in the field of legislation except in debating and proposing amendments to draft-laws. Moreover, the Constitution permitted the executive the power to override even this contribution in the legislative process by giving it the right to promulgate laws in the absence of the legislature.

In contrast to the strict theory of the Constitution, in practice the U.A.E. legislature has attempted to play a much more positive role in the legislative function. The data provided and the example of Penal Law Bill shows that the legislature in practice is far more powerful than the constitutional text included. The writer has been told that almost all the amendments to Bills proposed by the Council have been accepted by the government.

Most of the members have criticised their position in the legislative function. They have demanded a bigger share in this function, specifically the right to initiate Bills (41).

As for its political function, the Constitution deprives the Council of many significant and efficient control devices such as interpellation and vote of no-confidence.

Despite the shortcomings in the political function of the FNC, the Council has endeavoured to present itself as an independent and critical body. In order to keep faith with this

image the Council has preferred to capitalise on public debate more often than questions and recommendations.

By and large the co-operation between the executive and the legislature has enabled the latter to extend its power in the political function. In the Constitution the FNC has no power to establish investigating committees, yet the government has agreed to the formation of such committees in several cases. These committees are largely *ad hoc*. There were three investigating committees in the second council covering the subjects of electricity, health and the civil service (42). The present council has formed committees to investigate government policy with regard to the administrative system, the condition of graduate nationals and the health service (43).

In the fiscal field the Constitution not only prevents FNC members initiating financial Bills, but even deprives them of the right to accept or amend the most important element of the financial function which is the budget. This will come as no surprise to those who have studied the social background of the society. Traditionally, an emirate's revenue was owned by the ruling family, or more precisely by the ruler himself, and he had absolute power to spend it. Even now there are no clear rules or laws dealing with revenue and its spending in the emirates (44).

One must not forget that the effective performance of this function does not depend only on constitutional provisions. Certain social changes must take place for reform to be possible. Legislation has to be issued to regulate revenue and expenditure

and the idea that an emirate's revenue is owned by its ruler must be finally abolished.

**Footnotes:**

- 1 - Olson, op. cit., p. 11.
- 2 - Dr. Mohammed K. Laylah, **Political Systems: State and Government** (Arabic), Dar el-Fekr, Cairo, 1971, p. 614.
- 3 - Al-Jamal (71), op. cit., p. 202.
- 4 - Quoted in David Miers and Alan C. Page **Legislation**, Sweet & Maxwell, London, second edition, 1990. p. 5.
- 5 - See Sir William Dale, **Legislative Drafting, a New Approach**, Butterworths, London, 1977, p. 83.
- 6 - For further details about legislative drafting see *Ibid.*, especially chapters 4,5 and 6.
- 7 - Olson, op. cit., pp. 171-175. Also Wheare, op. cit., chapter six.
- 8 - Olson, op. cit., p. 178.
- 9 - William Keefe, " The Legislative Task " in William Keefe and Morriss Ogul, **The American Legislative Process: Congress and the States**, Prentice-Hall Inc., New York, second edition, 1968, p. 12.
- 10 - Andre Hauriou. **Constitutional Law and Constitutional Institutions** (Arabic translation), Vol. 2, Beirut, 1974, pp. 260-265.
- 11 - The same practice occurred in Brazil during the military regime. The executive decided which Bills should be dealt with. If the legislature rejected a government Bill, then the executive was able to enact it by a decree. See Astiz, op. cit., p. 123.
- 12 - Peterson, op. cit., p. 97.
- 13 - The researcher depended in this section on Dr. Sayyed Ibrahim's book (1986), especially pp. 349-362.
- 14 - Article 149 in the original draft-law, for instance, provided that whoever intentionally committed an act aiming to infringe the independence of the state or its unity would be executed. Article 183 stated that whoever sought by any means to change or topple the political, social or economic system of the country will be imprisoned for up to five years.
- 15 - **Federal Law no. 10 of 1980.**
- 16 - **Federal Law no. 5 of 1973 amended by Law no. 15 of 1980.**

- 17 - Federal Law no. 16 of 1980.
- 18 - Federal Law no. 9 of 1980. See Ibrahim (86), op. cit., pp. 254-257.
- 19 - Keefe, op. cit., p. 16.
- 20 - Al-Tabtabai (85), op. cit., p. 270.
- 21 - For instance, in the Indian Parliament ten clear days' notice is necessary for answering a question. Mukherjea, op. cit., p. 92.
- 22 - Laylah, op. cit., p. 619.
- 24 - J.A.G. Griffith & Michael Ryle, **Parliament: Functions, Practice and Procedures**, Sweet & Maxwell, London, 1989.
- 25 - Ibid., pp. 16-17.
- 25 - Al-Tabtabai (78), op. cit., p. 302.
- 26 - Ibrahim (86). op. cit., p. 63.
- 27 - Meeting 15-6-72 and meeting 28-6-72. See Ibrahim (86), op. cit., pp. 57-59.
- 28 - Meeting 30-5-73. Similar tone has been reported in the third council in 1983. See Peterson, op. cit., p. 98.
- 29 - Meeting 24-5-83. See Ibrahim (86), op. cit., p. 268.
- 30 - Meeting 31-1-84. See Ibid., p. 298.
- 31 - Ibid., p. 326.
- 32 - Black, op. cit., p. 1272.
- 33 - Meeting 7-5-85. Ibrahim (86), op. cit., p. 334.
- 34 - Mukherjea, op. cit., pp. 79-80.
- 35 - In Belgium, for instance, a request of interpellation can be presented by one member and it will be introduced to the Assembly in the next session, but it can be dealt with urgently at the demand of fifty members or more. In Finland, interpellation must be supported by twenty members of parliament. This device is recognized in the Federal Republic of Germany as a "Major Question" and it must be presented by at least thirty members. The government is not obliged to answer this request but it must be responsible for this action. The British system does not know this instrument. See Micheal Ameller, **Parliaments**, Cassell, London, second edition, 1966, pp. 291-293.
- 36 - Ibid., p. 227.

- 37 - In the USSR and most of the Western European countries the budget is presented in the form of Bill. In Egypt, Norway, Switzerland and Pakistan the budget is dealt with in a special form. See Ibid., pp. 228-230.
- 38 - For further details see Ibid., pp. 241-245.
- 39 - This body was established by the Federal Law no. 7 of 1976.
- 40 - Meeting 24-5-1983.
- 41 - An interview in Al-Khaleej with two FNC members on 3 December 1990.
- 42 - See Ibrahim (86), op. cit., pp. 156-165.
- 43 - Meetings 19-1-88, 28-6-88, and March 89.
- 44 - With the exception of Abu Dhabi, no emirate issue an annual budget for its income and expenditure. The rulers have the absolute power to direct and spend the income. It has become custom in Abu Dhabi to allocate 25 per cent of the oil income for the ruling family. In 1982 this has amounted to seven million US dollar per day. See Liesl Graze, The Turbulent Gulf, I.B. Tauris & Co. Ltd., London, 1990, pp. 174-175.



## **CHAPTER EIGHT**

### **AN ANALYSIS OF THE MAJOR POLITICAL AND CONSTITUTIONAL CASES: THE (FNC)**

#### **8.1 Introduction:**

The value of constitutional provisions cannot be assessed only in the abstract. The real test of their effectiveness is how they function in the context of the political system they have been designed for. Therefore, having discussed the functions of the U.A.E. legislature in the last chapter it is essential to study the U.A.E. Constitution in its practical operation through the medium of the FNC.

As a newly formed state, the U.A.E. had little experience of democratic government but it was only a matter of time before the FNC had to come to grips with certain constitutional crises and court cases and deal with them at a practical level.

The chapter is divided into two parts. The first part is concerned with the two major political crises in the U.A.E., namely the four extensions of the provisional Constitution tenure (1976-1981-1986-1991) and the 1979 joint memorandum between the FNC and the Council of Ministers. The focus is on the FNC's role in these crises and the question of democracy in the country. The aim

is to ascertain whether the U.A.E. legislature was strengthened and the constitutional structure of the state reinforced or whether the reverse was true.

In the second part of this chapter there is a discussion of the constitutional cases before the Supreme Court. The FNC was a party in two major disputes with the government over the interpretation of certain provisions of the Constitution. These cases reveal the effort of the legislature to protect and enlarge its constitutional power. It will be instructive to examine the reaction of the executive and the judiciary arms of government to the attempts of the FNC to expand its power base.

## **8.2 The Political Crises**

The emerging constitution of the U.A.E. was required to cope with two major issues which resulted in clashes between the federal authorities. The legislature wanted to protect the federal entity and enlarge political participation in the decision-making process.

The first issue that arose was whether the tenure of the Provisional Constitution, originally intended to last for only five years, should be extended. The position of the legislature with regard to this matter, which brought the newly fledged union to the brink of collapse, will be discussed and analysed.

The second political crisis occurred when two branches of the government, the FNC and the Council of Ministers, presented a joint memorandum to the Supreme Council laying down many

demands which would lead to the enhancement of union power at the expense of the individual emirates. This raises the question of whether it was a wise decision to involve the FNC in such a highly risky move. What was the major issue dominating the memorandum? What about democracy in the U.A.E. constitutional system? What were the consequences of this movement? All these questions will be dealt with in this section.

### 8.2.1 - Extensions of the U.A.E. Provisional Constitution:

The Constitution which had been enacted on 2<sup>nd</sup> of December 1971 was intended to be replaced by a permanent Constitution by the end of 1976. We have seen in chapter 5 that the preamble of the provisional Constitution indicates this fact. It reads:

" ... and until the preparation of the permanent Constitution for the union may be completed, we proclaim ... our agreement to this provisional Constitution, ..., which shall be implemented during the transitional period indicated in it."

Article 144 specifies this transitional period. It provides that " .. the provisions of this Constitution shall apply for a transitional period of five Gregorian years."

In fact in mid 1976 a permanent Constitution was drafted but, as explained in chapter 5, the Supreme Council rejected this proposal for various reasons. The drafted Constitution enlarged the power of the federal authorities at the expense of the local authorities. Furthermore, it strengthened the powers of the Federal National Council. The permanent Constitution, in addition,

revoked the veto power granted to the two largest emirates, Abu Dhabi and Dubai.

Since then the provisional Constitution has been extended three times, each time for a five-year period; 1971-76, 1976- 81, 1981-86 and 1986-91.

#### 1 - The first extension of the Constitution:

As we have seen in chapter 5, as the end of 1976 approached no agreement to introduce the permanent Constitution had been reached. It seemed inevitable that a constitutional crisis was bound to occur, especially when the president of the union threatened to resign and not to renew his nomination for the post. The Supreme Council met on 12 July and issued a proposal to extend the validity of the provisional Constitution for another five years.

In accordance with paragraph 2 of Article 144, the Supreme Council referred its proposal to the legislature. (1) The position of the FNC was respected in this matter and the correct procedure for a constitutional amendment was observed.

The FNC had three options. It could approve the proposed constitutional amendment, which required a majority of two thirds of its existing members, it could disapprove or it could amend the amendment. The latter option meant that the Supreme Council would be required to accept an amendment made by the FNC. It was obvious that if the FNC resorted to such an option it would delay the resolution of this important constitutional matter since it would set a precedent where the legislature can obstruct or at least

challenge a Supreme Council proposal. It was indeed a risky option because of the contradiction with the position of the rulers.

The Speaker, who happened to be from Dubai which was in favour of the extension of the 1971 Constitution, appointed a committee to discuss the proposed constitutional amendment. The committee decided to approve the proposal and recommended a few amendments to the standing Constitution. (2)

The role of the legislature in this constitutional crisis became clear in its extraordinary session on 12 October 1976. In this session the FNC had to decide whether it was prepared to accept the *status quo* with all its shortcomings, i.e. the weakness of the federal structure, the imbalance in wealth distribution, the strong tendency for localization of security matters, etc., or whether it was going to try to present a firm stand against the negatives of the first five years of the union.

The session lasted five hours during which the matter of extending the life of an incapable constitution was rigourously discussed. FNC members to a large extent upheld their emirates' point of view and defended it. The Dubai and Ras-al-Khaimah members were staunch defenders of the Supreme Council proposal, while Abu Dhabi members were in favour of amending certain Articles in the Constitution before passing the proposal. (3) Such a tendency is a *prima facie* result of the appointment method in selecting the legislature members. Had the members been elected democratically, they would not automatically have allied themselves with their rulers' position but would have been more concerned with the will of the people.

Three schools of thought emerged in the session regarding the question of extension. One group disagreed with the idea of extending the validity of the provisional Constitution on the grounds that this would imply weakness of the federal authority and would keep the FNC's position in the power structure as it was. (4) In other words the legislature, in this group's view, would remain a consultative body.

The members who held this view were those who represented Abu Dhabi and smaller emirates such as Umm-al-Quwain and Fujairah. Abu Dhabi, whose position in the union as the capital of the country was due to its being the largest and wealthiest emirate and the only contributor to the federal budget then, hoped to consolidate its political leadership by amending the Constitution and thus become the main beneficiary of a strong federal state. The smaller emirates lined up with Abu Dhabi in a bid to attract its generous endowments in order to improve the living standards of their inhabitants. It would be wrong, however, to deny the fact that some members of this group were vigorous advocates of the federal system and the unitary process.

The second group was in total agreement with the Supreme Council proposal. (5) It demanded the approval of the constitutional amendment without hesitation. The members advocating this stand argued that the Constitution would expire on the 2<sup>nd</sup> of December 1976 and because of this urgency the FNC should pass the proposal straight away. They further argued that if any member had any suggestion regarding the Constitution he could raise it at the next meeting but not at the extraordinary one then. (6) The Speaker even leaked a rumour that the amendments

proposed by the first group would mean the dissolution of the council and consequently the members would lose their financial and social privileges. (7)

The members who belonged to the second group came mainly from Dubai and Ras-al-Khaimah. These two emirates had been allies since the inception of the nine-member-union (see chapter 4). Dubai is the commercial centre of the country and has the most sophisticated and ethnically mixed population. It therefore adopts a *laissez-faire* policy and objects to any federal governmental intervention in its commercial sector. There is a strong autonomous feeling among its ruling elites. Ras-al-Khaimah still basks in its historical glory when it was the major land power in the region in the last century. Its ruler resists any attempt to assimilate his local institutions into the federal system. It is no wonder that the FNC representatives of these two emirates favoured the preservation of the *status quo*.

The attitude of the third group was a conciliatory one. (8) It would accept the extension of the present-day Constitution under one condition: that the FNC recommend the amendment of certain articles in it. Most of the members of this group were from smaller emirates such as Ajman and Sharjah. These emirates were in favour of strong federal institutions but were not willing to antagonize those fellow members who defended the existing constitutional structure.

