CHAPTER II
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THE CONSTITUTION : STRUCTURE AND FUNCTIONS

INTRODUCTION

THE 150 years long British rule in the Trucial Coast had implanted there the practices of western democracy. In the emirates prior to the formation of the federation, the basis of political rule was essentially derived from Islamic law, tribal customs, and principles such as shura, majlis and baiah. Shura means the consultation process with tribal notables and elders; majlis enables a ruler to grant daily audience to his subjects; and, baiah means an approval as well as a promise of allegiance to an ascending ruler.¹

While in the process of transforming itself into a modern system, the traditional political system had to give up certain sentiments and age-old traditions to establish a very effective system. In this process, one appropriate way open to them was to establish a popularly elected/selected representative government. Of course, given the fact that traditional and informal governance is still in existence, the emirates could not have

followed the western democratic tenets both in word and spirit.

The provisional constitution, which established the federation of the UAE, nevertheless endorsed the principles of representative rule. It's preamble sets the 'complete representative democratic rule' as the system's long-term objective.3

The constitution incorporated many principles of the western constitutionalism relating to the basic individual rights and obligations. It also adopted the classical western model of the trinity of government - legislature, executive and judiciary. But, in practice it lacks the 'balance of power' among the three units and puts less emphasis on 'checks and balances'.

Decisions are taken by a majority of five to two votes which must include the votes of Abu Dhabi and Dubai. The concentration of political power in Abu Dhabi and Dubai is resented by the rulers of some of the poor Sheikhdoms, and had been one of the factors which caused Ras al-Khaimah not to join the federation with others. The minority shall be bound by the vote of the majority. The council's decisions regarding procedural matters are taken by simple majority. These matters are to be defined by the by-laws of the council. The council's meetings are generally held in the union's capital. The meeting can

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2 Hereafter the Constitution refers to the Provisional Constitution.

also be held in any other place which should be previously agreed to.

Unlike in many cases of frustrated attempts at building constitutional rule among new nations (and perhaps old ones as well), the constitution of the UAE is undoubtedly a live document. A. M. Khalifa lists five unique features of the UAE constitution:

♦ First, it is the first constitution ever to be promulgated in the Gulf. It generated a sense of enthusiasm bolstered by the notion of securing a more enlightened self-rule.

♦ Second, this document has been voluntarily accepted by the local authorities of seven member units. In a sense, it can be viewed as both an expression of the status quo and a perpetuator of it insofar as traditional authority try to adopt, cautiously and gradually, to changing times and circumstances.

♦ Third, the constitution is an important document because it provides the main basis for political action by national and local governments. None of the seven member - emirates has so far attempted to frame a constitution of its own. This state of affairs, Khalifa believes, might encourage the trend towards the evolution of a unitary system of government at the national level in the long run.

♦ Fourth, whatever promises of material rewards this document purports to deliver to its constituents, individuals and political units, seem to have been
faithfully kept by the increasing wealth of Abu Dhabi, the federation's core unit and its most influential member.

Fifth, though called 'provisional', the constitution survived twenty five years and seems to remain in force for considerable time. "As years pass, through trial and error, amending and rescinding, this document may well one day achieve a permanent status". 4

It goes without saying that a proper study of the constitution is a pre-condition to understand any polity. Hence, a detailed study of the UAE constitution is warranted. The UAE provisional constitution came into being on 2 December 1971. The preamble to the constitution mentions the following aims and objectives of the federal endeavour: to provide 'a better life, a more solid stability and a higher international status for the Emirates and their people", to establish "strong relations among the Arab Emirates in the form of an independent sovereign federal state, able to protect its entity and that of the member states, co-operating with the sister Arab states and all other friendly member states of the United Nations and the international family of states in general, on the basis of reciprocal respect and the exchange of interests and benefits", to establish the basis of federal rule on a sound basis".

4 Ibid., p. 38.
Furthermore, the constitution sets for itself the task to provide its people with "a free dignified constitutional life, progressing at the same time towards a complete representative democratic rule in an Islamic Arab society free of fear and uncertainty". Truly aspire for the realization of all "our countries and our people to attain the status qualifying them to take their place among the civilised states and people of the world".

This chapter will examine the evolution of the constitution, the theoretical soundness of its various provisions and their actual performance in practice during the last twenty-five years. It will also present a brief discussion on federalism before attempting structural-functional analysis to evaluate its efficacy.

THE SALIENT FEATURES OF FEDERALISM

The basic features of the federation are as follows:

1. Unity is the main feature of unitary system where as union is the basis of a federation. That is why federation is born out of the desire for union rather than unity. Federation allows the units to preserve their identity by conceding their independent jurisdiction. Those areas that are of national importance will be left to the federal authority.

\[5^5\] For the Text of the Provisional Constitution of the United Arab Emirates, see, Appendix.
2. The states will lose their sovereignty as soon as a federation is formed. A new born state will be the sovereign among and over the federating units.

3. The federation consists of two parts - national or central government and the regional governments.

4. The powers of the government are divided into two parts: the central government has jurisdiction over subjects of a general nature, which are common to all and the local governments are given power over matters of local importance and utility which do not require uniformity.

5. Federation deliberately behaves in favour of union. It establishes the system of dual government and powers and functions will be distributed among the two units of government on the basis of a written constitution.

6. A federal constitution has the important character of rigidity so that neither central government nor the regional government may be in a position to deprive the other of its powers. In case any change is desirable, it has to be made by amending the constitution. Here the rigid nature of the constitution requires both the central and regional governments to act in cooperation with each other to pass the amendment.

7. Federation is a permanent one.²

Despite its many weaknesses federalism remains to be the most popular system of government for a heterogeneous state because nobody could so far devise a better model.

In this regard, it is worth citing K. C. Wheare, an expert on federalism:

One of the most urgent problems in the world today is to preserve diversities either where they are worth preserving for themselves or where they can not be eradicated even if they are not desirable, and at the same time to introduce such a measure of unity as it will prevent and facilitate cooperation. Federalism is one way of reconciling these two ends.  

TYPES OF FEDERALISM

Broadly, there are three types of federalism: 1) Dual federalism 2) Co-operative federalism or quasi-federalism, and 3) Permissive federalism.

1. Dual Federalism is also known as 'layer cake' federalism which means that the two levels of government should be co-ordinate and independent. "This doctrine holds that the national government could not exceed its enumerated powers and could constitutionally promote only a few specific policies; that the state governments and the federal government existed within distinct, separate, and equal spheres, and that tension rather than cooperation characterized the relationship

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between these two spheres". The 1789 federal constitution of the United States had incorporated the concept of dual federalism and successfully maintained it upto 1913.

2. Co-operative Federalism maintains only the coordination status between the two governments. Instead of independence it substitutes inter-dependence. A federal system stands not only for the distribution of powers between general and regional governments, both autonomous in their respective spheres, it also desires sincere cooperation between the two sets of political organisations in order to ensure that the ideal of coordination and complete administration of the divided spheres is attained as effectively as possible. The co-operative federalism has had its roots in the American model.