The third opinion gained more supporters during the course of discussion, especially from among the first group. However, the second group argued that no condition could be attached to the

FNC's approval. The FNC's constitutional adviser explained that the FNC's recommendations, whether subject to conditions or not, would have to be referred to the Supreme Council which may accept or reject them. (9)

At the end of the meeting the conciliatory group prevailed. The FNC approved the proposal for amending Article 144 of the Constitution. The FNC attached a recommendation to its approval stipulating that certain amendments must be introduced to the Constitution so that it could become consistent with the reality of the federal state. The most important issues were the unification of the armed and security forces, a fixed percentage to be cut out of the emirates' revenue as a contribution to the federal budget, and the nullification of the veto power given to Abu Dhabi and Dubai. (10)

On 16 November 1976 the Supreme Council met and issued a number of important resolutions. It made Article 142 null and void and thus accorded the federation the ultimate power to establish a unified armed force. The second resolution was to establish a state security body under the supervision of the President. The third one was that the emirates should contribute to the federal budget. The last resolution was the unification of official control of the media institutions in the country. (11) Finally the Supreme Council sanctioned the amendment of the Constitution at its meeting on 29 November and re-elected the President and his vice-President for another five years. (12) In fact not all the emirates implemented the above mentioned resolutions.



The Supreme Council agreed to two of the FNC's recommendations. They are the unification of the armed and security forces and financial contribution to the federal budget. This seemed to indicate that the rulers were willing to listen to the advice of others and relinquish part of their emirates' sovereignty to the central government.

## 2 - The second and third Constitutional extensions:

After ten years in existence, the Constitution had failed to ensure a workable federal structure. The intelligentsia had hoped to reduce the traditional role of the rulers and diminish their power. The intellectuals were convinced that a new Constitution, which would bring into being the democratic state to which they aspired, was the right instrument to be adopted. They pressed in the newspapers and magazines for the replacement of the Constitution and urged the FNC to be resolute in its deliberations. The educated section among the nationals insisted that the society had reached a level of sophistication which qualified it to participate in producing a new structure for the federation. (13)

The FNC on 16 December 1980 agreed to form an eleven-member committee to handle the task of meeting the rulers and discussing the need and the procedures for presenting a permanent Constitution. (14) However the committee was suspect from the outset because of its membership. At least four of its members were known to be against any further steps in favour of the federal state since such steps might jeopardize their emirates' interests. In any case the committee was a fiasco because no ruler

was willing to meet it or discuss the issue of a permanent Constitution.

A union decree was issued (15) calling for an extraordinary session of the FNC on 3 November 1981 to discuss a proposal submitted by the Supreme Council amending Article 144 and extending the Constitution for another five years.

The atmosphere in the FNC was one of frustration. The 1979 political crisis, discussed below, and the failure of the eleven-member committee were the main reasons for this sense of defeat. A member stood up and expressed the feelings of his fellow colleagues;

" When discussing this issue ( i.e. extension of the tenure of the Constitution) we must limit our discussion to the vote on approving or disapproving the proposal. In my opinion the majority of the members approve the draft constitutional amendment.  
(16) "

Yet there were a few members who had the courage to challenge the Supreme Council's proposal and demand its withdrawal. A member of this group declared that:

" Even if we came here ( i.e. FNC) through appointment, this does not impede us from expressing our frank ideas on this extension. ... If the Supreme Council proposes this amendment then it's its right to do so... Although we may know that our approval or disagreement will make no difference, we still have to declare our opinion honestly. ... that extension at this juncture is neither in the interests of the Supreme Council nor of the people. (17) "

Regardless of such desperate attempts by a small group in the legislature to convince the FNC to concede to the demands of the intellectuals, the FNC passed the proposal, 31 against 3. The

Supreme Council accordingly passed a resolution extending the life span of the Constitution for another five years. (18)

The Constitution was due to expire on 2 December 1986 when the Supreme Council preferred to ignore the FNC in the third extension process. It chose not to follow the constitutional procedure stipulated in paragraph 2 of Article 144 which demanded the presentation of any constitutional amendment to the FNC prior to its sanction. The Supreme Council simply issued a resolution to extend the tenure of the Constitution without even introducing it to the FNC. (19) The Constitution is due to expire on 2 December 1991.

### 3 - An analysis of the practice of constitutional extensions in the U.A.E.:

For twenty years, the U.A.E. has been subject to a provisional Constitution designed for a union of nine members faced with problems very different from those faced by the present union today, and there is no indication that it will not remain in force for another term.

Experience has shown that the opposition to the extension of the Constitution has lost impetus with the passage of time. The FNC members were very keen at first to replace the standing order with a new and more effective federal structure, but they failed to resist the emirates' pressures over the first extension being unwilling to amend the proposal of the extension and challenge the power of the rulers. The members did not even attach to their approval a proposition to enhance their power in the legislative process or at least to modify the method of selection.

The Supreme Council did not follow faithfully the constitutional procedures for the amendment of the Constitution. It even violated Article 144 in the third extension when it did not submit a proposal for a constitutional amendment to the legislature. No one challenged this constitutional violation, not even the body most concerned, the FNC.

Moreover, Article 144 stipulates in paragraph 3 and 4 that the Supreme Council should prepare a permanent Constitution to replace the provisional Constitution. This should be followed by an invitation to the FNC to an extraordinary session to discuss the draft permanent Constitution six months before the end of the period of validity of the provisional Constitution. Not even once did the Supreme Council obey these stipulations. In the first constitutional term a draft Constitution was prepared and discussed by the Supreme Council but the FNC was not consulted. In the second, third and fourth constitutional terms no draft constitution was presented.

The extension of the U.A.E. Constitution means the maintenance of the loose federal structure introduced in 1971. It also preserves the distribution of power among the federal organs and the government *vis-a-vis* individual emirates. The continuation of the Constitution perpetuates the weakness of the FNC. The Constitution guarantees a low profile for the legislature in the federal structure and will continue to do so as long as it is in force. The extension of the Constitution, in the final analysis, is a legal act which masks a political and economic failure in the state.

The legislature has not seized the opportunity on the occasion of any of the previous three extensions to enhance its position in the federal structure. However, it can be suggested that the reason for this lack of action over such a very crucial constitutional matter is the method of selection of the members most of whom can be relied upon to put the interests of their respective emirates before those of the federation. The FNC did not in actual fact set up a committee to present a new constitution to the Supreme Council. In this way the FNC could have moved the question of the permanent constitution and save itself public criticism. But it seems that in the end the members decided to keep quiet and not get involved in such a risky matter.

The fourth term of the U.A.E. Constitution ended on 2 December 1991. No permanent constitution has been drafted to replace the provisional constitution. The tenure of the 1971 Constitution has been extended for another five years. The only innovation introduced this time is the creation of a committee, under the presidency of finance minister. It has the task of re-examining and suggesting some improvements to the existing constitution.(20)

### 8.2.2 - The joint memorandum

After the first extension of the Constitution a new cabinet and FNC were appointed. Both of them included university graduates who were vigorous supporters of a unitary state rather than a federal one. Many ministers and FNC members were influenced by the slogans of Arab Nationalism and Arab unity.

They were dissatisfied with the performance of the federal authorities in the U.A.E.

Meanwhile, the Gulf region as a whole was in turmoil by the end of 1978. Israel had invaded south Lebanon, the Shah of Iran had been toppled by a popular revolution, the Soviet Union had invaded Afghanistan, and three Yemeni leaders had been assassinated.

The political elites of the U.A.E. were divided into two camps. They were either pro or anti centralisation of power. Ali M. Khalifa describes the two camps thus:

" .. there are the *wahdawis*, unitarians, who idealistically view the union concept in totalistic terms. They argue that step-by-step integration is a sign of weakness and is tantamount to surrender to narrow parochial interests. .... *wahdawis* hope that the realization of a unitary system will weaken the traditional brand of rule, which has limited meaningful political participation to the ruling families and their upper-class allies. ... the *ittihadis*, or federalists, who primarily believe that a step-by-step federation is the most promising course of action in view of the sociopolitical dynamics of the area. These gradualists argue that any integrative step should be adopted only after the voluntary acceptance of such a step by the federating states. ... They tend to resist the pressure to widen political participation and favor preserving the traditional power structure, particularly on the local level. (21) "

The FNC with its enthusiastic pressure groups could not resist the argument for the union when there was so obviously no control over the economic and political situation or proper grasp of current events. The legislature called for a joint meeting between the FNC and the Council of Ministers to discuss the internal and external affairs of the country. In the meeting (22) a joint committee

was formed to present a memorandum dealing with national affairs.

A joint memorandum was presented on 23<sup>rd</sup> February 1979 which discussed the vital issues for the federation and suggested solutions to them. The main recommendations of the memorandum can be summed up as follows:

- unification of the armed forces because defence of the state cannot be partitioned. The Union army must have a unified command and monopoly on importing weaponry;
- unification of internal security forces because security cannot be segmented;
- abolition of internal boundaries among the emirates because they are part of the colonial legacy;
- limitation of foreign migration to the country and control over the national exits;
- revision of the naturalisation process in force over the past eight years;
- unification of the country's national revenues in order to diminish the imbalance of living standards among the emirates;
- establishment of a central bank and protection of the national economy;
- unification of the judiciary in the emirates and the respectability of federal laws;

- the federal authorities must be respected and their powers enhanced. The Supreme Council should meet regularly, the Council of Ministers should be strengthened and the FNC should be converted to a full legislature, and
- introduction of a permanent constitution to replace the existing one. (23)

When analysing the joint memorandum one can make certain observations. The memorandum did not ask more than the provisional Constitution stipulated and what agreed upon by the rulers at their meeting on 16 November 1976. With the exception of a few points, the memorandum was in fact an appeal for the implementation of the Constitution. The only new subjects which the standing Constitution did not already cover were the abrogation of the emirates internal borders and the strengthening of the existing legislature.

In fact the real issues of the joint memorandum were the centralisation of power and the making of the federal institutions more effective and governable. The memorandum drafters were aiming at a unified state where no duplication of state apparatus existed. They were disappointed with the first eight years of the federal experience and therefore willing to introduce a speedy remedy for its shortcomings.

It is worth noticing that democratic principles were not the essence of the memorandum. It was only mentioned twice. The first time was in the section dealing with the idea of creating a new state through fostering the ideal citizen. The memorandum stated that " not by bread alone human beings live. The citizens should be



nurtured democratically and fields of freedom of opinion should be provided to him to participate in the country's politics in a democratic way consistent with Islam. (24) "

The second time was when the memorandum dealt with the legislature issue. It demanded the expansion of the FNC's base so it could practice a truly democratic role. The memorandum stated that " the time has come for the FNC to take up its normal position in order to fulfil its real role in the legislative and political process."

However, the authors of the memorandum did not explain what they meant by the phrase "expanding the base of the legislature". Did it mean increasing the number of FNC members? Or changing the method of their selection by adopting election instead of appointment? The phrase may be interpreted as meaning the expansion of public support for the FNC. The memorandum did not touch upon the question of full free election or even quasi (part election) of members. Frauke Heard-Bey argues that both parties, the FNC and the Council of Ministers, were aware that the one-man-one-vote principle was impractical in U.A.E. society because of the absence of political parties and uncertainty about the population structure. (25)

In fact the U.A.E. legislature declined to press for a real democracy and failed again to make the issue of its weak constitutional position the central focus of this important political initiative. Because of the nature of its partner in the movement, the FNC drafted a memorandum that was more concerned with administrative and executive matters than with popular ones.

The joint memorandum was submitted to the President of the Union so that the highest authority in the state, i.e. the Supreme Council, could discuss it and then act upon it. The Supreme Council was called to convene on 19 March 1979, but the meeting was adjourned to 27 March because Dubai and Ras-al-Khaimah declined to attend.

Meanwhile popular demonstrations erupted all over the country demanding the Supreme Council accept the memorandum. (26) Dubai and Ras-al-Khaimah issued two separate memoranda against rushing into a unitary system. (27) Dubai asked the neighbouring countries to intervene in the issue because it was afraid of Abu Dhabi's increasing influence in union affairs. (28)

The memorandum was presented to the rulers at their next meeting but no decision was taken. Dubai was against the unification of services because of the variety of their standards among the emirates. Dubai's position was nearer to the German interpretation of a federal system in holding the view that central government " should not be more than the sum total of all the member authorities and where constitutional attention is constantly focused on safeguarding the federal elements vis-a-vis the inevitable centralising tendencies of the federal government." (29)

The final outcome of the joint memorandum was that the Supreme Council agreed to appoint the ruler of Dubai prime minister, the government was reshuffled and the pro unitary ministers were sacked.

The zeal amongst the FNC members for reform of the constitutional structure soon abated. Even in its first session after the crisis, some FNC members reproached the Speaker for mentioning the memorandum in his opening speech. (30) In another meeting the Speaker complained of the absence of many members from the council's meetings or committees. Some members did suggest the formation of a committee to meet the President and his deputy to discuss with them the matters included in the joint memorandum. When they were asked what they would do if the committee failed in its mission, an enthusiastic member replied " we will resign from the Council." (31) However, the committee failed and to no one's surprise none of its members resigned.

It seems that the far-reaching nature of the memorandum's demands and the impatience of its authors for its implementation were the major factors in its rejection. The unitarian advocates in both councils were trying to get rid of the federation overnight. No ruler would willingly accept the abolition of his emirate's borders nor readily agree to surrender his emirate's natural resources to the state when both were vital to his power base. (32)

It appears that the Supreme Council was suspicious of the collaboration between the FNC and the Council of Ministers. In the view of the Supreme Council, they were transcending their constitutional boundaries. The Council of Ministers is a body designed to execute the general policy endorsed by the Supreme Council. The FNC is an advisory body available for the Supreme Council to consult. Neither council has the power to suggest or propose extensive reform of the structure of the country.

This suspicion was increased, especially among the emirates opposing hasty movement towards unification, when both councils sided with one party in the union. The fact that the memorandum was fully supported by Abu Dhabi increased the fear of domination among the smaller emirates. Had it not been so one-sided (*ex parte*), the memorandum might not have faced such a fierce reaction from the other camp. The move toward complete reform was not to be gradual enough and therefore the FNC has lost its credibility with the rulers. It was possibly unwise to raise this tricky issue so early in the life of the federation.

### **8.3 Constitutional cases before the Supreme Court in the U.A.E.**

Montesquieu stated in his book The spirit of Laws:

"... there is no liberty if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression." (33)

It is, therefore, very important to separate and ensure the independence of the judiciary from other parts of the government so that it fulfils its duties.

Justice is a basic principle in Shari'ah. The Holy Quran and the traditions of the Prophet (peace be upon him) and his Caliphs are loaded with references to justice. Allah commands in the Quran:

" God do commands you to render back your Trusts to those to whom they are due, and when you judge between man and man that you judge with justice." (Chapter 4, Verse 58).

In another verse Allah says:

"let not the hatred of others to you make you swerve to wrong and depart from justice. Be just; that is next to piety." (Chapter 5, Verse 9).

The messenger of Allah (peace and blessings of Allah upon him) said in this regard:

"Judges belong to three categories: One who would be admitted to Paradise and the remaining two who would be thrown into the Hell-fire. The one who would be admitted to Paradise, would be a judge recognized the truth and gave judgement according to it. The person who recognized the truth but deviated it while giving judgement would enter the Hell-fire. The man who would give judgement regarding the disputes of people, while ignorant of the case will also enter the Hell-fire." (34)

Islam, as we have already seen in the introduction, acknowledges the autonomy of the judiciary. In fact, the judges under the Islamic state were free in their opinions from any interference by the executive power. (35) Such values did affect the constitution-makers in the U.A.E. Accordingly, Article 94 of the Constitution stated that "Justice is the basis of rule. In performing their duties, judges shall be independent and shall not be subject to any authority but the law and their own conscience."

As a federal state the U.A.E. judicial system is divided into two levels; federal courts and local courts. Federal courts are composed of three types; Supreme Court, courts of Appeal and courts of First Instance (see Federal law 6 of 1978). (36) The constitution gives the emirates the right to apply for incorporation into the federal court system. Three emirates did not do this, namely Dubai, Ras-al-Khaimah and Umm-al-Quwain.

The U.A.E.'s Supreme Court was established under the 1971 Constitution but became effective in 1973. (37) It was given, *inter alia*, exclusive powers to interpret the provisions of the

Constitution at the request of any federal authority or the local government of any emirate and was to be responsible for the examination of the constitutionality of federal laws. Its decisions are binding on all.

Judicial Review, hence, was adopted in Article 99 of the Constitution. The Supreme Court was given the power to declare acts and laws, passed by the executive and the National Council, unconstitutional. In other words, it was created to act as a check upon the government.

In order to secure the independence of the Supreme Court judges, the Constitution stipulated that the president and the judges of the Supreme Court shall not be removed while they administer justice. Their terms of office cannot be terminated except in the following occasions; death, resignation, reaching age of retirement, end of their contracts, appointment to other offices, permanent incapacity and disciplinary discharge (Article 97).

Although it meant imposing a new institution on the traditional legal framework of the country, such a court had long been needed to settle disputes between the FNC and the government. Actually the fact that disputes arose and the frequency with which they had to be referred to the Supreme Court confirms that the traditional power monopolists were against any challenge to the *status quo* and not willing to renounce any part of their authority. On the other hand, the reference of such cases to the Supreme Court also indicates that there was a power struggle going on among different factions within the new federal bodies. Each one of them was keen to consolidate its constitutional powers and to extend them to cover certain issues that the Constitution

kept silent about. Furthermore, the cases reflect the respectable position of the Supreme Court in the federal structure.

Two major cases occurred between the FNC and the government and both times the main issue was the interpretation of the relevant provisions of the Constitution.

### 8.3.1 - The case of the Social Security Bill: (38)

In this case the traditional power holders, the Supreme Council members and their agents, the Council of Ministers, sought a Supreme Court injunction in their favour to restrict the powers of the FNC. The focal point of the dispute was the interpretation of Article 110 (3)a of the Constitution. Article 99 of the Constitution explains the procedures with regard to constitutional interpretation. Only federal and local institutions can submit an application for the Supreme Court so that it may render an interpretation of the Constitution.

The case began when the Council of Ministers submitted to the FNC a draft law for social security. The Bill determined those groups eligible for social alms and how much each group was entitled to. The FNC agreed to the Bill but introduced certain amendments, among them one to include a further group and one to increase the alms amount. The Council of Ministers submitted the Bill to the Supreme Council which promulgated the original Bill without taking into consideration the FNC's recommendations.

(39)

The FNC, defending its constitutional rights, objected to the promulgation of the law because the Bill had not been referred back to the legislature as the Constitution required. The

government reacted by tabling an application to the Supreme Court seeking its interpretation of Article 110 (3) a .

The Council of Ministers defended the position of the President of the Union and the Supreme Council, insisting that the procedures provided in Article 110 (3) a do not lay any obligation on the Supreme Council to re-submit the Bill to the FNC. The concerned Article provides that :

" If the Federal National Council inserts any amendment to the Bill and this amendment is not acceptable to the President of the Union or the Supreme Council, or if the Federal National Council rejected the Bill, the President of the Union or the Supreme Council may refer it back to the Federal National Council."

The Council of Ministers argued that the question of referring the Bill back to the legislature was optional. The President or the Supreme Council may or may not choose to refer it back. It was not a compulsory duty on either of them and the failure to do it did not affect the validity of the promulgated law. Therefore, there was no point on insisting on sending it back to the FNC. (40)

The FNC took the opposite view. It argued that the legislature under the U.A.E. Constitution had two options: one was to accept the Bill presented by the government in which case the President of the Union or the Supreme Council could promulgate the law straight away, the second was to amend or reject the Bill in which case re-submission of the Bill to the FNC was compulsory. The Constitution had clearly stipulated this step and therefore it must be respected and implemented.

The Supreme Court decided in favour of the FNC and proved to be independent to a certain extent from other federal



institutions. It made it clear that referring a Bill back to the FNC is to be an optional matter for the President of the Union and the Supreme Council. However, re-submission is a part of the legislative process if the President or the Supreme Council want to override the FNC's objections to the Bill. Consultation, the Supreme Court stressed, is a necessary requirement for promulgating legislation. The Supreme Court furthermore set forth that the consultative nature of the FNC does not obstruct its right of re-submission. The President must wait for the FNC's final opinion before sanctioning the Bill.

As a result of this case certain principles were introduced into the legal and political framework of the U.A.E. The Supreme Court became the arbiter between federal institutions and this in turn served to consolidate the new federal system. (41) That the FNC did not hesitate to challenge government interpretation of its role in the legislative process also led to lasting benefit. Although the Supreme Court decision did not change the consultative nature of the FNC, it gave the legislature the power to delay Bills. Moreover, this case demonstrated that the rulers were prepared to accept the fact their decisions might be challenged in the courts.

### 8.3.2 - The case of the National Bank of Investment and Development: (42)

This case lay the FNC's desire to extend its power from simply amending Bills to actually introducing new Bills. The core of the dispute was the extent of FNC's amending powers. Was it allowed to exclude provisions from or include new provisions in a Bill introduced by the government or was it restricted to mere literal amendment? Was the FNC's power limited to the

amendment of a projected Bill or could it extend to the revision of the original law?

The Council of Ministers submitted a Bill amending Law No. 10 in 1973 regarding the establishment of a National Bank of Investment and Development (NBID). In fact the Bill included only one amendment which related to the title of the bank. The FNC, however, took the opportunity of introducing a number of amendments to the original law. The Council of Ministers protested against such action and declared it unconstitutional.

The FNC submitted an application to the Supreme Court demanding the court's interpretation of Article 89 of the Constitution in order to determine the FNC's constitutional powers *vis-a-vis* governmental Bills.

Two positions were raised in the disputed issue. The first supported the Council of Ministers' position. (43) It argued that the FNC had the power to amend Bills drafted by the government but this power was restricted to the provisions included in the Bill and could not exceed them. The FNC could amend the provisions by adding or omitting sentences to them, modifying their wording, or breaking them down into smaller articles. It has no power to amend articles in the original law which had not been introduced in the Bill. (44)

The other position defended the FNC's position. (45) It pointed out that Article 89 of the Constitution, which provides that " ... The National Council shall discuss these Bills and pass them, amend or reject them", did not restrict the power of legislature in amending Bills. Both addition or subtraction from a Bill amounts

to amending and to deny this violates the Constitution. The Constitution, moreover does not specify the meaning of the word "amend " and leaves it open. The term might mean making minor or substantial changes in the Bill. If it is interpreted as meaning that the FNC can omit from the disputed Bill but cannot add new provisions, then this contradicts the Constitution in two ways. First it limits the amending power of the FNC which conflicts with Article 89. Second to assert that the FNC cannot add to a projected Bill designed to amend an existing law means in practice that such a Bill is immunised against any addition to it.

The Supreme Court in this case decided to stick to the strict interpretation of the Constitution and adhere to the exact wording of it. It accepted that the amending power prescribed for the FNC in the Constitution is unrestricted but stressed that this unrestricted power is limited to the provisions included in the Bill. In other words the Supreme Court was of the opinion that adding new provisions to the Bill mounted to proposing a new Bill, something which the FNC is not empowered to do under the existing Constitution. The FNC therefore could not add any provision to the Bill concerning the establishment of the NBID since this would mean amendment to other articles in the original law.

The Supreme Court agreed with the Council of Ministers and forbade the legislature to amend any non-submitted articles. It declared that " amending other articles in the law amounts to initiating a proposal to change a law and is not simply a complementary amendment to a draft law. The proposition to amend a law is a proposition which the National Council is not

permitted to make since it embraces participation in the legislative power which is a power exclusive to the Council of Ministers." (46)

When discussing this ruling a number of observations may be made. It seems that the Supreme Court differentiated between new Bills projecting new laws and Bills amending existing laws. In the former case the Supreme Court gives the FNC unrestricted amending power. It can add to or omit from the Bill. In the latter case, however, the Supreme Court limits the FNC's amending power to the provisions of the Bill. The FNC cannot deal with other articles of the law which are not included in the amending Bill. This distinction does not exist in the Constitution. Article 110 (3)b, which states that " the term "Bill" ... shall mean the draft which is submitted to the President of the Union by the Council of Ministers including the amendments, if any, made by the National Council", treats all Bills in the same way. This suggests that the power of the FNC should not be restricted with regard to the second kind of Bills in the way that the Supreme Court alleged. (47)

The Supreme Court accepted the right of the FNC to amend a new Bill by adding or omitting provisions, but did not allow it the same latitude in the case of a Bill amending an existing law because in the eyes of the Court this amounted to proposing a new Bill, the power to do which the Constitution denies the FNC. However, amendment to a Bill, whether that Bill is new or designed to amend an existing law, is considered by some lawyers to be to all intents and purposes a proposal for a new Bill attached to the original Bill. The FNC therefore has such power but it depends on the Council of Ministers presenting a Bill. In other words the FNC

can propose a new Bill only through amendment to Bills introduced by the government. (48)

One may ask whether such a situation would have arisen in the U.A.E. constitutional system had the legislature been given the power to initiate Bills. If the FNC had power *ab initio* it would not have to wait until the government submitted a Bill to remedy an unacceptable state of affairs but could initiate a Bill amending any unsatisfactory law. Because of the existing constitutional system which restricts the FNC's role in the legislative process, the FNC has had no alternative but to resort to a wide interpretation of its constitutional powers in order to participate in the process effectively.

The Supreme Court chose to adhere to the provisions of the Constitution and favoured the Council of Ministers' argument. In his Ph.D. thesis, Hadif Al-Owais, praised the Supreme Court decision not to extend the powers of the FNC. He stated that " if the Constitution denied the National Council the power to introduce new Bills, then the Supreme Court was not willing to allow that Council to achieve that power under the disguise of making amendments to Bill submitted by the Council of Ministers." (49)

#### **8.4 Conclusion:**

The U.A.E. legislature has attempted to play a major role in the political life of the state. It allied itself with the Council of Ministers on some occasions and sought the help of the Supreme

Court on other occasions. It endeavoured to override any constitutional restraints on its powers but in the end it failed to make much headway.

The members of the FNC were sincere in their efforts to advance the cause of popular political participation in the government of the country. However, many obstacles were put in their way. Under the Constitution, their institution is a consultative body which cannot endow its members with the authority to implement their ambitious plans. The Constitution became a major fetter on the participation by the democratic elements in the country. FNC members are appointed by their emirate's rulers and therefore their first allegiance, in spite of Article 77 of the Constitution, is to those rulers and not to the people. Such tradition is coherent with a tribal system of government.

Finally, the FNC has not been helped by other governmental bodies in its mission to advance the constitutional reform in the U.A.E. The Council of Ministers, since 1979, has failed to hold a single joint session with the legislature. It only condescends to cooperate with the FNC on the level of committees. The Supreme Court defended the procedural rights of the FNC in the case of the Social Security Bill but was reluctant to widen the FNC's legislative function in the second case.

**Footnotes:**

- 1 - Federal Decree No. 79 of 1976.
- 2 - Al-Rokn, op. cit., p. 35.
- 3 - Al-Tabtabai (85), op. cit., p. 360 also Taryam, op. cit., p. 237.
- 4 - The representatives of this tendency were: Abdulla Juma Buharon, Ahmad Sultan Al-Jaber ( Umm-al-Quwain), Rahmah Al-Masood, Faraj bin Homoodah, Rashid Owaidah (Abu Dhabi) and Saeed Al-Raqabani (Fujairah). See Al-Azmenah Al-Arabiah, issue no. 105, 24/3/81, p. 6.
- 5 - The representatives of this group were: Mohammed Al-Mosa, Saeed Al-Naboudeh (Dubai), Salim Darweesh and Ahmad Ghubash (Ras-al-Khaimah). Ibid.
- 6 - Ibrahim (86), op. cit., pp. 131-32.
- 7 - See Al-Tabtabai (85), op. cit., p. 361.
- 8 - The main advocate of this view was the Ajman representative Hamad Bu Shihab.
- 9 - Ibrahim (86), op. cit., p. 134.
- 10 - Ibid., p. 136.
- 11 - Taryam, op. cit., p. 237.
- 12 - Constitutional amendment No. 2 to 1976.
- 13 - See Al-Islah, issue no. 35, pp. 6-9. Also Al-Azmenah Al-Arabiah, issues no. 104, 110, 115.
- 14 - The committee was formed of the following members: the Speaker Taryam O. Taryam (in chair), Hamad Bu Shihab, Hilal Lootah, Muhammed A. Al-Mosa, Sultan Khalifah, Saleh Al-Shal, Abdul-Rhman Abu Khater, Saif Sultan, Faraj bin Homoodah, Rashid Owaidah and Saeed Al-Naboudeh. See **The Political Report** (Arabic), The Gulf Centre for Arab Studies, No. 5, Sharjah, December 1980, pp. 3-8.
- 15 - Federal Decree NO. 19 of 1981.
- 16 - Ibrahim (86), op. cit., p. 238.
- 17 - Ibid., pp. 238-39.
- 18 - Supreme Council Resolution No. 2 of 1981.