The Indian system has variously been described by scholars as cooperative or quasi federalism. But the constitution itself does not mention the word 'federal'. Prof. K.C. Wheare rightly visualises that if each regional government "keeps completely to itself, many matters will suffer from diversity of regulation, and government itself will be less efficient because

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11 Elazar, n. 9, pp. 85-96.
the experience of other states will have been neglected".12

3. Permissive federalism negates the existence of coordination and interdependence between the two levels of government and raises the importance of the central government over and above the creating units. The UAE constitution has initiated for the first time a clear-cut pattern of permissive federalism. This term was first coined by Michael D. Reagan.13

**UAE FEDERALISM COMPARED WITH OTHER FEDERALISMS**

The term federation is derived from the Latin word *Foedus* which means a covenant. Generally, a federation is brought about by a treaty or an agreement between the union or national government and its units. The units are called States in the United States, Australia and India, provinces in Canada and Pakistan, cantons in Switzerland, the Landers in the Federal Republic of Germany,14 and emirates in the United Arab Emirates.

A federation requires two conditions for its formation. First a body of countries closely connected by locality, history and race as to be capable of bearing in the eyes of their inhabitants an impression of common Nationality. Secondly, the existence of a very peculiar

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13 Reagan, n.6, pp. 164-68.
state of sentiment among the inhabitants which it is proposed to unite. "They must desire union and must not desire unity".\textsuperscript{15}

A federation comes into being either as a result of centripetal or centrifugal forces. It depends on the country's internal and external circumstances. In the case of the United states after civil war, the federation had been strengthened. Federalism is one of the most widespread principles of political organisation. When foreign and independent states are either too weak to resist the foreign aggression or economically too backward, they form the federal union and transfer some of their rights to it. It is called centripetal process. The federation in India is a result of decentralisation process where power flows from the centre to the units (states). This evolution is called centrifugal process.

A question arises here. Are the units, or the countries which form the federal union, subjected to a single administrative system? The answer here is no. They are constitutional and not administrative units. In other words every unit has its own basic system which defines its legislative, executive and legal powers. But, in spite of this, the federal constitution imposes itself directly on all the citizens of the union without requiring the approval of the local authorities.

DIFFERENCES BETWEEN FEDERATION AND CONFEDERATION

In the beginning of the nationalism tide in the nineteenth century and even years before that several forms of unity or federation emerged in the literature of political thought. Certain ruling families exploited this growing desire and rode the crest of its wave for personal ambitions, completely remote from the genuine interests of the peoples and in consistent with the essence of the national thoughts which should be fundamentally based on unity of interests among the neighbouring and a kin peoples of common history and the same destiny.  

The literary meaning of the confederation is an association of sovereign states which agree upon a common programme of action. Usually confederations one temporary. They tend to be dissolved once the very purpose of the confederacy has been fulfilled. The confederation, therefore, is most useful in promoting territorial - integration only when independent states are not willing to relinquish their national sovereignty but do desire some degree of institutionalised political coordination. Sometimes confederations transform into federations. (e.g., the United States and the Switzerland).

16 Summary of World Broadcasts (SWB) (London), Middle East (ME) / 3895, A / 7, January 22, 1972. (Hereafter, SWB, ME).
Even though the American federation is universally acknowledged to be the most successful one, there is no such thing as a model system of federalism. The best type is that which can be adopted to the needs of the people. And, what is to be kept in mind is that the level of political awareness among the citizens and the degree of democratization in a country largely contribute to the success or failure of a particular system of government. Federalism, as practiced in the United States, India, and the United Arab Emirates, exemplifies the differences in theory and practice.

The preamble to the UAE constitution categorically says that the UAE is an "independent sovereign federal state". However, several historians and political analysts use federation and confederation as synonyms when describing the UAE.


A three member committee was formed to draft a 'permanent complete charter' as the law of the land. Later, the supreme council adopted a resolution regarding the title of the document. In an official message to the committee the council maintained that the permanent complete charter' should be replaced by 'provisional constitution'. The difference between 'charter' and 'constitution' is only too obvious, as commitment to a
charter is usually weaker than commitment to a constitution".  

A charter usually means a commitment by members, who can be both sovereign and otherwise, to a set of goals. For example, the member states of the Arab League, who are all sovereign, are bound by a charter. On the other hand, a constitution is a basic legal framework governing the conduct of a state. In case of a federal union, a member state of the union is bound to transfer all its external prerogative and most of its domestic prerogatives to the central federal authority. It may be noted that while a charter can have sovereign states as its members, a constitution, with some like the UAE exceptions in the case of federations, can never have sovereign states as members. The member - emirates obviously preferred something more permanent and complete than a charter. But, they were and are not prepared to accept a permanent constitution. Hence, the prefix 'provisional' was added to the constitution. 

The three-member committee was given two months time to finish the work. According to a council resolution, the finished work was to be shown to a constitutional expert. Dr. Wahid Ra'fat was chosen to give comments and advises. The draft was completed in a record time on 12 July 1969. It was originally consisted of over seven chapters incorporating 126 articles. Dr. Ra'fat offered

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19 Ibid., p.123.
some remarks, the most important being whether it was appropriate to describe the constitution as provisional, because it would weaken its authority and value. He recommended for specific chapters on federal legislation, military affairs, local government the union president and the creation of a customs union.

These proposals were strongly opposed by Dubai. Given his suggestions and opinions, one can easily place him under the federalist category. The recent experience else where, especially in South Yemen in favour of made experts think federalism. Thus three draft constitutions were put before a subsequent meeting of rulers: One drawn up by the ad hoc committee, one by Qatar and the third by Dr. Fa'fat. Nevertheless, the rulers adopted none of them. Despite so much of confusion, the fourth session of the Supreme Council was convened in Abu Dhabi between 21 and 25 October 1969. The agenda was unanimously adopted: the first item was the “consideration of the draft provisional constitution prepared by the ad hoc committee and the constitutional expert”. The proposal for the permanent constitution could never materialise. The provisional constitution was adopted in the event of formation of a federation. As per the constitution, its extension should be decided at least six months before the expiry date. Ever since its adoption in 1971, the constitution has been extended for further five-year terms in 1976, 1981, 1986 and 1991. It restricted the powers of the federal union. It means individual emirates constitute ‘the rule’ and the federal authority the
exception'\textsuperscript{20} This was the situation when Bahrain and Qatar were members of the federation. All the provisions were made keeping in mind a nine-member federation.

The constitution is also considered to be a grant since it was conceived by the rulers and neither was it put to a popular referendum nor worked out by a constituent assembly, nor designated to be a contract between the rulers and the people. The rulers acted according to a certain popular direction. Moreover, they acted under the pressure of certain international, Arab, Gulf and domestic circumstances which rendered the formation of a federation the only option open to them.

Article 45 of the constitution provides for the structures of the federal government. The executive authority is enumerated in articles 46 to 67. Articles 68 to 93 contain provisions for the Federal National Council which is the legislative wing of the government. Articles 94 to 109 discuss federal judiciary. A detailed attempt will be made to analyse various governmental structures and their functions.