- 19 - Supreme Council Resolution No. 1 of 1986.
- 20 - Michael Hudson argued that one of the Gulf War results is the impediment of democratization process in the area at least in the short run. See his article "After the Gulf War: Prospects for Democratization in the Arab World" in **The Middle East Journal**, Vol. 45, No. 3, 1991. p. 426.
- 21 - Khalifa, op. cit., pp. 93-94. The same analysis is provided by Heard-Bey, op. cit., p. 388.
- 22 - FNC meeting on 28/1/1979.
- 23 - For the text of the joint memorandum see Saeed Ahmad Al-Hamed, Federal National Council of the United Arab Emirates (Arabic), Dar-al-Mutanabbi, Abu Dhabi, n.d., pp. 89-114.
- 24 - Heard-Bey, op. cit., p. 398.
- 25 - Ibid., p. 399.
- 26 - Ghanim Ghubash interpreted these demonstrations as a sign from the masses that the memorandum fell short of real public demands. Despise of all its positive points, he argues, the memorandum was a product of governmental institutions which do not reflect popular aspirations. See his book Life and Politics (Arabic), Dar-al-Farabi, Beirut, 1990, pp. 139-40.
- 27 - For Dubai and Ras-al-Khaimah memoranda see Al-Shaheen, op. cit., pp. 327-29.
- 28 - Keesing's Contemporary Archives, 29 September 1979, pp. 29847-49.
- 29 - Heard-Bey, op. cit., p. 400. Actually the memorandum was interpreted in some quarters as a threat to the rulers rule. If the army was to be unified, for example, then the possibility of a coup organized by low ranking officers would be greater. See Al-Azmenah Al-Arabiah, issue no. 103, 10/3/81.
- 30 - Mohammed Ghubash interpreted such action as a reflection of the fact that FNC members represent local governments rather than the people. See his article in Al-Azmenah Al-Arabiah, issue no. 129, 7/9/81.
- 31 - See Al-Azmenah Al-Arabiah, issue no. 51, 27/2/80.
- 32 - Shaikh Rashid, ruler of Dubai, said in an interview that " a unitary state means no borders, therefore no rulers. It means elections, it means putting finance, revenue and decision making in the hands of a central government." Quoted in Peterson, op. cit., p. 102. He even accused the Speaker of the FNC of trying to be a leader of opposition in the country. Quoted in G. Ghubash (90), op. cit., pp. 28-30.



- 33 - Quoted in Ballantyne (1986), op. cit., p. 29.
- 34 - This tradition was narrated by Abu Daoud on the authority of Buraidah (may Allah be pleased with him). See **The 200 Hadith**, op. cit., p. 133.
- 35 - Hamidullah, op. cit., pp. 119-120.
- 36 - Ballantyne (1986), op. cit., p. 58.
- 37 - Federal Law No. 10 of 1973.
- 38 - Application for Constitutional Interpretation, 1/2, 14 April 1974.
- 39 - Ibrahim (86). op. cit., p. 115.
- 40 - Al-Owais, op. cit., p. 293.
- 41 - Ibid., p. 272.
- 42 - Application for Constitutional Interpretation, 2/4, 14 April 1976, Official Gazette, No. 37, pp. 17-21.
- 43 - The Egyptian constitutional adviser, Professor Waheed Ra'afat, who helped in drafting the U.A.E. constitution, supported the government point of view in this dispute.
- 44 - Official Gazette, No. 37, p. 18.
- 45 - Ibrahim (86), op. cit., pp. 120-22.
- 46 - Official Gazette, No. 37, p. 21.
- 47 - Al-Tabtabai (78), op. cit., pp. 295-96.
- 48 - Al-Tabtabai (85), op. cit., p. 266.
- 49 - Al-Owais, op. cit., pp. 298-99.

## **CHAPTER NINE**

### **CONCLUSION**

The thesis has set out to explain how the 1971 Constitution was introduced and adopted to the requirements of the rulers of the U.A.E. It also explains how the legislature may operate within a constitutional system even when it lacks real political or economic power.

In chapter 1 we have seen that Western scholars have favoured a particular kind of analysis of the constitutional arrangements in developing nations which has led them to the conclusion that legislatures in developing states were ineffectual, impractical and anomalous institutions when compared or contrasted to the western experience of legislatures.

In chapter 2 we have seen that the state in the U.A.E. was not the creation of a single, national or colonial influence. Britain did not establish any democratic form of constitutional and administrative apparatus in the emirates, as a basis for civilian bureaucracy after 1971. It did not even recruit large numbers of the indigenous work force for its local departments. Instead, the British authority reinforced the position of the rulers and increased their powers.

Chapter 2 also has shown that the U.A.E. society has historically allowed a kind of citizens' involvement in the running of their affairs through the traditional *Majlis*. In 1971, however, this kind of involvement was for all intents and purposes

abandoned to a certain extent in the Constitution and was replaced by a largely unelected legislature.

The backdrop of the traditional socio-political structure of the society, was explained in chapter 2, chapters 3 and 4 dealt with the pre-1971 attempts to establish a constitutional system of government in Dubai and the whole of the U.A.E. The two Chapters have explained that the rulers were unaccustomed to being constrained by a supreme constitution in performing their decision-making role. Chapter 3 has specifically set out to point that in the U.A.E. where the institution was not so deeply rooted in history, the British were not prepared to support the one and only legislative experiment in the pre-1971 era (i.e. the 1938 reform movement). Furthermore, reluctant to interfere with the traditional system, they made no attempt to provide a legal framework for the area after their departure.

Chapter 4 has shown that the practical working of the 1971 Constitution rests to a large extent on the power and consent of the rulers. Its legal status is unclear but ultimately is at the whim of the rulers. First, the rulers have used the Constitution as an instrument to regulate their internal problems. Secondly, they used the Constitution to accommodate and channel demands from relevant effective segments of the society; that is the merchants and newly emerging "middle class". For these reasons the continuity of the present constitution depends on their position.

Much of the debate surrounding the form the constitution of the U.A.E. should take, centred upon the aims and limits of federal power. The outcome was not without controversy. Individual

emirates were deeply apprehensive about centralization and desired a constitution which would diffuse such power by creating subordinate federal institutions. At the same time, their fears were tempered by aspirations of socio-economic development which, especially in the poorer and smaller emirates, would mean allowing those federal institutions a very major role.

With the failure of the two pre-1971 attempts to establish a legislature, the U.A.E. has adopted a provisional constitution in 1971 which is highlighted in chapter 5. This chapter explains that one of the functions of the modern 1971 constitution is to establish democracy or at least prepare the way forward in that direction. The U.A.E. 1971 Constitution declares in its preamble that one of its ambitions is to progress "by steps towards a comprehensive, representative, democratic regime." Democracy was there in the minds of the constitution-makers, yet the difficult part was how to accommodate the traditions of the past within the constitution.

We have seen in chapters 6 and 7 how the constitutional framework of the legislature and its actual role in the political system of the U.A.E. was developed. Both chapters were corresponding to the historical development of the country as was discussed in chapter 2, and the general perspective of legislature in developing countries as was outlined in chapter 1.

In chapter 6 we have seen that there are similarities between the traditional *Majlis* and the federal legislature. These similarities may be summed up as follows. The decisions of neither are final. They have to be sanctioned by the ruler. Their suggestions and

criticisms are considered as consultative opinions with no binding power. Another shared feature is that both the Majlis and the Federal National Council represent the traditional groupings in society. Finally both bodies are unelected.

The FNC has become the new traditional Majlis but with some differences. First, it is institutionalised and protected by a written constitution and for a body in a traditional society this is a huge development in itself. Second, it is the first time in U.A.E. history that a group of citizens representing the seven emirates has got together under one roof to discuss state affairs. Traditionally each emirate had its own Majlis to deal with local affairs. Third, the role and functions of the FNC are much wider than those of the Majlis. Nevertheless, it is appropriate to notice that the traditional custom of any citizen expressing his opinion on any issue in the shaikh's *Majlis* still persist. One must admit that the old order of behaviour and values have continued notably unaltered.

The chapter has also made it clear that the socio-political factors which lead to the weakness of the U.A.E. legislature are probably more significant than the constitutional restrictions. First among them is the characteristic absence in the traditional society of an intermediate group able to mediate between the ruler and the ruled. The openness of the ruler's court does not encourage the emergence of any group seeking to be the mouthpiece of the society. The tradition has persisted since 1971 and has to a large extent damaged the legislature's chances of representing the demands of the people. One expects now with the complexity of the society that the decline in the tradition of free access will strengthen the legislature's mediating role.

Another factor to be considered is that since the coming of oil the ruling elites have sought to create a general sense that the people are in need of them rather than *vice versa*. The people are not able to run their affairs and are obliged to accept the type of legislature the ruling elites are prepared to grant them. Thirdly, it seems that a weak legislature, in terms of its law making powers and control over the executive, has been the price the people have paid for the rapid socio-economic growth of their country. Fourthly, in the absence of such things as political parties U.A.E. society remains politically uneducated.

In chapter 7 the thesis has shown that the U.A.E. legislature does have certain specific legislative and political functions to perform but its power to fulfil these functions is restricted by constitutional factors. These are as follows.

In normal circumstances one expects a legislature to represent the people, to legislate and to be a check on the executive. In common with most developing countries, the U.A.E. Constitution has established a legislature whose nature somewhat frail. The FNC members are appointed and therefore responsible to the ruler who appointed them. Furthermore, the legislature is denied the power to initiate Bills, check the executive or have a say in financial matters.

When comparing the general perspective of the role of legislature set out in chapter 1 and that of the U.A.E. legislature explained in chapter 7 one may ask how such a restricted legislature differs from a traditional Majlis? What are the functions of such an expensive institution? It is definitely not the law-making

function that justifies the existence of the U.A.E.'s legislature nor any control it exercises over the executive. In common with most Third World legislatures the FNC is not a law-making body, yet it has a role to fulfil in this area. It discusses all proposed legislation and in many cases presents its own amendments. Its sessions are lively and forceful. Therefore, although it does not have the final word in the law-making function it has an influence on the law-maker through its deliberations.

With regard to executive control, once established, the legislature seems to be a latent constraint on the executive. It has a serious function in that it makes the government responsible for its actions and practices. However, administration can benefit from its existence. In the case of the U.A.E., the FNC attempts to monitor and criticise the government in its debates and at question time. By building good relations with the executive, the legislature has been successful in overcoming some of the constitutional restraints aimed at preventing such activities as the formation of investigative committees.

However, it is important before anything else to stress again that the traditional *Majlis* still survives in each emirate and play a role in the executive control function. The rulers still meet their followers and consult with them the major issues of the emirates affairs. It appears that the emergence of the FNC in the constitutional system of the country did not diminish the role of the *Majlis* in this function.

With regard to the representative role of the legislature, there seems to be a persistent lack of genuine representation in the

legislatures of the new states. Yet, the distortion varies from one country to another.

The FNC cannot be said to be truly representative. At present the U.A.E. legislature is composed of unelected members and therefore has no mandate from the people. For this reason it usually takes into account the wishes of the rulers because each member feels that he has no backing from the people. Furthermore, the legislator tends to disregard local issues in his emirates during FNC sessions. He rather prefer to concentrate on federal and constitutional matters.

The major obstacle to genuine representation is the fact that the U.A.E. has never had any kind of free elections throughout its history. This had created among the ruling elites a general atmosphere that the absence of elections is something acceptable to local political culture. One even may argue that to introduce elections would be an odd thing to do in 1971, especially as their absence does not represent a threat to the system or even shake its stability and legitimacy. In other words, the ruling families have never tried the election device and would rather stay in the safe side and not take the risk of adopting it.

Beside the election issue the composition of the U.A.E. legislature increases its unrepresentativeness. In a close socio-political system where nepotism and personal relationships take precedence over expertise and merit, one expects to see legislators appointed on the most spurious grounds. The FNC therefore is not an open forum.



With regard to political recruitment function the FNC has been partially successful in this. Its existence has provided the system with posts to be distributed among the politically ambitious and those of local importance. This has helped to increase loyalty amongst influential segments of the society.

However, the U.A.E. legislature has failed to perform the task of training future politicians to serve in the cabinet and federal departments. With the exception of one, all cabinet ministers have been appointed from outside the legislature.

The U.A.E. legislature has played no significant role in the mobilization of the masses by creating a democratic movement or the integration of society. The former is not a major concern of the system because most of the people are already mobilized around it. The fact that the FNC has had to gather citizens from the different emirates has in itself achieved a degree of integration, but the emirates' society is not ethnically or culturally so disintegrated as to need a legislature devoted to such a function.

The legitimating role is an important one shared by many Third World legislatures. However, the legitimacy of the ruling families of the emirates does not emanate from the people or the legislature. They are there because of tribal power and service distribution. Nonetheless, the FNC serves the system through passing laws, legitimating government actions and being a *pro forma* representative of the people.

Chapter 8 has presented how the provisions of the 1971 Constitution were implemented and interpreted by the Supreme court for the sake of preserving the power of the rulers. We have

seen that the constitutional and political crises made it obvious that the traditional quasi-undemocratic way of ruling had triumphed. The rulers admittedly listened to their people and consulted their advisers, but the final decision always lay in their hands. When they were faced with a new order under which certain sections of the population, represented by the FNC and the Council of Ministers, would be able to participate in the formation of the country's present and future structure, the rulers were resentful. They ignored the writing on the wall and continued to monopolise the real power.

Some conclusions may be drawn from the thesis. First, constitutional evolution rather than radical change has been the U.A.E.'s experience of constitutional development. The traditional rulers conceded new constitutional arrangements as long as they did not undermine their personal status and ultimate authority.

They moreover have used the 1971 Constitution as a mean to legitimate their position. This veneer of democratic government has protected and entrenched the rulers influence and power. This is consisted with the legitimating ideology which auspicate for their historical claim to rulership but the constitution has become a useful device for anticipating and controlling demands for reforms.

The future task, therefore, is to reconcile their power with the constitution. The aim must be to convince the rulers after the end of the Gulf war that the future trend is towards a democratic system of representative government. Such a system may be best brought about through a period of constitutional monarchy in every emirate.

Second, it is clear from the evidence that legislatures in most Third World countries have never been intended, either in the colonial period or since independence, to perform the legislative function of making laws in the democratic sense or to control the executive. The colonial powers did not encourage the legislature and even where it was established, legislature was seen as a control device rather than a means of power sharing.