I) **SUPREME COUNCIL OF THE UNION**

Otherwise known as the Supreme Federal Council (SFC) is the highest authority in the federal union. The SFC is in some ways, the successor to the former Trucial states

\textsuperscript{20} Ibid., p. 197.
council, essentially a consultative body established by Britain in 1952 to facilitate the cooperation of the rulers in matters concerning their common interests. It comprises of the rulers of the seven emirates. Each emirate shall have one vote in the deliberations of the council. The SFC has different duties and responsibilities on the following matters:

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(a) POLICY MAKING

It formulates the general policy in all matters delegated to the union. Under Article 150 of the constitution the council is empowered to formulate policy and legislate on all matters of state including foreign affairs, defence, international security, education, public health, immigration, housing and development. It make sure that all provisions are carried on in accordance with the constitution and it also protect the common interests of the member - emirates.

(b) POWER OF RATIFICATION

The SFC has power of Ratification including various federal laws and annual laws, International Treaties and agreements and also the decrees related to matters subject to the ratification or approval by the council. The Ratification shall be done by a decree. It also maintain union’s annual general budget and balance-sheet.

(c) ADMINISTRATIVE POWERS

The SFC has to approve the appointment of the union’s prime Minister. It also empowered to accept the Prime Minister’s resignation and relieving him of his duties upon the suggestion of the president of the union. It has a higher authority of approving the appointment of the president and members of the Supreme Federal Court. It accepts their resignations and relieving them of their duties in particular circumstances provided. All these
are done in the form of 'decree'. It performs higher supervision of all affairs of the union in general.

(d) **LEGISLATIVE POWERS**

The SFC has power to draw up its own by-laws which shall include the procedure of the council's functions and the voting on the council's decisions. The council's discussions are treated as secret. The SFC has a general secretariat staff to assist in the performance of the council's functions.

There are two different varieties of matters: the subject matters and the procedural matters. The decisions of the Supreme Council, related to the subject matters, are taken majority of five to two votes, which must include the votes of Abu Dhabi and Dubai. The concentration of political power in Abu Dhabi and Dubai is resented by the rulers of some of the poor Sheikhdoms, and had been one of the factors which caused Ras al-Khaimah not to join the federation with them.\(^2\) The minority shall be bound by the vote of the majority. The council's decisions regarding procedural matters are taken by simple majority. These matters are to be defined by the by-laws of the council. The council' meetings are generally held in the union's capital. The meeting can also be held in any other place which should be previously agreed.

\(^2\) Ibid., p.273.
II) THE PRESIDENT OF THE UNION AND HIS DEPUTY

The Supreme Council of the union elects amongst its members a president for the union and a Vice-President. The Vice-President exercises all the prerogatives of the president in his absence. Both President and Vice-President stay in office for five calendar years and are eligible for re-election. Upon assuming the responsibilities of their offices, each of them shall repeat the following before the Supreme Council:

I swear by Almighty God to be loyal to the United Arab Emirates, respect its constitution and laws, safeguard the interests of the people of the union, perform my duty with honesty and sincerity and preserve the independence of the union and the security of its land.

----Article 52.

When the President or Vice-President posts become vacant on account of death, resignation or the termination of the rule of either of them in his own emirate for any reason, the Supreme Council shall be convened within a month to elect a successor to the vacant office. In extraordinary conditions when both the offices of President and his Deputy become vacant, the Supreme Council shall be convened immediately upon an invitation from any of its members or from the Prime Minister of the union to elect both vacant offices.
POWERS AND PRIVILEGES OF THE PRESIDENT

1. He presides over the Supreme Council meeting and directs its deliberations.

2. He is the ultimate authority to convene the Supreme Council and he declares its ending as well.

3. He calls for a joint session between the Supreme Council and Council of Ministers when the need arises.

4. He signs on the laws, decrees and federal decisions which are approved by the Supreme Council.

5. He appoints the Prime Minister, two deputy Prime Ministers and the Ministers of the Union. He accepts their resignation, in terms of their termination of office, for Prime Minister the approval should come from the Supreme Council and rest of the Ministers the suggestions should put forward by the Prime Minister of the Union.

6. He appoints diplomatic missions to serve in other countries. He also appoints the senior federal civil and military personnel. He accepts their resignation and can also terminate their services with the approval of the council of ministers. All these appointments, resignation or termination of their service shall be done by decrees in accordance with the federal laws.
7. He signs the credentials of diplomatic representatives and also accepts and receives the credentials of foreign diplomatic and consular representatives.

8. He can also supervise the implementation of federal laws, decrees and decisions through the federal council of ministers.

9. He represents himself as a President within the union and before foreign states in all international affairs.

10. He exercises the right to pardon or to commute a penalty. He can also approve the death sentence in accordance with the provisions of the constitution and federal laws.

11. He confers civil and military medals and decorations.

12. He also enjoys prerogative granted to him by the Supreme Council or by the provisions of the constitution or federal laws.
III) THE FEDERAL COUNCIL OF MINISTERS

In 1971, the total strength of the council of ministers was restricted to fourteen. However, it has been increased to the present strength of twenty-three. The first cabinet announced on 9 December, 1971, most of the ministers were either members of the various emirates ruling families or represented important interest groups allied with those families.\(^{23}\)

The ministers are chosen from among the citizens of the union and they should have sufficient experience and efficiency. But, for the members of the federal national council, they should have above qualifications and added to this the "adequate knowledge of reading and writing" [Article 70 (4)]. The members of the Federal Council of ministers including Prime Minister and Deputy Prime Minister take the both of office before the President of Union. The first federal council of ministers had a strength of 12 ministries.\(^{24}\)

The Prime Minister, being the head of the council of ministers, presides over the meetings, supervises the coordination of work between various ministries and of all federal executive departments. The Deputy Prime Minister shall exercise all the prerogative of the Prime Minister in his absence. Though the federal council of

\(^{23}\) Ibid.

ministers had higher executive authority, in practice the President, together with the Supreme Council, exercises more authority. At the same time the council of ministers also responsible, while dealing with the internal and foreign affairs.

*Powers of the council of ministers*

1. It implements the general policy of the union government.

2. It prepares the federal general annual budget and balance sheet. It also prepares various draft decisions and decrees.

3. It has a privilege to draw up the necessary regulations for the implementation of federal laws, disciplinary regulations which extend to departments and public authorities. The council of ministers, through special provisions in the law, can delegate authority to the Federal Minister concerned or any other administrative unit.

4. It is authorised to supervise the implementation of federal decisions, regulations, decrees and laws through all the departments concerned within the union and the emirates. It also supervises the implementation of Federal Court’s decisions, international treaties and agreements.

5. It is authorised to appoint and terminate the services of federal civil servants. It supervises the performance of federal Departments and public
authorities and the discipline of Federal employees.

The discussions of the council of ministers shall be secret. It always considers the vote of majority of the members. When such a situation arises that both parties acquire equal number of votes then the Prime Minister enjoys the casting vote. The members of federal executive authority, i.e., the Prime Minister, Deputy Prime Minister(s) and other federal ministers are not allowed, under the constitution, to take-up any other private or public employment. In other words, 'one person one post' is prescribed. The main aim of the ministers is to serve the interests of the union, by promoting the welfare disregarding personal interests. The Prime Minister and his ministers are collectively responsible before the President and the Supreme Council, in terms of the implementation of general policy. Each minister is personally responsible before the President for his post and over all functioning of his ministry. As and when the office of the Prime Minister falls vacant due to resignation, removal or death of the incumbent leads to the collapse of the whole cabinet. In such a case, the President can ask the ministers to continue temporarily to conduct the urgent matters until the formation of a new cabinet.

At the beginning of each fiscal years, the council of ministers submits to the President a report to be

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forwarded to the Supreme Council, on internal achievements, the union's relations with other countries and the international organisations. It also submits its recommendations to achieve progress in all fields. The council of ministers draws up its by-laws to include its functional procedure. It is also provided with a general secretariat staff to carry out day-to-day affairs. The salaries of the Prime Minister Deputy Prime Minister(s) and ministers are fixed by the law.

The Legislative Body : The Federal National Council (FNC)

The second most important pillar of the government is the Federal National Council (FNC). The UAE is considered to be the unicameral. The FNC appears somewhat superficial to be a parliament or legislature. The FNC consists of forty members, who are chosen from the seven emirates according to a weighted formula reflecting the population and influence of each. Abu Dhabi and Dubai are allotted eight seats each; Sharjah and Ras al-Khaimah send six each; and remaining emirates - Fujairah, Ajman and Umm al Qaiwain - send four each.26 The method of selecting members to the FNC is not specified in the provisional constitution. The FNC had its inaugural session in February 1972, elected from among the members its President from Dubai and its two - Vice-President from Abu Dhabi.27

26 Middle East Contemporary Survey (Tel Aviv), Vol., 1976-77, p. 360. (Hereafter, MECS).
27 Anthony, n.21, p. 274.
The constitution assigns the FNC an advisory role, "to offer opinions to the federal Supreme Council on matters referred to it by the cabinet". The FNC members are chosen by the respective ruler. Under the constitution, the selection process is purely an emiratal affair. There is one practical obligation that the representatives are drawn from among the young, educated men, or from their most loyal supporters within each emirate. In order to become a member of the FNC, one has to fulfill the following qualifications:

1. He should be a citizen of one of the seven emirates in the UAE.
2. He should not be less than 25 years of age.
3. He must have full civil rights, and is of good reputation, sound character, having never been sentenced in a crime.
4. He must have adequate knowledge of reading and writing.

The members of the FNC serve an initial period of two years which is renewable. Prior to starting the duties in the council, they all take oath before the council in an opening session. In case, the place of a member of the council becomes vacant whatsoever the reason, a substitute shall be selected within two months. The new members shall complete the remaining period of his predecessor. The council's meeting takes place in the capital, in certain circumstances, it can also be

convened at any other place with in the Union. This decision should be passed by a majority vote in the council and with the approval of the council of ministers. The council can disqualify any member. The disqualification move should be initiated by at least five members and endorsed by a simple majority. The Council also competent enough to accept the resignation of a member.

FUNCTIONS OF THE FNC

The council shall convene in an annual ordinary session for a period of not less than six months starting from the third week of the November of each year. It the council shall not be invited to meet in its annual ordinary session prior to the third week of November, it shall automatically meet on the Twenty-first of the same month. There is a provision for extraordinary session whenever the need arises. The Council will not discuss any matter except the one for which the extraordinary session is convened. The ending of the sessions is notified by the Supreme Council in the form of a decree.

The President of the union will deliver a message in the opening meeting of the ordinary session. In that he discusses the conditions of the country, the most important events which took place within and outside the country. He mentions the governments aims and projects which enable them to carry out the new developmental plans. The President of the Union may delegated this duty
to his deputy or the federal Prime Minister in his absence. At the very moment the FNC will elect a committee from among the members to prepare a reply to President's opening speech. First the report should be approved by the council then it goes to the President. Finally, this report is presented before the Supreme Council.

The members are free to express their opinions, ideas within the council is in session except in the act of his committing a crime. When the council is in recession, the council should be informed in advance. The council members are entitled to get remuneration's to be fixed by a law as well as travel expenses from their place of residence to the place of council meeting.

The council elects from among its members a President, two deputies and two controllers. The terms of office of both the President and his two deputies expire when the term of the council expires, but the two controllers' term will expire at the opening of the following annual ordinary session when two new controllers are elected.

The Council shall have Secretary General to be assisted by a member of staff directly under the Council's supervision. The Council by-laws underline their conditions of employment and work. The by-laws
define the prerogative of the Council’s President, his
two deputies and the two controllers.²⁹

In general, the Council’s meetings are open but at
the request of the government’s representative, the
Council’s President or one third of its members, shall
have a secret session. When the Council meeting takes
pace the majority of the members should be present
(quorum) to render the deliberations valid. Important
decisions are passed with an absolute majority. If the
votes are equal, then the President of the session can
exercise the casting vote.

²⁹ They shall outline all that is connected with the council’s affairs, committee members,
Secretariat, employees, procedure of debate and voting in the council and committees, and
other matters within the framework of the constitution.
TERMS AND CONDITIONS OF THE FNC

The federal President with the approval of federal Supreme Council may issue an decree to postpone the meetings of the Council for a period not exceeding one month. The President is empowered to dissolve the Council with the prior approval of the Supreme Council. The same decree should contain an invitation to convene the new council within a maximum period at sixty days.

FEDERAL LEGISLATION AND DECREES

Amendment Procedures

1. Federal laws are issued in accordance with the provisions of the constitution. The draft law shall become law after the following procedure:
   a) The Council of ministers shall draft laws and present it to the Federal national.
   b) The Council of ministers shall submit the draft law to President for his approval. Later it will be presented to the Supreme Council for ratification.
   c) The President of the Union shall sign the law and order the issuance of the same after ratification by the Supreme Council.

2. The draft law made by the Council of ministers with the consent of the Supreme Council, may be sent to the Federal National Council. It may introduce an amendment to the draft law or reject whole draft, if those
changes are not accepted by the President of the Union and Supreme Council, again they may send the same draft as it is. Since being a consultative body of the Union, Federal National Council's suggestions are not binding by either the President of the Union or the Supreme Council. So in this condition, the President is deemed to issue a law after ratification by the Supreme Council.

3. The constitution facilitates the provisions for issuing ordinances and when the situation arises that the federal law should be made in the absence of FNC to meet the contingency. In the given conditions, the Council of ministers may arrange for these laws to be issued by the Supreme Council and the President of the Union. These laws should be notified to the Federal National Council in the very first meeting.

LAWS ISSUED BY DECREES

When the Supreme Council is in recession, if the situation demands the immediate issuance of federal laws, the President of the Union and the Council of ministers together may issue whatever is necessary in the form of decrees. These decrees will have the same effect of the laws, provided they are not contrary to the provisions of the constitution. These laws by decrees shall be submitted to the Supreme Council. If the Council approves them, then the decrees shall have the force of a law, and the same will be notified to the Federal National Council. If the Supreme Council rejects it, the proposed
decree shall not have the force of a law. No decree shall be issued unless approved by the Council of ministers and ratified by the President of the Union. These decrees shall be published after the President's assent to them.

PARTIAL DELEGATION OF POWERS TO THE EXECUTIVE

The Supreme Council may delegate to the President of the Union and the Council of ministers to issue decrees in the absence of the Supreme Council. But the ratification of which is a prerogative of the Supreme Council, provided that such a delegation of power shall not include important matters.30

Two requirements are essential for the enforcement of laws:

1) Laws shall be published in the official Gazette of the Union within two weeks from the date on which a law is signed and issued by the Federal President and ratified by the Supreme Council. Such laws shall be operational after one month of the date of their publication in the official Gazette. Alternately, there may be another date specified in the law.