In some developing countries the law-making function is not executed by all the members of the legislature either because of their lack of interest or, more probably, because of the powerful and decisive participation of the executive and political agencies in legislation.

Political leaders in developing countries, therefore, defend the existence of a weak or minimal legislature in their regimes for the presence of these bodies symbolizes the notion of pluralistic and popular government.

Third, it is simplistic to label a legislature as a mere rubber stamp because of its limited power in the law-making function. Third World legislatures usually prefer not to say directly and explicitly "no" to the executive government or the administration. Instead, they use diplomatic and subtle ways. They are likely to concentrate their efforts on deliberating privately rather than publicly, and seeking amendments rather than defeating government-sponsored bills. Legislative bodies in developing countries tend to use powers at their disposal in order to delay, amend, and modify unacceptable policies though this, apparently, is not taken to the extreme of rejection.

Fourth, it is important in the case of drawing of the constitution for a developing country to take into consideration how to make changes to the existing system without totally rejecting the past. The present constitutional system in the U.A.E. allows room for peaceful and gradual transition rather than radical change. This will come about through increased popular participation in the decision-making process based on preserving and respecting federal institutions, amending those restrictive provisions in the Constitution which deny the legislature real power and maintaining good will on all sides.

Certain early reforms to the existing legislature may be recommended in order to implement some democratic ideals. A gradual process of free elections of FNC members must be the cornerstone of any drafted constitution in the U.A.E. Representation in the council should be open to all citizens. Each emirate should be represented in the legislature according to the number of its nationals, although a maximum number of representatives should be laid down in order to secure the interests of the smaller emirates. The legislature must be allowed to participate actively in the law-making process and to operate positive control over the executive. Its decisions must be taken seriously and acted upon. Finally in order to ensure the effectiveness of the legislature it must be a major partner in any future constitution-making process.

The researcher does not claim that these reforms can have immediate or dramatic effect on the existing constitutional system, but in future years it ought to help.

Fifth, indeed, its legitimating role is probably the only reason for the existence of a legislature in some developing countries since it symbolizes popular participation in the decision-making process or at least implies the role of the masses in the political system. This symbolic function is clearly important in new states where the elite need the appearance of public support. In fact, through its election and representation of different socio-economic groups, a legislature acquires a legitimacy that other non-elected institutions may fail to achieve and, hence, can legitimate government proposals and policies through ratifying and approving legislation and executive actions.

However, as in the case of the U.A.E.'s legislature, unelected legislatures with nominated members representing different sectors of society tend to lack legitimacy. They owe their existence to the reluctance of the political elite to allow the creation of a separate political group through election by the population. Accordingly, election to the legislature is the practice in most political systems as being a prerequisite to its legitimacy in the public mind and hence to the utility of the institution in the political process.

Finally, it is important not to draw on a categorical relationship between democracy and political culture of many Third World countries.

On one hand, the absence of democracy is not always attributable to the autocratic nature of their leaders or their personal beliefs. There are other values which can prevent the establishment of democracy in some developing states, such as an

unwillingness to accept public criticism of those in power, the traditional dependency on rulers for survival, a high degree of centralisation of power and state control over civil society.

In some cases, the political culture considers compromise a sign of weakness and evidence of a lack of ability to solve problems on the part of the ruler. In the light of this approach, the actions taken by the ruler of Dubai in 1938 against the legislative movement and the continuous refusal of the emirates' rulers to amend the constitution or appreciate the demands of the FNC, may be interpreted as expressions of strength.

On the other hand, history shows that the seeds of democracy do exist in the political culture of many developing countries. For example, the 1938 "reform movement" in Dubai was a positive demonstration of a democratic impulse in that society. The same spirit has infused the political culture of the U.A.E. since 1971 and has been manifest in debates such as those on the extension of the Constitution and the joint memorandum.

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## **APPENDIX A**

### **THE 1971 PROVISIONAL CONSTITUTION OF THE U.A.E.**

## THE PROVISIONAL CONSTITUTION OF THE UNITED ARAB EMIRATES (1)

We, the Rulers of the Emirates of Abu Dhabi, Dubai, Sharjah, Ajman, Umm Al Qawain and Fujairah (2):

Whereas it is our desire and the desire of the people of our Emirates to establish a Union between these Emirates, to promote a better life, more enduring stability and a higher international status for the Emirates and their people;

Desiring to create closer links between the Arab Emirates in the form of an independent, sovereign, federal state, capable of protecting its existence and the existence of its members, in co-operation with the sister Arab states and with all other friendly states which are members of the United Nations Organisation and of the family of nations in general, on a basis of mutual respect and reciprocal interests and benefits;

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;

And whereas the realisation of the foregoing was our dearest desire, towards which we have bent our strongest resolution, being desirous of advancing our country and our people to the status of qualifying them to take appropriate place among civilised states and nations;

For all these reasons and until the preparation of the permanent Constitution for the Union may be completed, we proclaim before the Supreme and Omnipotent Creator, and before all the peoples, our agreement to this provisional Constitution, to which our signatures were appended, which shall be implemented during the transitional period indicated in it;

May Allah, our Protector and Defender, grant us success.

## Appendix A

### PART ONE

#### THE UNION, ITS FUNDAMENTAL CONSTITUENTS AND AIMS

##### Article 1

The United Arab Emirates is an independent, sovereign, federal state and is referred to hereafter in this Constitution as the Union. The Union shall consist of the following Emirates:-

Abu Dhabi - Dubai - Sharjah - Ajman - Umm Al Qawain -  
Fujairah - Ras Al Khaimah. (3)

Any other independent Arab country may join the Union, provided that the Supreme Council agrees unanimously to this.

##### Article 2

The Union shall exercise sovereignty in matters assigned to it in accordance with this Constitution over all territory and territorial waters lying within the international boundaries of the member Emirates.

##### Article 3

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.

##### Article 4

The Union may not cede its sovereignty or relinquish any part of its territories or waters.

##### Article 5

The Union shall have a Flag, an Emblem and a National Anthem. The Flag and the Emblem shall be prescribed by Law. Each Emirate shall retain its own flag for use within its territories.

##### Article 6

The Union is a part of the Great Arab Nation, to which it is bound by the ties of religion, language, history and common destiny.

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The people of the Union are one people, and one part of the Arab Nation.

### Article 7

Islam is the official religion of the Union. The Islamic Shari'ah shall be a main source of legislation in the Union. The official language of the Union is Arabic.

### Article 8

The citizens of the Union shall have a single nationality which shall be prescribed by law. When abroad, they shall enjoy the protection of the Union Government in accordance with accepted international principles.

No citizen of the Union may be deprived of his nationality nor may his nationality be withdrawn save in exceptional circumstances which shall be defined by Law.

### Article 9

1. The Capital of the Union shall be established in an area allotted to the Union by the Emirates of Abu Dhabi and Dubai on the borders between them and it shall be given the name "Al Karama".
2. There shall be allocated in the Union budget for the first year the amount necessary to cover the expenses of technical studies and planning for the construction of the Capital. However, construction work shall begin as soon as possible and shall be completed in not more than seven years from the date of entry into force of this constitution.
3. Until the construction of the Union Capital is complete, Abu Dhabi shall be the provisional headquarters of the Union.

### Article 10

The aims of the Union shall be the maintenance of its independence and sovereignty, the safeguard of its security and stability, the defence against any aggression upon its existence or the existence of its member states, the protection of the rights and liabilities of the people of the Union, the achievement of close co-operation between the Emirates for their common benefit in realising these aims and in promoting their prosperity and progress in all fields, the provision of a better life for all citizens together with respect by each Emirate for

## **Appendix A**

the independence and sovereignty of the other Emirates in their internal affairs within the framework of this Constitution.

### **Article 11**

1. The Emirates of the Union shall form an economic and customs entity. Union Laws shall regulate the progressive stages appropriate to the achievement of this entity.
2. The free movement of all capital and goods between the Emirates of the Union is guaranteed and may not be restricted except by a Union Law.
3. All taxes, fees, duties and tolls imposed on the movement of goods from one member Emirate to the other shall be abolished.

### **Article 12**

The foreign policy of the Union shall be directed towards support for Arab and Islamic causes and interests and towards the consolidation of the bonds of friendship and co-operation with all nations and peoples on the basis of the principles of the Charter of the United Nations and ideal international standards.

## **PART TWO**

### **THE FUNDAMENTAL SOCIAL AND ECONOMIC BASIS OF THE UNION**

#### **Article 13**

The Union and the member Emirates shall co-operate, within the limits of their jurisdiction and abilities, in executing the provisions of this Part.

#### **Article 14**

Equality, social justice, ensuring safety and security and equality of opportunity for all citizens shall be the pillars of the Society. Co-operation and mutual mercy shall be a firm bond between them.

#### **Article 15**

The family is the basis of society. It is founded on morality, religion, ethics and patriotism. The law shall guarantee its existence, safeguard and protect it from



## Appendix A

corruption.

### Article 16

Society shall be responsible for protecting childhood and motherhood and shall protect minors and others unable to look after themselves for any reason, such as illness or incapacity or old age or forced unemployment. It shall be responsible for assisting them and enabling them to help themselves for their own benefit and that of the community.

Such matters shall be regulated by welfare and social security legislations.

### Article 17

Education shall be a fundamental factor for the progress of society. It shall be compulsory in its primary stage and free of charge at all stages, within the Union. The law shall prescribe the necessary plans for the propagation and spread of education at various levels and for the eradication of illiteracy.

### Article 18

Private schools may be established by individuals and organisations in accordance with the provisions of the law, provided that such schools shall be subject to the supervision of the competent public authorities and to their directives.

### Article 19

Medical care and means of prevention and treatment of diseases and epidemics shall be ensured by the community for all citizens.

The community shall promote the establishment of public and private hospitals, dispensaries and cure-houses.

### Article 20

Society shall esteem work as a corner-stone of its development. It shall endeavour to ensure that employment is available for citizens and to train them so that they are prepared for it. It shall furnish the appropriate facilities for that by providing legislations protecting the rights of the employees and the interests of the employers in the light of developing international labour legislations.

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### Article 21

Private property shall be protected. Conditions relating thereto shall be laid down by Law. No one shall be deprived of his private property except in circumstances dictated by the public benefit in accordance with the provisions of the Law and on payment of a just compensation.

### Article 22

Public property shall be inviolable. The protection of public property shall be the duty of every citizen. The Law shall define the cases in which penalties shall be imposed for the contravention of that duty.

### Article 23

The natural resources and wealth in each Emirate shall be considered to be the public property of that Emirate. Society shall be responsible for the protection and proper exploitation of such natural resources and wealth for the benefit of the national economy.

### Article 24

The basis of the national economy shall be social justice. It is founded on sincere co-operation between public and private activities. Its aim shall be the achievement of economic development, increase of productivity, raising the standards of living and the achievement of prosperity for citizens, all within the limits of Law.

The Union shall encourage co-operation and savings.

## PART THREE

### FREEDOM, RIGHTS AND PUBLIC DUTIES

#### Article 25

All persons are equal before the law, without distinction between citizens of the Union in regard to race, nationality, religious belief or social status.

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### Article 26

Personal liberty is guaranteed to all citizens. No person may be arrested, searched, detained or imprisoned except in accordance with the provision of law.

No person shall be subjected to torture or to degrading treatment.

### Article 27

Crimes and punishments shall be defined by the law. No penalty shall be imposed for any act of commission or omission committed before the relevant law has been promulgated.

### Article 28

Penalty is personal. An accused shall be presumed innocent until proved guilty in a legal and fair trial. The accused shall have the right to appoint the person who is capable to conduct his defence during the trial. The law shall prescribe the cases in which the presence of a counsel for defence shall be assigned.

Physical and moral abuse of an accused person is prohibited.

### Article 29

Freedom of movement and residence shall be guaranteed to citizens within the limits of law.

### Article 30

Freedom of opinion and expressing it verbally, in writing or by other means of expression shall be guaranteed within the limits of law.

### Article 31

Freedom of communication by post, telegraph or other means of communication and the secrecy thereof shall be guaranteed in accordance with law.

### Article 32

Freedom to exercise religious worship shall be guaranteed in accordance with established customs, provided that it does not conflict with public policy or violate public morals.

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### Article 33

Freedom of assembly and establishing associations shall be guaranteed within the limits of law.

### Article 34

Every citizen shall be free to choose his occupation, trade or profession within the limits of law. Due consideration being given to regulations organising some of such professions and trades. No person may be subjected to forced labour except in exceptional circumstances provided for by the law and in return for compensation.

No person may be enslaved.

### Article 35

Public office shall be open to all citizens on a basis of equality of opportunity in accordance with the provisions of law. Public office shall be a national service entrusted to those who hold it. The public servant shall aim, in the execution of his duties, at the public interest alone.

### Article 36

Habitations shall be inviolable. They may not be entered without the permission of their inhabitants except in accordance with the provisions of the law and in the circumstances laid down therein.

### Article 37

Citizens may not be deported or banished from the Union.

### Article 38

Extradition of citizens and of Political refugees is prohibited.

### Article 39

General confiscation of property shall be prohibited. Confiscation of an individual's possessions as a penalty may not be inflicted except by a court judgement in the circumstances

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specified by law.

### Article 40

Foreigners shall enjoy, within the Union, the rights and freedom stipulated in international charters which are in force or in treaties and agreements to which the Union is party. They shall be subject to the corresponding obligations.

### Article 41

Every person shall have the right to submit complaints to the competent authorities, including the judicial authorities, concerning the abuse or infringement of the rights and freedom stipulated in this Part.

### Article 42

Payment of taxes and public charges determined by law is a duty of every citizen.

### Article 43

Defence of the Union is a sacred duty of every citizen and military service is an honour for citizens which shall be regulated by law.

### Article 44

Respect of the Constitution, laws and orders issued by public authorities in execution thereof, observance of public order and respect of public morality are duties incumbent upon all inhabitants of the Union.

## PART FOUR THE UNION AUTHORITIES

### Article 45

The Union authorities shall consist of:-

1. The Supreme Council of the Union.
2. The President of the Union and his Deputy.
3. The Council of Ministers of the Union.

## Appendix A

4. The National Assembly of the Union.
5. The Judiciary of the Union.

### CHAPTER I - THE SUPREME COUNCIL OF THE UNION

#### Article 46

The Supreme Council of the Union shall be the highest authority in the Union. It shall consist of the Rulers of all the Emirates composing the Union, or of those who deputise for the Rulers in their Emirates in the event of their absence or if they have been excused from attending.

Each Emirate shall have a single vote in the deliberations of the Council.

#### Article 47

The Supreme Council of the Union shall exercise the following matters:-

1. Formulation of general policy in all matters invested in the Union by this Constitution and consideration of all matters which leads to the achievement of the goals of the Union and the common interest of the member Emirates.
2. Sanction of various Union laws before their promulgation, including the Laws of the Annual General Budget and the Final Accounts.
3. Sanction of decrees relating to matters which by virtue of the provisions of this Constitution are subject to the ratification or agreement of the Supreme Council. Such sanction shall take place before the promulgation of these decrees by the President of the Union.
4. Ratification of treaties and international agreements. Such ratification shall be accomplished by decree.
5. Approval of the appointment of the Chairman of the Council of Ministers of the Union, acceptance of his resignation and his removal from office upon a proposal from the President of the Union.
6. Approval of the appointment of the President and Judges of the Supreme Court of the Union, acceptance of their resignations and their dismissal in the circumstances stipulated by this Constitution. Such acts shall be accomplished by decrees.

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7. Supreme Control over the affairs of the Union in general.
8. Any other relevant matters stipulated in this Constitution or in the Union laws.

### Article 48

1. The Supreme Council shall lay down its own bye-laws which shall include its procedure for the conduct of business and the procedure for voting on its decisions. The deliberations of the Council shall be secret.
2. The Supreme Council shall establish a general Secretariat which shall consist of an adequate number of officials to assist it in the execution of its duties.

### Article 49

Decisions of the Supreme Council on substantive matters shall be by a majority of five of its members provided that this majority includes the votes of the Emirates of Abu Dhabi and Dubai. The minority shall be bound by the view of the said majority.

But, decisions of the Council on procedural matters shall be by a majority vote. Such matters shall be defined in the bye-laws of the Council.

### Article 50

Sessions of the Supreme Council shall be held in the Union capital. Sessions may be held in any other place agreed upon beforehand.

## CHAPTER II - THE PRESIDENT OF THE UNION AND HIS DEPUTY

### Article 51

The Supreme Council of the Union shall elect from among its members a President and a Vice President of the Union. The Vice President of the Union shall exercise all the powers of the President in the event of his absence for any reason.

### Article 52

The term of office of the President and the Vice President shall be five Gregorian years. They are eligible for re-election to the same offices.

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Each of them shall, on assuming office, take the following oath before the Supreme Council:

"I swear by Almighty God that I will be faithful to the United Arab Emirates; that I will respect its Constitution and its laws; that I will protect the interests of the people of the Union; that I will discharge my duties faithfully and loyally and that I will safeguard the independence of the Union and its territorial integrity."

### Article 53

Upon vacancy of the office of the President or his Deputy for death or resignation, or because either one of them ceases to be Ruler in his Emirate for any reason, the Supreme Council shall be called into session within one month of that date to elect a successor to the vacant office for the period stipulated in Article 52 of this Constitution.

In the event that the two offices of the President of the Supreme Council and his Deputy become vacant simultaneously, the Council shall be immediately called into session by any one of its members or by the Chairman of the Council of Ministers of the Union, to elect a new President and Vice President to fill the two vacant offices.

### Article 54

The President of the Union shall assume the following powers:-

1. Presiding the Supreme Council and directing its discussions.
2. Calling the Supreme Council into session, and terminating its sessions according to the rules of procedure upon which the Council shall decide in its bye-laws. It is obligatory for him to convene the Council for sessions, whenever one of its members so requested.
3. Calling the Supreme Council and the Council of Ministers into joint session whenever necessity demands.
4. Signing Union laws, decrees and decisions which the Supreme Council has sanctioned and promulgating them.
5. Appointing the Prime Minister, accepting his resignation and relieving him of office with the consent of the Supreme Council. He shall also appoint the Deputy Prime Minister and the Ministers and shall receive their resignations and relieve them of office in accordance with a proposal from



## Appendix A

the Prime Minister of the Union.

6. Appointing the diplomatic representatives of the Union to foreign states and other senior Union officials both civil and military (with the exception of the President and Judges of the Supreme Court of the Union) and accepting their resignations and dismissing them with the consent of the Council of Ministers of the Union. Such appointments, acceptance of resignations and dismissals shall be accomplished by decrees and in accordance with Union laws.
7. Signing of letters of credence of diplomatic representatives of the Union to foreign states and organisations and accepting the credentials of diplomatic and consular representatives of foreign states to the Union and receiving their letters of credence. He shall similarly sign documents of appointment and credence of representatives.
8. Supervising the implementation of Union laws, decrees and decisions through the Council of Ministers of the Union and the competent Ministers.
9. Representing the Union internally, vis-a-vis other states and in all international relations.
10. Exercising the right of pardon and commutation of sentences and approving capital sentences according to the provisions of this Constitution and Union laws.
11. Conferring decorations and medals of honour, both civil and military, in accordance with the laws relating to such decorations and medals.
12. Any other power vested in him by the Supreme Council or vested in him in conformity with this Constitution or Union laws.

## CHAPTER III - THE COUNCIL OF MINISTERS OF THE UNION

### Article 55

The Council of Ministers of the Union shall consist of the Prime Minister, his Deputy and a number of Ministers.

### Article 56

Ministers shall be chosen from among citizens of the Union known for their competence and experience.

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### Article 57

The Prime Minister, his Deputy and the Ministers shall, before assuming the responsibilities of their office, take the following oath before the President of the Union:-

"I swear by Almighty God that I will be loyal to the United Arab Emirates; that I will respect its Constitution and laws; that I will discharge my duties faithfully; that I will completely observe the interests of the people of the Union and that I will completely safeguard the existence of the Union and its territorial integrity."

### Article 58

The law shall define the Jurisdiction of the Ministers and the powers of each Minister. The first Council of Ministers of the Union shall be composed of the following Ministers:-

1. Foreign Affairs
2. Interior
3. Defence
4. Finance, Economy and Industry
5. Justice
6. Education
7. Public Health
8. Public Works and Agriculture
9. Communications, Post, Telegraph and Telephones
10. Labour and Social Affairs
11. Information
12. Planning.

### Article 59

The Prime Minister shall preside over the meetings of the Council of Ministers. He shall call it into session, direct its debates, follow up the activities of Ministers and shall supervise the co-ordination of work between the various Ministries and in all executive organs of the Union.

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The Deputy Prime Minister shall exercise all the powers of the Prime Minister in the event of his absence for any reason.

### Article 60

The Council of Ministers, in its capacity as the executive authority of the Union, and under the supreme control of the President of the Union and the Supreme Council, shall be responsible for dealing with all domestic and foreign affairs which are within the competence of the Union according to this Constitution and Union laws.

The Council of Ministers shall, in particular, assume the following powers:-

1. Following up the implementation of the general policy of the Union Government, both domestic and foreign.
2. Initiating drafts of Federal Laws and submitting them to the Union National Council before they are raised to the President of the Union for presentation to the Supreme Council for sanction.
3. Drawing up the annual general budget of the Union, and the final accounts.
4. Preparing drafts of decrees and various decisions.
5. Issuing regulations necessary for the implementation of Union laws without amending or suspending such regulations or making any exemption from their execution. Issuing also policy regulations relating to the organisation of public services and administrations, within the limits of this Constitution and Union laws. A special provision of the law or the Council of Ministers, may charge the competent Union Minister or any other administrative authority to promulgate some of such regulations.
6. Supervising the implementation of Union laws, decrees, decisions and regulations by all the concerned authorities in the Union or in the Emirates.
7. Supervising the execution of judgements rendered by Union Law Courts and the implementation of international treaties and agreements concluded by the Union.
8. Appointment and dismissal of Union employees in accordance with the provisions of the law, provided that their appointment and dismissal do not require the issue of a decree.
9. Controlling the conduct of work in departments and public services of the Union and the conduct and discipline of

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Union employees in general.

10. Any other authority vested in it by law or by the Supreme Council within the limits of this Constitution.

### Article 61

Deliberations of the Council of Ministers shall be secret. Its resolutions shall be passed by a majority of its members. In the event that voting is evenly divided, the side on which the Prime Minister has voted shall prevail. The minority shall abide by the opinion of the majority.

### Article 62

While in office, the Prime Minister, his Deputy or any Union Minister, may not practise any professional, commercial or financial occupation or enter into any commercial transactions with the Government of the Union or the Governments of the Emirates, or combine with their office the membership of the board of directors of any financial or commercial company.

Furthermore, they may not combine with their office more than one official post in any of the Emirates and shall relinquish all other local official posts, if any.

### Article 63

The members of the Council of Ministers shall aim to serve in their conduct the interests of the Union, the promotion of public welfare and totally renounce personal benefits. They must not exploit their official capacities for their own interests or that of any person related to them.

### Article 64

The Prime Minister and the Ministers shall be politically responsible collectively before the President of the Union and the Supreme Council of the Union for the execution of the general policy of the Union both domestic and foreign. Each of them shall be personally responsible to the President of the Union and the Supreme Council for the activities of his Ministry or office.

The resignation of the Prime Minister, his removal from office, his death, or the vacating of his office for any reason whatsoever shall involve the resignation of the whole Cabinet. The President of the Union may require the Ministers to remain in office temporarily, to carry out immediate administration, until such time as a new Cabinet is formed.

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### Article 65

At the beginning of every financial year, the Council of Ministers shall submit to the President of the Union for presentation to the Supreme Council, a detailed statement of internal achievements, on the Union's relations with other states and international organisations, together with the recommendations of the Cabinet on the best and most practical means of strengthening the foundations of the Union, consolidating its security and stability, achieving its goals and progress in all fields.

### Article 66

1. The Council of Ministers shall draw up its own bye-laws including its rules of procedure.
2. The Council of Ministers shall establish a general Secretariat provided with a number of employees to assist it in the conduct of its business.

### Article 67

The Law shall prescribe the salaries of the Prime Minister, his Deputy and the other Ministers.

## CHAPTER IV - THE NATIONAL ASSEMBLY OF THE UNION

### Section 1 - General Provisions

#### Article 68

The National Assembly of the Union shall be composed of forty (4) members. Seats shall be distributed to member Emirates as follows:-

Abu Dhabi	8 seats
Dubai	8 seats
Sharjah	6 seats
Ras Al Khaimah	6 seats
Ajman	4 seats
Umm Al Qawain	4 seats
Fujairah	4 seats

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### Article 69

Each Emirate shall be free to determine the method of selection of the citizens representing it in the Union National Assembly.

### Article 70

A member of the Union National Assembly must satisfy the following conditions:-

1. Must be a citizen of one of the Emirates of the union, and permanently resident in the Emirate he represents in the Assembly.
2. Must be not less than twenty-five Gregorian years of age at the time of his selection
3. Must enjoy civil status, good conduct, reputation and not previously convicted of a dishonourable offence unless he has been rehabilitated in accordance with the law.
4. Must have adequate knowledge of reading and writing.

### Article 71

Membership of the Union National Assembly shall be incompatible with any public office in the Union, including Ministerial portfolios.

### Article 72

The term of membership in the Union National Assembly shall be two Gregorian years commencing from the date of its first sitting. When this period expires, the Assembly shall be completely renewed for the time remaining until the end of the transitional period as laid down in Article 144 of this Constitution.

Any member who has completed his term may be re-elected.

### Article 73

Before assuming his duties in the Assembly or its Committees, a member of the Union National Assembly shall take the following oath before the Assembly in public session:-

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"I swear by Almighty God that I will be loyal to the United Arab Emirates; that I will respect the Constitution and the laws of the Union and that I will discharge my duties in the Assembly and its Committees honestly and truthfully."

### Article 74

If, for any reason, a seat of any member of the Assembly becomes vacant before the end of the term of his membership, a replacement shall be selected within two months of the date on which the vacancy is announced by the Assembly, unless the vacancy occurs during the three months preceding the end of the term of the Assembly.

The new member shall complete the term of membership of his predecessor.

### Article 75

Sessions of the Union National Assembly shall be held in the Union capital. Exceptionally, sessions may be held in any other place within the Union on the basis of a decision taken by a majority vote of the members and with the approval of the Council of Ministers.

### Article 76

The Assembly shall decide upon the validity of the mandate of its members. It shall also decide upon disqualifying members, if they lose one of the required conditions, by a majority of all its members and on the proposal of five among them. The Assembly shall be competent to accept resignation from membership. The resignation shall be considered as final from the date of its acceptance by the Assembly.

### Article 77

A member of the National Assembly of the Union shall represent the whole people of the Union and not merely the Emirate which he represents in the Assembly.

## Section 2 - Organisation of Work in the Assembly

### Article 78

The Assembly shall hold an annual ordinary session lasting not less than six months, commencing on the third week of November each year. It may be called into extraordinary session

## Appendix A

whenever the need arises. The Assembly may not consider at an extraordinary session any matter other than those for which it has been called into session.

Notwithstanding the preceding paragraph, the President of the Union shall summon the Union National Assembly to convene its first ordinary session within a period not exceeding sixty days from the entry into force of this Constitution. This session shall end at the time appointed by the Supreme Council by decree.

## Article 79

The Assembly shall be summoned into session, and its session shall be terminated by decree issued by the President of the Union with the consent of the Council of Ministers of the Union. Any meeting held by the Council without a formal summons, or in a place other than that legally assigned for its meeting in accordance with this Constitution, shall be invalid and shall have no effect.

Nevertheless, if the Assembly is not called to hold its meeting for its annual ordinary session before the third week of November, the Assembly shall be ipso facto in session on the twenty first of the said month.

## Article 80

The President of the Union shall inaugurate the ordinary annual session of the Assembly whereupon he shall deliver a speech reviewing the situation of the country and the important events and affairs which happened during the year and outlining the projects and reforms the Union Government plans to undertake during the new session. The President of the Union may depute his Vice President or the Prime Minister to open the session or to deliver the speech.

The National Assembly shall select, from among its members, a committee to draft the reply to the Opening Speech, embodying the Assembly's observations and wishes, and shall submit the reply after approval by the Assembly to the President of the Union for submission to the Supreme Council.

## Article 81

Members of the Assembly shall not be censured for any opinions or views expressed in the course of carrying out their duties within the Assembly or its Committees.



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### Article 82

Except in cases of "flagrante delicto", no penal proceedings may be taken against any member while the Assembly is in session, without the authorisation of the Assembly. The Assembly must be notified if such proceedings are taken while it is not in session.

### Article 83

The President of the Assembly and its other members shall be entitled, from the date of taking the oath before the Assembly, to a remuneration which shall be determined by law, and to travelling expenses from their place of residence to the place in which the Assembly is meeting.

### Article 84

The Assembly shall have a Bureau consisting of a President, a First and Second Vice President and two controllers. The Assembly shall select them all from among its members.

The term of office of the President and the two Vice Presidents shall expire when the term of the Assembly expires or when it is dissolved in accordance with the provisions of the second paragraph of Article 88.