2) The laws do not have retroactive effect, i.e., the provisions of the laws shall not be applicable to the events that took place prior to the

30 Such as ratification of international treaties, agreements, the enforcement and lifting of martial law, declaration of a defensive war, or the appointment of the President and members judges of the Higher federal court.
promulgation of the said laws, except on matters taking place after date of the laws becoming operational. When necessary, the laws could specify otherwise, except in penal matters.

POWER AND PRIVILEGES OF THE COUNCIL

The all federal draft laws including financial draft laws are presented to the FNC before they presented to the President of the Union for submission to the Supreme Council: The FNC has power to debate on these laws. It can propose amendments to a draft, approve as it is, or reject it. The Council, in its ordinary session, shall debate the federal annual general budget draft law and the final accounts draft law. The federal government is required to notify the FNC of the international treaties and agreement it concluded with other states and various international organisations. Such notification has to contain all necessary details. The FNC may debate on any general subject connected with the affairs of the Union. It can also suggest some recommendations and the subjects it wishes to discuss. If the Council of ministers rejects the FNC’s recommendations, it may notify the reasons for the rejection. Either the Prime Minister or his deputy or any member of the Council of ministers shall represent the federal government before the FNC when it debates issues related to federal matters.

In practice, the FNC does not have any power because it can not initiate any legislation but simply offers
recommendations on draft laws which are not binding. Malcom C. Peck is of the opinion that though the FNC is ineffective at present, it has the potential to develop political expertise and leadership which may make it in future a useful national legislative institution.\textsuperscript{31}

**DISTRIBUTION OF LEGISLATIVE, EXECUTIVE AND INTERNATIONAL PREROGATIVES BETWEEN THE UNION AND THE EMIRATES**

The legislative, executive and financial powers are divided between the Union and the emirates. The Union list and the emiratal list are, though not specified, implicit in the constitutional scheme. The federal agreement exercises exclusive powers over those matters under the Union list. Similarly, individual emirates have powers over matters left to them. Article 101 authorises the Federal Higher Court to nullify any law made by any emirate if it is not compatible with federal laws or violating the constitutional provisions. This may be regarded as the power of "judicial review".\textsuperscript{32} Article 120 contains the Union list under 19 categories. The federal government is responsible for legislation and execution of matters inter alia, foreign affairs, defence, posts and Telegraph, aviation, education, public health, currency and federal information.


Article 121 enumerates matters, on which the federal government has power to make legislation only, such as labour relations, extradition of criminals, banks, insurance, and protection of animal and agricultural resources.

The individual emirates are responsible for all other matters which do not fall under the purview of the federal government. It is obvious that the 'residuary powers' are left to the emirates. The governments of emirates are empowered to conclude agreements of purely local administrative nature with neighbouring countries. However, such agreements should be in tune with the Article 120 (1), which grants to the federal government complete powers over foreign affairs, Federal laws, and should not contradict the interests of the union. Additionally, these agreements have to be notified to the Supreme Council in advance. In case the Council objects to them, the whole matter remains postponed. Until the federal government considers the objection. The member emirates are permitted, under Article 123, to become members of Organisation of Petroleum Exporting Countries (OPEC) and Organisation of Arab Petroleum Exporting Countries (OAPEC).

As if to uphold the spirit of federalism, Article 124 authorizes any emirate to express its opinion on any international agreement plans to conclude, if such agreement or treaty might affect the status of that emirate. In the event of a dispute between federal
government and the member - emirate, the matter is referred to the Higher Federal Court.

FEDERAL - EMIRATE FINANCIAL RELATIONS

The Union revenue consists of the following matters:

a) Taxes, fees and royalties levied in accordance with the federal law in matters which are within the domain of the Union's legislative and executive prerogatives.

b) Fees and wages received by the union in consideration of services rendered.

c) The emirates contributions in the annual budget of the Union.

d) Federal revenue from its own properties.

All member-emirates shall have to allocate a fixed proportion of their annual revenue to cover the federal annual budget and expenditure. The sum has to fixed by the budget law. The federal annual draft budget is prepared on the basis of revenue and expenditure, at least two months before the beginning of the financial year. This draft budget is presented before the FNC for comments, prior to presenting the draft budget to the Supreme Council for ratification. The general budget is issued by a law. There is a provision to issue a decree in unusual conditions. If the budget is not passed before starting of the financial year, the government can approve interim monthly allocations by a federal decree.
on the basis of one-twelfth of the previous financial year's allocations. Revenue collection and expenditure are carried out in accordance with laws that were in force at the end of the preceding financial year.

However, in some cases where it is absolutely necessary, it is possible to have this expenditure or transfer which is being done by a decree to be ratified by a law, in accordance with the provisions of Article 113 of this constitution. Every sum spent not included in the budget or in excess of the estimates therein, and the transfer of any sum from one section of the budget to another, must be done by a law.

The Union shall allocate in its budget appropriation of its revenue to cover reconstruction and developmental projects, internal security and social affairs in the light of the needs of some emirates. The Union authorities shall supervise the execution of these projects, how the allocations are spent, and finally coordinates the work with emiratal concerned. I need arises the Union shall pool some special fund for this purpose. No federal tax can be levied, adjusted or abolished except with a law. Every one has to pay tax except some cases are stipulated in law. All public loans and commitments which may result in expenditure from the federal General Treasury shall be allowed with a federal law.
AUDITOR GENERAL

The Auditor General is appointed by a decree for the purpose of auditing the accounts of the Union and all the institutions affiliated to it. He also audits any other accounts, which are referred to him. The accounts of the preceding year’s budget are presented to the Supreme Council for ratification only after the Auditor General submits his report.

UAE CIVIL SERVICE

A federal civil service was created in 1973. It is mainly based in Abu Dhabi. Its expansion was rapid until the oil revenue squeeze of the early 1980s. This change prompted the pruning of the number of employees. When the service was started its total strength was less than 4,000 but within 10 years period this number rose to 40,000 young, skilled individuals leave their poorly paid local jobs in search of better opportunities at the federal level, mainly in Abu Dhabi, the capital of the federation. This rapid growth had a negative effect on the performance of the government. As a consequence, for example, the 1984 federal draft budget allotted 10 percent less for government salaries than did the 1983 budget.

33 Khalifa, n. 3, p. 161.
The lack of UAE nationals and the decimal chances of trained workers led to the dependence on the expatriate. According to Khalifa, “although the gradual federalization of otherwise local administrative organs has contributed to this large increase, direct union recruitment has nevertheless been of great significance”.\textsuperscript{34}

Though exact numbers are not available, it is estimated, by Peck and Khalifa, the 40 percent of the union civil service comes from Dubai and 20 percent Abu Dhabi - with the remainder drawn from the northern emirates.\textsuperscript{35}

The unique feature of the civil service structure is that it is crowned with the expatriates. In December 1975, expatriates represented a clear majority of federal employees in at least six ministries.\textsuperscript{36} Expatriates, Arab and non-Arab, play a major role in the day-to-day functioning of the federal machinery. The federal administration has taken the government into every part of the UAE, thus playing a crucial role in making a reality of the federal union.