The term of office of the controllers shall expire with the choice of new controllers at the opening of the next ordinary annual session. If any post in the Bureau becomes vacant, the Assembly shall elect who shall fill it for the remaining period.

### Article 85

The Assembly shall have a Secretary-General who shall be assisted by a number of staff who shall be directly responsible to the Assembly. The Assembly's standing orders shall lay down their conditions of service and their powers.

The Assembly shall lay down its standing orders, issued by decree promulgated by the President of the Union with the Consent of the Council of Ministers.

The standing orders shall define the powers of the President of the Assembly, his two Vice Presidents and the Controllers and shall define generally all matters pertaining to the Assembly, its committees, its members, its Secretariat, its employees, its rules and procedures of discussion and voting in the Assembly and the Committees and other matters within the limits of the provisions of this Constitution.

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### Article 86

Sessions of the Assembly shall be public. Secret sessions may be held at the request of a representative of the Government, the President of the Assembly or one third of its members.

### Article 87

Deliberations of the Assembly shall not be valid unless a majority of its members at least are present. Resolutions shall be taken by an absolute majority of the votes of members present, except in cases where a special majority has been prescribed. If votes are equally divided, the side which the President of the session supports shall prevail.

### Article 88

Meetings of the Assembly may be adjourned by a decree promulgated by the President of the Union with the approval of the Council of Ministers of the Union for a period not exceeding one month, provided that such adjournment is not repeated in one session except with the approval of the Assembly and for once only. The period of adjournment shall not be deemed part of the term of the ordinary session.

The Assembly may also be dissolved by a decree promulgated by the President of the Union with the approval of the Supreme Council of the Union, provided that the decree of dissolution includes a summons to the new Assembly to come into session within sixty days of the date of the decree of dissolution. The Assembly may not be dissolved again for the same reason.

## Section 3 - Powers of the National Assembly

### Article 89

In so far as this does not conflict with the provisions of Article 110, Union Bills, including financial bills, shall be submitted to the National Assembly of the Union before their submission to the President of the Union for presentation to the Supreme Council for ratification. The National Assembly shall discuss these bills and may pass them, amend or reject them.

### Article 90

The Assembly shall examine during its ordinary session the

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Annual General Budget draft law of the Union and the draft law of the final accounts, in accordance with the provisions in Chapter Eight of this Constitution.

### Article 91

The Government shall inform the Union Assembly of international treaties and agreements concluded with other states and the various international organisations, together with appropriate explanations.

### Article 92

The Union National Assembly may discuss any general subject pertaining to the affairs of the Union unless the Council of Ministers informs the Union National Assembly that such discussion is contrary to the highest interests of the Union. The Prime Minister or the Minister concerned shall attend the debates. The Union National Assembly may express its recommendations and may define the subjects for debate. If the Council of Ministers does not approve of these recommendations, it shall notify the Union National Assembly of its reasons.

### Article 93

The Government of the Union shall be represented at sessions of the Union National Assembly by the Prime Minister or his deputy or one member of the Union Cabinet at least. The Prime Minister or his deputy or the competent Minister, shall answer questions put to them by any member of the Assembly requesting explanation of any matters within their jurisdiction, in conformity with the procedures prescribed in the standing orders of the Assembly.

## CHAPTER 5 - THE JUDICIARY IN THE UNION AND THE EMIRATES

### Article 94

Justice is the basis of rule. In performing their duties, judges shall be independent and shall not be subject to any authority but the law and their own conscience.

### Article 95

The Union shall have a Union Supreme Court and Union Primary Tribunals as explained hereafter.

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### Article 96

The Union Supreme Court shall consist of a President and a number of judges, not exceeding five in all, who shall be appointed by decree, issued by the President of the Union after approval by the Supreme Council. The law shall prescribe the number of the chambers in the Court, their order and procedures, conditions of service and retirement for its members and the preconditions and qualifications required of them.

### Article 97

The President and the Judges of the Union Supreme Court shall not be removed while they administer justice. Their tenure of office shall not be terminated except for one of the following reasons:-

1. Death.
2. Resignation.
3. Expiration of term of contract for those who are appointed by fixed term contract or completion of term of secondment.
4. Reaching retirement age.
5. Permanent incapacity to carry the burdens of their duties by reason of ill health.
6. Disciplinary discharge on the basis of the reasons and proceedings stipulated in the law.
7. Appointment to other offices, with their consent.

### Article 98

The President and the Judges of the Union Supreme Court shall, before holding office, swear on oath before the President of the Union and in the presence of the Union Minister of Justice that they will render justice without fear or favour and that they will be loyal to the Constitution and the laws of the Union.

### Article 99

The Union Supreme Court shall have jurisdiction in the following matters:-

1. Various disputes between member Emirates in the Union, or between any one Emirate or more and the Union Government, whenever such disputes are submitted to the Court on the

## Appendix A

request of any of the interested parties.

2. Examination of the constitutionality of Union laws, if they are challenged by one or more of the Emirates on the grounds of violating the Constitution of the Union.

Examination of the constitutionality of legislations promulgated by one of the Emirates, if they are challenged by one of the Union authorities on the grounds of violation of the Constitution of the Union or of Union laws.

3. Examination of the constitutionality of laws, legislations and regulations in general, if such request is referred to it by any Court in the country during a pending case before it. The aforesaid Court shall be bound to accept the ruling of the Union Supreme Court rendered in this connection.
4. Interpretation of the provisions of the Constitution, when so requested by any Union authority or by the Government of any Emirate. Any such interpretation shall be considered binding on all.
5. Trial of Ministers and senior officials of the Union appointed by decree regarding their actions in carrying out their official duties on the demand of the Supreme Council and in accordance with the relevant law.
6. Crimes directly affecting the interests of the Union, such as crimes relating to its internal or external security, forgery of the official records or seals of any of the Union authorities and counterfeiting of currency.
7. Conflict of jurisdiction between the Union judicial authorities and the local judicial authorities in the Emirates.
8. Conflict of jurisdiction between the judicial authority in one Emirate and the judicial authority in another Emirate. The rules relating thereof shall be regulated by a Union Law.
9. Any other jurisdiction stipulated in this Constitution, or which may be assigned to it by a Union law.

## Article 100

The Union Supreme Court shall hold its sittings in the capital of the Union. It may, exceptionally, assemble when necessary in the capital of any one of the Emirates.

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### Article 101

The judgements of the Union Supreme Court shall be final and binding upon all.

If the Court, in ruling on the constitutionality of laws, legislations and regulations, decides that a Union legislation is inconsistent with the Union Constitution, or that local legislations or regulations under consideration contain provisions which are inconsistent with the Union Constitution or with a Union law, the authority concerned in the Union or in the Emirate, accordingly, shall be obliged to hasten to take the necessary measures to remove or rectify the constitutional inconsistency.

### Article 102

The Union shall have one or more Union Primary Tribunals which shall sit in the permanent capital of the union or in the capitals of some of the Emirates, in order to exercise the judicial powers within the sphere of their jurisdiction in the following cases:-

1. Civil, commercial and administrative disputes between the Union and individuals whether the Union is plaintiff or defendant.
2. Crimes committed within the boundaries of the permanent capital of the Union, with the exception of such matters as are reserved for the Union Supreme Court under Article 99 of this Constitution.
3. Personal status cases, civil and commercial cases and other cases between individuals which shall arise in the permanent capital of the Union.

### Article 103

The law shall regulate all matters connected with the Union Primary Tribunals in respect of their organisation, formation, chambers, local jurisdiction, procedures to be followed before them, the oath to be sworn by their judges, conditions of service relating to them and the ways of appeal against their judgements.

The law may stipulate that appeals against the judgements of these Tribunals shall be heard before one of the chambers of the Union Supreme Court, in the cases and according to the procedures prescribed therein.

## Appendix A

### Article 104

The local judicial authorities in each Emirate shall have jurisdiction in all judicial matters not assigned to the Union judicature in accordance with this Constitution.

### Article 105

All or part of the jurisdiction assigned to the local judicial authorities in accordance with the preceding Article may be transferred by a Union law issued at the request of the Emirate concerned, to the Primary Union Tribunals.

Circumstances in which appeals against judgements by the local judicial authorities in penal, civil, commercial and other litigations may be referred to the Union Tribunals, shall be defined by a Union law provided that its decision in such appeals shall be final.

### Article 106

The Union shall have a Public Prosecutor who shall be appointed by a Union decree issued with the approval of the Council of Ministers, assisted by a number of members of the Public Prosecutor's office.

The law shall regulate matters relating to the members of the Union Public Prosecutor's Office with respect to their method of appointment, ranks, promotion, retirement and the qualifications required of them.

Besides, the Union Law of Criminal Procedure and trials shall regulate the power of this body and its procedures and the competence of its assistants from the police and the public security officers.

### Article 107

The President of the Union may grant pardon from the execution of any sentence passed by a Union judicature before it is carried out or while it is being served or he may commute such sentence, on the basis of the recommendation of the Union Minister of Justice, after obtaining the approval of a committee formed under the chairmanship of the Minister and consisting of six members selected by the Union Council of Ministers for a term of three years which may be renewed. The members of the committee shall be chosen from citizens of good repute and capability.

Membership of the committee shall be gratis. Its deliber-

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ations shall be secret. Its decisions shall be issued by a majority vote.

### Article 108

No sentence of death imposed finally by a Union judicial authority shall be carried out until the President of the Union has confirmed the sentence. He may substitute it by an attenuate sentence in accordance with the procedure stipulated in the preceding Article.

### Article 109

There shall be no general amnesty for a crime or for specified crimes except by law.

The promulgation of the law of amnesty shall consider such crimes being deemed non avenue, and shall remit the execution of the sentence or the remaining part of it.

## PART FIVE

### UNION LEGISLATIONS AND DECREES AND THE AUTHORITIES HAVING JURISDICTION THEREIN

#### CHAPTER I - UNION LAWS

### Article 110

1. Union laws shall be promulgated in accordance with the provisions of this Article and other appropriate provisions of the Constitution.
2. A draft law shall become a law after the adoption of the following procedure:-
  - (a) The Council of Ministers shall prepare a bill and submit it to the Union National Assembly.
  - (b) The Council of Ministers shall submit the bill to the President of the Union for his approval and presentation to the Supreme Council for ratification.
  - (c) The President of the Union shall sign the bill after ratification by the Supreme Council and shall promulgate it.
3. (a) If the Union National Assembly inserts any amendment to the bill and this amendment is not acceptable to the President of the Union or the Supreme Council or if the



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Union National Assembly rejects the bill, the President of the Union or the Supreme Council may refer it back to the National Assembly. If the Union National Assembly introduces any amendment on that occasion which is not acceptable to the President of the Union or the Supreme Council, or if the Union National Assembly decides to reject the bill, the President of the Union may promulgate the law after ratification by the Supreme Council.

(b) The term "bill" in this clause shall mean the draft which is submitted to the President of the Union by the Council of Ministers including the amendments, if any, made to it by the Union National Assembly.

4. Notwithstanding the foregoing, if the situation requires the promulgation of Union laws when the National Assembly is not in session, the Council of Ministers of the Union may issue them through the Supreme Council and the President of the Union, provided that the Union Assembly is notified at its next meeting.

### Article 111

Laws shall be published in the Official Gazette of the Union within a maximum of two weeks from the date of their signature and promulgation by the President of the Union after the Supreme Council has ratified them. Such laws shall become in force one month after the date of their publication in the said Gazette, unless another date is specified in the said law.

### Article 112

No laws may be applied except on what occurs as from the date they become in force and no retroactive effect shall result in such laws. The law may, however, stipulate the contrary in matters other than criminal, if necessity so requires.

## CHAPTER II - LAWS ISSUED BY DECREES

### Article 113

Should necessity arise for urgent promulgation of Union laws between sessions of the Supreme Council, the President of the Union together with the Council of Ministers may promulgate the necessary laws in the form of decrees which shall have the force of law, provided that they are not inconsistent with the Constitution.

Such decree-laws must be referred to the Supreme Council within a week at the maximum for assent or rejection. If they

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are approved, they shall have the force of law and the Union National Assembly shall be notified at its next meeting.

However, if the Supreme Council does not approve them, they shall cease to have the force of law unless that it has decided to sanction their effectiveness during the preceding period, or to settle in some other way the effects arising therefrom.

### CHAPTER III - ORDINARY DECREES

#### Article 114

No decree may be issued unless the Council of Ministers has confirmed it and the President of the Union or the Supreme Council, according to their powers, has ratified it. Decrees shall be published in the Official Gazette after signature by the President of the Union.

#### Article 115

While the Supreme Council is out of session and if necessity arises, it may authorise the President of the Union and the Council of Ministers collectively to promulgate decrees whose ratification is within the power of the Supreme Council, provided that such authority shall not include ratification of international agreements and treaties or declaration or rescission of martial law or declaration of a defensive war or appointment of the President or Judges of the Union Supreme Court.

## PART SIX

### THE EMIRATES

#### Article 116

The Emirates shall exercise all powers not assigned to the Union by this Constitution. The Emirates shall all participate in the establishment of the Union and shall benefit from its existence, services and protection.

#### Article 117

The exercise of rule in each Emirate shall aim in particular at the maintenance of security and order within its territories, the provision of public utilities for its inhabitants and the raising of social and economic standards.

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### Article 118

The member Emirates of the Union shall all work for the co-ordination of their legislations in various fields with the intention of unifying such legislations as far as possible.

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.

### Article 119

Union law shall regulate with utmost ease matters pertaining to the execution of judgements, requests for commissions of rogation, serving legal documents and surrender of fugitives between member Emirates of the Union.

## PART SEVEN

### DISTRIBUTION OF LEGISLATIVE, EXECUTIVE AND INTERNATIONAL JURISDICTIONS BETWEEN THE UNION AND THE EMIRATES

### Article 120

The Union shall have exclusive legislative and executive jurisdiction in the following affairs:-

1. Foreign affairs.
2. Defence and the Union Armed Forces.
3. Protection of the Union's security against internal or external threat.
4. Matters pertaining to security, order and rule in the permanent capital of the Union.
5. Matters relating to Union officials and Union judiciary.
6. Union finance and Union taxes, duties and fees.
7. Union public loans.
8. Postal, telegraph, telephone and wireless services.
9. Construction, maintenance and improvement of Union roads which the Supreme Council has determined to be trunk roads. The organisation of traffic on such roads.