\textsuperscript{34} Ibid., p. 61.
\textsuperscript{35} Peck, n. 31, p. 124, also see Khalifa, n. 3, p. 61.
\textsuperscript{36} Petroleum and Mineral Resources, Planning, Economy and Commerce, Information and Culture, Youth and Sports and Justice.
JUDICIARY

As the Judiciary is one of the pillars of government in a federal state it is given a whole chapter of the provisional constitution. (Chapter - five which consists of articles 94 to 109) The system of law in the UAE is European ones but with a special emphasis on Islamic law (the Sharia) an emphasis that has recently been increased. The constitution itself is a blend of western and Islamic principles. 37 Between 1820 and 1971, the British foreign office in London assumed direct responsibility for the security and foreign affairs of the Arab Emirates. This extra jurisdiction did not extend to the subjects of the emirates.

Later period of the British rule i.e., after the independence of India in 1947 to 1971, the UAE's external and security policies along with other British protectorates in the Gulf were conducted by the political Resident (based in Bahrain) who in turn was assisted by political agents latterly in Bahrain, Qatar, Dubai and Abu Dhabi. 38 Throughout the period there was no organised judiciary in the UAE as well as in individual emirates. There was a system in which local rulers would hear complaints from the people. There would be certain kind of a settlements on the basis of tribal Arab traditions and Islamic norms. "Whereas cases relative to personal status were governed by the universally acknowledged

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38 Amin, n. 25, p.13.
rules of Islamic law, other cases were judged in accordance with local custom and equitable principles". 39

None of the seven emirates has written constitution. Within each one all power and authority is vested in the ruler. He has ultimate legislative, executive and judicial power through over the last few years. Some delegation of responsibilities has taken place. In June 1978, President Sheikh Zayed had enacted the law which established the new federal courts. The new legal system effectively transferred local judicial authorities to the jurisdiction of the federal system. 40

The constitution provided for the establishment of the Union Supreme Court and Union Primary Tribunals as the judicial organs of state. Each of the seven emirates enjoys internal autonomy under its hereditary ruler. The internal autonomy has so far been a hurdle to create a single unified legal system operative in the entire federation. 41 The constitution makes provision for in addition to the Supreme Court, preliminary courts. "These primary tribunals in Abu Dhabi, Sharjah, Ajman and Fujairah are now primary federal Tribunals, and primary Tribunals in those emirates have become circuits of the primary federal Tribunals". 42

39 Ibid., p. 395.


41 Amin, n. 25, p. 395.

Sources of the Law

Until the middle of the nineteenth century, the Sharia constituted the only basic law and civic charter of Islamic society. It provided safeguards against the excessive power by ruler or disparity in the duties of the ruled. The UAE represents a more complex situation with a modern constitution and a federal system of government in place, both the legislative and judiciary powers are divided between the union and the individual emirates though not very precisely. There are three sources of law for UAE.
(1) Islamic law (2) Constitutional law (3) Legislation.

Islamic Law

As such there is no formal ideological basis in the emirates. Islam is official religion, according to chapter I, article 7, of the UAE provisional constitution, and the Islamic Sharia is the 'principal source' of law in Union as well as in emiratal level. Arabism is emphasised more strongly in Article 6 which proclaims that the UAE to be a part of the Arab Nation (Umma). Though Islam is stressed but social impact or conditions also have equal influence.
Constitutional Law

After the Islamic law, the most important source of legal authority is the provisional constitution of 1971. According to A.V. Dicey it includes "all rules which directly or indirectly affect the distribution or the exercise of power in the state, and which are enforced by the courts. The constitutional law is the deliberate effort by the constituent assembly. In 1975, a constituent committee was appointed to prepare a permanent federal constitution, but the Federal National Assembly had chosen to continue with the existing provisional constitution." 43

Legislation

The Federal National Assembly is the formal legislative body. It consists of 40 members from various emirates. It does not assume the legislative power by itself, as the executive authority, with all its bodies, shares this power with it. "The Assembly does not initiate legislation and its members are directly appointed by the ruler of the respective emirate - not elected democratically." 44 The Assembly's major business is confined to debating bills that are submitted to it by the council of ministers. Though it is entitled to enter amendments, by addition or omission, and even approve or

43 Amin, n. 25, p. 399.
44 Ibid.
disapprove, it can not impose anything on the Supreme Council. The President of the Union and Supreme Court reserves the constitutional right to promulgate laws, irrespective of approval or disapproval by the assembly. The powers of assembly, are very limited. It considers the draft legislation proposed by the council of ministers and has an advisory status.

There were until 1978, two distinct judicial structures, the federal Supreme Court and the judiciary of each emirate. The federal Supreme Court was established in 1973. The other divisional courts have been formed under the federal courts Act of 1978.45

JUDICIARY AT EMIRATAL LEVEL

The constitution allows independence to the individual emirates with regard to the administration of justice. "These are called Sharia' Courts and are also answerable to the federal Supreme Court. The Court systems in the emirates of Dubai and Ras al-Khaimah are independent of the federal system, although they apply the civil procedure code".46 This will increase the domestic sovereignty in the individual emirates. Article 104 stipulates that local judicial bodies in each emirate shall attend to all judicial matters which have not been delegated to federal courts in accordance with the

provisions of this constitution. At emiratal level disputes in general are still resolved by the traditional local judges are known as quadi. Their jurisdiction covers all areas of criminal and civil law, although it is mainly related to the family law and succession between the local residents. However, courts of First Instance in Abu Dhabi, Sharjah, Ajman and Fujairah are now formally designated as 'federal courts of First Instance'.

In Abu Dhabi, by virtue of the civil courts Act 1967, the jurisdiction of the qadis (Sharjah Court) and state courts has been demarcated. In the absence of organised judiciary all relatively important civil and criminal cases, as well as judicial disputes arising from international contracts, are heard personally by the ruler of the concerned emirates. Each court system has an appeals process. Death sentences may be appealed to the
independent of the federal system. Nevertheless, despite the decree, judges in criminal cases involving non-Muslims may decide to impose civil court penalties and appeals court may overturn or modify Sharia penalties imposed on non-Muslims by lower courts.\textsuperscript{49}

In Abu Dhabi, Sharjah and Dubai there are state civil courts of first instance which deal with commercial and civil disputes that are outside the jurisdiction of the Islamic judges operating within the traditional Shariah courts. In Dubai, civil courts are vested with jurisdiction in all commercial cases. In the case of Sharjah, it has a civil court, established by the courts law 1971, which hears commercial and Labour disputes. This civil court enjoys restricted jurisdiction to hear road traffic offenses.

As the judiciary is one of the pillars of any government, it is given a whole chapter in the constitution. Justice is the basis of rule, judges are free and independent. They ruled by the law and conscience. The constitution provided one Federal Higher Court in the Union, and a number of First Instance federal courts.

The Federal Higher Court consists of a President and four judges. The total number should not exceed five altogether. Their appointments are done by a decree issued by the President of the Union approved by the Supreme Council. A law, the constitution envisages, shall

\textsuperscript{49} Ibid.
define the organisation of the court, its order, procedure, conditions of service, pension and the qualifications of its members.

The President of the Federal Higher Court and the member-judges are not relieved from their positions unless in certain conditions. Before assuming the duties, the President of the federal Higher Court and his deputies take the oath of office before the President of the Union and the presence of the minister of justice.