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10. Air Traffic Control and the issue of licences to aircraft and pilots.
11. Education.
12. Public health and medical services.
13. Currency board and coinage.
14. Measures, standards and weights.
15. Electricity services.
16. Union nationality, passports, residence and immigration.
17. Union properties and all matters relating thereto.
18. Census affairs and statistics relevant to Union purposes.
19. Union Information.

## Article 121

Without prejudice to the provisions of the preceding Article, the Union shall have exclusive legislative jurisdiction in the following matters:-

Labour relations and social security; real estate and expropriation in the public interest; extradition of criminals, banks; insurance of all kinds; protection of agricultural and animal wealth; major legislations relating to penal law, civil and commercial transactions and company law, procedures before the civil and criminal courts; protection of cultural, technical and industrial property and copyright; printing and publishing; import of arms and ammunition except for use by the armed forces or the security forces belonging to any Emirate; other aviation affairs which are not within the executive jurisdiction of the Union, delimitation of territorial waters and regulation of navigation on the high seas.

## Article 122

The Emirates shall have jurisdiction in all matters not assigned to the exclusive jurisdiction of the Union in accordance with the provisions of the two preceding Articles.

## Article 123

As an exception to paragraph 1 of Article 120 concerning the exclusive jurisdiction of the Union in matters of foreign policy

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and international relations, the member Emirates of the Union may conclude limited agreements of a local and administrative nature with the neighbouring states or regions, save that such agreements are not 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.

The Emirates may retain their membership in the OPEC organisation and the Organisation of Arab Petroleum Exporting Countries or may join them.

### Article 124

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

### Article 125

The Governments of the Emirates shall undertake the appropriate measures to implement the laws promulgated by the Union and the treaties and international agreements concluded by the Union, including the promulgation of the local laws, regulations, decisions and orders necessary for such implementation.

The Union authorities shall supervise the implementation by Emirates' Governments of the Union laws, decisions, treaties, agreements and Union judgements. The competent administrative and judicial authorities in the Emirates should forward to the Union authorities all possible assistance in this connection.

## PART EIGHT

### FINANCIAL AFFAIRS OF THE UNION

#### Article 126

The general revenues of the Union shall consist of the income from the following resources:-

1. Taxes, fees and duties imposed under a Union law in matters within the legislative and executive jurisdiction of the Union.
2. Fees and rates received by the Union in return for services

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provided.

3. Contribution made by member Emirates of the Union in the Annual Budget of the Union in accordance with the article herein coming after.
4. Union income from its own properties.

### Article 127

The member Emirates of the Union shall contribute a specified proportion of their annual revenues to cover the annual general budget expenditure of the Union, in the manner and on the scale to be prescribed in the Budget Law.

### Article 128

The law shall prescribe the method of preparing the general budget of the Union and the final accounts. The law shall also define the beginning of the financial year.

### Article 129

The draft annual budget of the Union, comprising estimates of revenues and expenditure, shall be referred to the Union National Assembly at least two months before the beginning of the financial year, for discussion and submission of comments thereon, before the draft budget is submitted to the Supreme Council of the Union, together with those comments, for assent.

### Article 130

The annual general budget shall be issued by a law. In all cases, where the budget law has not been promulgated before the beginning of the financial year, temporary monthly funds may be made by Union decree on the basis of one twelfth of the funds of the previous financial year. Revenues shall be collected and expenditure disbursed in accordance with the laws in force at the end of the preceding financial year.

### Article 131

All expenditure not provided for in the budget, all expenditure in excess of the budget estimates and all transfers of sums from one part to another of the Budget must be covered by a law.

Notwithstanding the foregoing, in cases of extreme urgency, such expenditure or transfer may be arranged by decree-law in

## **Appendix A**

conformity with the provisions of Article 113 of this Constitution.

### **Article 132**

The Union shall allocate in its annual budget a sum from its revenue to be expended on building and construction projects, internal security and social affairs according to the urgent needs of some of the Emirates.

The execution of these projects and the disbursement thereon shall be drawn from these funds, accomplished by means of and under the supervision of the competent Union bodies with the agreement of authorities of the Emirates concerned.

The Union may establish a special fund for this purpose.

### **Article 133**

No Union tax may be imposed, amended or abolished except by virtue of law. No person may be exempted from payment of such taxes except in the cases specified by law.

Union taxes, duties and fees may not be levied on any person except within the limits of the law and in accordance with its provisions.

### **Article 134**

No public loan may be contracted except by a Union law. No commitment involving the payment of sums from Union Exchequer in a future year or years may be concluded except by means of a Union law.

### **Article 135**

The final accounts of the financial administration of the Union for the completed financial year shall be referred to the Union National Assembly within the four months following the end of the said year, for its comments thereon, before their submission to the Supreme Council for approval, in the light of the Auditor-General's report.

### **Article 136**

An independent Union department headed by an Auditor-General who shall be appointed by decree, shall be established to audit the accounts of the Union and its organs and agencies, and to

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audit any other accounts assigned to the said department for that purpose in accordance with the law.

The law shall regulate this department and shall define its jurisdiction and the competence of those working therein, and the guarantees to be given to it, its head and the employees working in it in order that they may carry out their duties in the most efficient manner.

## PART NINE

### ARMED FORCES AND SECURITY FORCES

#### Article 137

Every attack upon any member Emirate of the Union shall be considered an attack upon all the Emirates and upon the existence of the Union itself, which all Union and local forces will co-operate to repel by all means possible.

#### Article 138

Only (5) the Union shall have army, navy and air forces with unified training and command. The Commander in Chief of these forces and the Chief of the General Staff shall be appointed and dismissed by means of a Union decree.

The Union may have a Union Security Forces.

The Union Council of Ministers shall be responsible directly to the President of the Union and the Supreme Council of the Union for the affairs of all these forces.

#### Article 139

The law shall regulate military service, general or partial mobilisation, the rights and duties of members of the Armed Forces, their disciplinary procedures and similarly the special regulations of the Union Security Forces.

#### Article 140

The declaration of defensive war shall be declared by a Union decree issued by the President of the Union after its approval by the Supreme Council. Offensive war shall be prohibited in accordance with the provisions of international charters.



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### Article 141

A Supreme Defence Council shall be set up under the chairmanship of the President of the Union. Among its members shall be the Vice President of the Union, the Chairman of the Council of Ministers of the Union, the Ministers of Foreign Affairs, Defence, Finance, Interior, the Commander in Chief and the Chief of the General Staff. It shall advise and offer views on all matters pertaining to defence, maintenance of the peace and security of the Union, forming of the armed forces, their equipment and development and the determination of their posts and camps.

The Council may invite any military adviser or expert or other persons it wishes to attend its meetings but they shall have no decisive say in its deliberations. All matters pertaining to this Council shall be regulated by means of a law.

### Article 142 (6)

The member Emirates shall have the right to set up local security forces ready and equipped to join the defensive machinery of the Union to defend, if need arises, the Union against any external aggression.

### Article 143

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.

The Supreme Council may call upon the aid of the local armed forces belonging to any Emirate for this purpose provided that the Emirate requesting assistance and the Emirate to whom the forces belong agree.

The President of the Union and the Council of Ministers of the Union collectively, may, if the Supreme Council is not in session, take any immediate measure which cannot be delayed and considered necessary and may call the Supreme Council into immediate session.

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### PART TEN

#### FINAL AND TRANSITIONAL PROVISIONS

##### Article 144

1. Subject to the provisions of the following paragraphs, the provisions of this Constitution shall apply for a transitional period of five Gregorian years beginning from the date of its entry into force in accordance with provisions of Article 152 (7).
2. a) If the Supreme Council considers that the topmost interests of the Union require the amendment of this Constitution, it shall submit a draft constitutional amendment to the Union National Assembly.  
  
(b) The procedure for approving the constitutional amendment shall be the same as the procedure for approving laws.  
  
(c) The approval of the Union National Assembly for a draft constitutional amendment shall require the agreement of two-thirds of the votes of members present.  
  
The President of the Union shall sign the constitutional amendment in the name of the Supreme Council and as its representative and shall promulgate the amendment.
3. During the transitional period, the Supreme Council shall adopt the necessary measures to prepare a draft permanent Constitution to take the place of this temporary constitution. It shall submit the draft permanent Constitution to the Union National Assembly for debate before promulgating it.
4. The Supreme Council shall call the Union National Assembly into extraordinary session at a time not more than six months before the end of the period of validity of this temporary Constitution. The permanent Constitution shall be presented at this session. It shall be promulgated according to the procedure laid down in paragraph 2 of this Article.

##### Article 145

Under no circumstances, may any of the provisions of this Constitution be suspended, except when Martial Law is in force and within the limits specified by this law.

Notwithstanding the foregoing, sessions of the National Assembly of the Union may not be suspended during that period nor may the immunity of its members be violated.

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### Article 146

In case of necessity defined by law, Martial law shall be declared by a decree promulgated with the approval of the Supreme Council on the basis of a proposal made by the President of the Union with the consent of the Council of Ministers of the Union. Such decree shall be notified to the Union National Assembly at its next meeting.

Martial law shall be similarly lifted by decree issued with the approval of the Supreme Council when the need, for which it was imposed, no longer exists.

### Article 147

Nothing in the application of this Constitution shall affect treaties or agreements concluded by member Emirates with states or international organisations unless such treaties or agreements are amended or abrogated by agreement between the parties concerned.

### Article 148

All matters established by laws, regulations, decrees, orders and decisions in the various member Emirates of the Union in effect upon the coming into force of this Constitution, shall continue to be applicable unless amended or replaced in accordance with the provisions of this Constitution.

Similarly, the measures and organisations existing in the member Emirates shall continue to be effective until the promulgation of laws amending them in accordance with the provisions of the Constitution.

### Article 149

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

### Article 150

The Union authorities shall strive to issue the laws referred to in this Constitution as quickly as possible so as to replace the existing legislations and systems, particularly those

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## Appendix A

which are not consistent with the provisions of the Constitution.

### Article 151

The provisions of this Constitution shall prevail over the Constitutions of the member Emirates of the Union and the Union laws which are issued in accordance with the provisions of this Constitution shall have priority over the legislations, regulations and decisions issued by the authorities of the Emirates.

In case of conflict, that part of the inferior legislation which is inconsistent with the superior legislation shall be rendered null and void to the extent that removes the inconsistency. In case of dispute, the matter shall be referred to the Union Supreme Court for its ruling.

### Article 152

The Constitution shall take effect from the date to be fixed in a declaration to be issued by the Rulers signatories to this Constitution.

Signed in Dubai on this day the 18th of July, 1971, corresponding to this day the 25th of the month of Jamad Awwal 1391.

(Signatures of the Rulers of Abu Dhabi, Dubai, Sharjah, Ajman, Umm Al Qawain, Fujairah). (8)

## Appendix A Footnotes

- 1 This constitution is based, to a large extent, on the model set by the Egyptian Constitution. A principal reason for the heavy influence of the Egyptian Constitution is the general place which the Egyptian legal system occupies as a model for other Arab countries.  
A second reason for the Egyptian influence was the participation of a number of Egyptian legal advisers and scholars in the process of drafting the U.A.E. Constitution. Dr. Wahid Ra'fat, the Egyptian scholar, was the main drafter of the final version of this constitution.  
The U.A.E. Constitution is also affected by British influences in some of its major characteristics. The federal system adopted by this constitution is a system favoured by the British for adoption by their former colonies and protectorates.
- 2 Ras Al Khaimah joined the Union on the 10th of February, 1972.
- 3 The original signatories of the Constitution did not include Ras Al Khaimah, which adhered to the Union on 10 February, 1972. A new paragraph was added by a Declaration of Constitutional Amendment No. 1 (1972) which reads as follows:-  
"In the event of the acceptance of a new member joining the Union, the Supreme Council of the Union shall determine the number of seats which will be allocated to that member in the National Assembly of the Union, being in addition to the number stipulated in Article 68 of this Constitution."
- 4 Decision of the Supreme Council of the Union No. 3, 1972.
- 5 Added by Constitutional Amendment No. 1 (1976).
- 6 Depleted by Constitutional Amendment No. 1 (1976).
- 7 This paragraph has been amended three consecutive times, the last of which was in 1981. The effect of the last amendment is to make the term of this Constitution expire on 1st of December 1991.
- 8 Ras Al Khaimah joined the Union on the 10th February, 1972.

Source: Hadif Rashid Al-Owais, The role of the Supreme Court in the Constitutional System of the United Arab Emirates, A Comparative Study.

## **APPENDIX B**

### **A TRANSLATION OF THE 1938 AGREEMENT IN DUBAI**

**ARTICLE 1.**

A Majlis shall be founded at once in the State of Dubai to be formed of members of the Albu Falasah and other tribes subjects of Dubai. This Majlis shall consist of 15 members who shall now and in the future be selected by the notables of Dubai.

**ARTICLE 2.**

The Majlis shall hold its meetings from time to time to deal with all matters concerning the affairs of the State under the presidentship of the Ruler of Dubai. Should he be, for any accidental reason, unable to attend one of the members of the Majlis shall preside.

**ARTICLE 3.**

The Ruler of Dubai shall enforce all the decisions arrived at by the majority of the Majlis.

**ARTICLE 4.**

The Ruler of Dubai shall refer to the Majlis all matters concerning the State of Dubai and take no action in any matter without the previous approval of the majority of the Majlis.

**ARTICLE 5.**

No decision whatsoever shall be considered operative unless it has been approved by the majority of the Majlis.

**ARTICLE 6.**

All the incomes and expenditure (of the state) shall be done in the name of the State of Dubai. No expenditure shall be incurred without the previous approval of the majority of the Majlis.

**ARTICLE 7.**

The Majlis shall not interfere in the private affairs and personal property of the Ruler of Dubai.

**ARTICLE 8.**

Should the Ruler, as president of the Majlis, refrain from attending any of its meetings without a reasonable cause, the Majlis shall hold its meeting and in his (Ruler's) absence pass such decisions as may be considered suitable. Such decisions shall be operative. But matters connected with His Majesty's Government shall not be discussed in the absence of the Shaikh.

**ARTICLE 9.**

The Ruler shall receive an allowance of one eighth of the total income of the State. This allowance is to pay for his household expenditure and that of his sons. He shall not receive any other allowance beside what is mentioned above.

Dated 24th Sha'ban 1357 equivalent to the 19th October 1938.

Signed:-

Sa'id bin Maktum

Mani' bin Rashid, on behalf of the Albu Falasah.

Witnessed:-

Shakhbut bin Sultan bin Zaid, Ruler of Abu Dhabi

Muhammad bin 'Abdullah bin Huraiz (Dubai)

Rashid bin Muhammad bin Dalmuk (Dubai)

Source: Anwar M. Gargash, Political Participation in Kuwait and the United Arab Emirates. p. 244