POWERS OF THE FEDERAL HIGHER COURT

1. It is empowered to deal with disputes between the member emirates of the Union or between one member emirate and the federal government, provided either of the concerned parties should approach the court.
2. It determines the constitutionality of the federal laws and declares null and void any emiratal law if it contradicts the federal laws.
3. All courts in the country are required to take note of the decisions of the Federal Higher Court in declaring the constitutionality of any law, legislation and by law.
4. Both federal and member - emirates are bound by the Federal Higher Court’s interpretation of the provisions of the constitution.

50 Death, Resignation, Lapse of the Contract, Retirement, due to ill-health, dismissal on disciplinary grounds or appointment to other office with the consent of the judge in question.
5. If the Supreme Council so asks, the Court will question ministers and senior federal officials, who are appointed by a decree, about their performance. This exercise is to be carried on in accordance with the special law for this procedure.

6. The Federal Higher Court has authority to try the Crimes which directly affect the interests of the Union. 51

The Federal Higher Court generally sits in the federal capital. If necessary it may sit in the capital of any member-emirate. The sentences passed by the Federal Higher Court are final and binding on all. The President of the Union may grant a pardon. 52

JUDICIAL REVIEW

According to a report by the State Department of the United States: "The constitution provides for the independence of the judiciary under the Supreme Court (the federal Higher Court) which has the power of judicial review and has original jurisdiction over disputes between emirates and between the Federal Government and Emirates. The constitution designates the Sharia’ as the basis of all legislation. Judicial

51 Crimes in this category are, in general connected with the security of the Union, forgery of official seals and documents of any federal authority and finally forging of currency.

52 Article 107: He can grant a pardon and commute any sentence upon a suggestion by the federal minister of justice and after the approval of a committee, presided over by the minister of justice and consisting of six members selected by the Federal Cabinet from among experienced and reputed citizens.
procedures reflect a mixture of western and Islamic models". 53

However, the constitution itself does not mention judicial review. But, this power of the judiciary is implicit in the Article 101 which stipulated that if the court is of the opinion that a law, legislation or by-law made by either federal or emiratal government is contrary to the constitution, "it shall be the duty of the authority concerned in the union or the emirate to take whatever steps are necessary to correct or remove the constitutional violations".

FIRST INSTANCE COURTS

The Union can have one or more first instance courts to meet in the federal (permanent) capital or the capital or the emirates to exercise their judicial powers in the following:

1. Disputes regarding administrative, commercial and civil disputes between the union and individuals whether the union is the plaintiff or the accused.
2. Crimes committed within the boundaries of the federal capital except those falling under the Federal Higher Court.
3. The first instance courts have exclusive powers on matters pertaining to personal status, civil

and commercial issues between individuals residing in the federal capital. They are to be regulated by a law, provided under Article 103, with regard to their organisation, departments, jurisdiction, procedures, oaths to be sworn by their judges and conditions of service etc.

The local judicial bodies in each emirate deal with all judicial matters which have not been delegated to federal courts. In certain conditions, a request is to be made by the concerned authority, regarding the transfer of certain or all of the prerogatives of the local judicial bodies to the federal first instance courts.

Article 105 provides appellate jurisdiction for the Federal Courts. They can reconsider sentences awarded by the courts at emiratal level. In such cases, the judgment of the federal courts is final.

ATTORNEY GENERAL

The Attorney General is appointed with the approval of the council of ministers by a federal decree. He is assisted by a number of employees. The Attorney-General is a constitutional functionary.
FEDERAL PRESIDENT'S SPECIAL POWER OF PARDON

As has already been mentioned, the President has special powers of pardon. All death sentences need to be approved by the President in order to be carried out. Additionally, he can commute sentences. However, Article 109 makes it clear that this power is not unlimited. For example, a complete pardon for a specific crime or crimes cannot be granted except by a law. Moreover, such law can only be passed in the context of the crime in question having not been committed.

CONSTITUTIONAL DEVELOPMENT

By the end of the 1975 the member emirates had been divided into two groups. The most controversial issue being the extension of the period of the provisional constitution which was due to be lapsed by December 1976. The final decision had to be reached at least six months prior to the expiry date. Among the two groups, federalists, who wanted to adopt a permanent constitution and were in favour of unification, were led by President Sheikh Zayed of Abu Dhabi. Other members of their group were Sharjah, Fujairah and Ajman. They believed that the federation became a fait accompli. The second group -- autonomists had wide-spread support for their proposal that the provisional constitution be extended for another five years. This group consisted of Dubai, Ras al-Khaimah and Ummal-Qaiwain. These three emirates were determined to concede only limited powers to the federal government.
keeping their respective agreements strong. The divide between federalists and autonomists was not the only problem that the fledging federation confronted.

1. Until 1976, nearly 98 percent of the federal budget was born by Abu Dhabi. The oil-rich Dubai and other emirates refused to increase their contributions. Given their known position, it was to be expected that they would not do anything to strengthen the federation. Moreover, they categorically said that the federal bureaucracy was a waste.

2. However, both the parties co-operated on certain issues. For example, they unanimously agreed that the federal government should control immigration, especially illegal immigration. The federal government was expected to regulate immigration not only to the UAE but also to the individual emirates.

3. The immediate problem that needed to be solved by the federal government was a border dispute between Dubai and Sharjah. Both federal machinery and the President failed to bring about a compromise between the parties. Now withstanding many differences between member-emirates, the President held that there could be no room for border disputes between and among federal member-states.

4. There was a nation-wide demand to incorporate information, security and intelligence services into federal bodies.
5. Regarding the criteria to select ministers, some suggested that the selection should be based on the competence of individuals rather than their being representatives of emirates interests.\textsuperscript{54}

President Zayed had declined to stand for the second term until and unless the above five issues were resolved in such a way to further strengthen the federalism. He was confident that, because of his generosity and his being generally popular, his candidacy was acceptable not only to the autonomists but also to the neighbouring countries like Iran, Kuwait and Saudi Arabia.\textsuperscript{55}

Several Supreme Council meetings took place between October and November 1976. Finally, the rulers could agree to extend the provisional constitution (with some modifications) for another five years. On return, they reached consensus on the following matters:

1. To amend Article 142 of the constitution in order to place the unified army under the control of the central government. It also prevented individual rulers to buy or raise troops. The right to levy armed forces and acquire weapons was placed exclusively, in the hands of the federal government.\textsuperscript{56}

\textsuperscript{54} MECS, 1976-77, n. 26, p. 359.

\textsuperscript{55} He gives generous grants from Abu Dhabi’s revenues to the small principalities and to other states in and outside the Gulf.

\textsuperscript{56} In two years, however, the Unity of the federal Defence force was under strain. A dispute arose in February 1978, when President Zayed appointed his son as commander-in-chief of the armed forces, without consulting the Vice-President; Sheikh Rashid, the ruler of Dubai.
2. It was decided to establish a public security office attached to the President's office and the intelligence services of the different emirates be merged.

3. Through the federal agencies, the President was empowered to control the matters related to immigration, resident permits and border control.\(^57\)

4. All information media and mass media were loosely integrated and centralised. These were kept under the control of the federal ministry of Information.

5. Each emirate was to contribute 20 percent of its revenues to the federal budget. This would in turn bring the emirates to come close to the federal affairs. It would also lessen Abu Dhabi's financial burden.

6. Other important policy decision was to reshuffle, reduce the number of ministers from 20 to 23 and appoint more technocrats.\(^58\)

The President issued a decree on 28 November 1976 extending the provisional constitution for another five years. On the following day the Supreme Council unanimously re-elected Sheikh Zayed and Sheikh Rashid as the President and Vice-President respectively.

Thereafter, the forces of Dubai and Ras al­-Khaimah refused to accept orders from federal command and Dubai independently ordered a number of British tanks.

\(^{57}\) By this time, the number of aliens in the UAE had reached 75 per cent of the population.

\(^{58}\) Taryam, n. 18, p. 137.
THE CHANGES IN FEDERAL NATIONAL COUNCIL

The Federal National Council (FNC) had been dissolved on 2 December 1976. Initially the representation in the FNC was on the basis of power and wealth drawn from the member emirates. It was replaced by the President according to the system of 'Proportional Representation'. According to this formula, the council of ministers was to include eight ministers from Abu Dhabi, five from Dubai, four from Ras al-Khaimah, three from Sharjah, and one each from Fujaireh, Ajman and Ummal-Qaiwain. The total number of ministers was not be exceed 23. The most important change brought about by the reshuffle was to elevate the 'commoner' and technocrats to the key posts. Tiryam 'Umran Tiryam, the former UAE ambassador to Egypt, was made speaker of the FNC and an able technocrat, Said at-Ghubash, was appointed as the minister of Planning. Nevertheless, key government positions were still occupied by members of the ruling families.

The new government came into being in January 1977. The success of the federalists made them to set the priorities. The government was pressurised to increase the salaries of civil servants and other state employees by upto 150 percent in order to control unrest and among them. The assembly also proposed to raise the cost of living allowances as well. There were other important steps taken by the newly formed government:

1. Proposal to strengthen the federal institutions. In this process, Abu Dhabi was the first emirate to attach its Department of Education, Health and Information, with their budgets to the federal ministries.

2. Adoption of a new population policy to tackle the problem of immigration and residency.

3. The introduction of federal economic planning.  

The actual terms of economic planning and development, in fact, often led to competition and duplication. For example, the new minister of planning, Said al-Ghubash, faced with the complicated task of drawing up a joint development plan for the principalities.

According to A.M. Khalifa, it may be called "Ostentatious duplication" or the inclination of some emirates to build infrastructures just because a neighbouring one has done so. The best example of its infrastructural spiral can be found in several international airports and seaports within short distances.  

During the period 1978-79, the UAE politics revolved around the "State of the Union", i.e. the question of federal powers versus the authority of individual emirates. Due to the traditional rivalry between Abu Dhabi (leader of the federalists) and Dubai and Ras al-Khaimah (leaders of the autonomists), the federal bodies

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60 Ibid.

61 Khalifa, n. 3, p. 74.
remained ineffective till the end of 1978. However, it did not inflict a fatal blow to the federation. Several countries (Britain, Kuwait, Bahrain and Soviet Union) initiated mediation efforts. As a result, a new federal cabinet was formed in July 1979. The core problems were still alive in the minds of the rulers. In December 1978, when the nation celebrated the seventh anniversary of the UAE, its Vice-President and the ruler of Dubai was away on a hunting trip to Pakistan. It was symbolic in that Dubai wanted to 'prove' the unimportance of the federation. The period from 1976 to 1979 was characterised by the close collaboration between the council of ministers and the national assembly. They called for parliamentary democracy and stronger federal control over individual emirates. Since then, the FNC has been able to debate in detail all matters domestic as well as foreign. Indeed, the FNC became almost a legislative body and demanded that the recruitment of its members should be through election. In March 1979, the Supreme Council held many meetings and, at the same time, many demonstrations took place in Abu Dhabi expressing support federal unity. Finally by 26 March 1979, the federal government and the FNC jointly prepared a ten point memorandum. The main items included were viz., their intention to consolidate federal authority; complete integration of military units in a single federal authority; new rules for assessing the share of each emirate in the federal budget, improved methods of

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62 Hiro, n. 28, p. 95.
accounting for the use made of federal funds; and steps to speed up the drafting of a permanent constitution. 63

The rulers of Dubai and Ras al-Khaimah objected to the granting to the federal authorities of the exclusive control of arms purchases, the unification of import regulations and greater federal supervision over the entry of aliens into any part of the UAE. Dubai published a nine-point memorandum in which it again highlighted the old grievances against Abu Dhabi. Even the mediation efforts failed to bring the rulers together.

At this juncture, a constructive role was played by the Kuwaiti Deputy Prime Minister and Foreign Minister, Shaykh Sabah al- Ahmad al-Jabir al - Sabah. A week-long negotiations he initiated had resulted in a reconciliation on 30 April 1979. The then Prime Minister and Sheikh Rashid’s son Shaykh Maktum Ibn Rashid al Maktum resigned on 25 April 1979. Sheikh Rashid assumed the office of the Prime Minister in addition to his post Vice-President. Their development enhanced his prestige considerably.

In return to this, Dubai agreed to place a half of its revenue at the disposal of the federal budget. 64 The composition of the cabinet offered Dubai some compensation for consenting to a stronger federal authority with the premiership held by Sheikh Rashid and one of the two posts of Deputy Prime Minister held by his

54 Taryam, n. 18, p. 246.
son Maktum. Two of the three key positions in the cabinet were now in the hands of Dubai. Generally, the seven emirates are represented in the federal council of ministers, although since 1979 the ministerial posts have been distributed on the basis of merit and kinship ties ceased to be the sole qualification for such posts. This is due to the personal attitude and influence of Sheikh Rashid. The federal executive gained steadily political influence ever since he became the Prime Minister.

In this new cabinet, two controversial appointments took place. One is of the foreign minister, Ahmad Khalifa al - Suwaydi and of the minister of State for Foreign Affairs, Rashid 'Abdallah'. President Zayed included both of them in a list of supposedly 'Nasserist' sympathizers whom he considered to be dangerous and wished to keep them out.

Nevertheless, the differences between autonomists and federalists continued on abated. For example, Rashid had dropped Abdallah Ibn 'Umran Tiryam from the post of minister of education and youth. It was believed that Rashid was unhappy over Umran's inability or unwillingness to suppress the pro-federalist demonstrations in March 1979. Umran retaliated in an interview to the Financial Times, where he asked, "why not have a direct election? We are keen to see that. Do

you think out new educated people will accept the old system." However, all these twists and turns could not increase the prominence of the FNC from being a consultative body. Umran pointed out that the FNC could criticize, ask for amendments to laws, and legislate. Unfortunately, their had never to be.

By the mid-1979, though all the differences could not be resolved, Abu Dhabi and Dubai had worked-out a working partnership. At the same time, the Iranian Revolution and Afghanistan crisis had an impact on the UAE politics. As Dubai had been a traditional ally of Iran, the advent of Shia regime in Tehran had increased its responsibilities. Now it should protect the UAE from revolutionary infiltration. The aftermath of the Iranian revolution provided President Zayed with an opportunity to prove that his commitment to federalism went beyond words. For whatever reasons, petroleum prices in the UAE rose sharply which triggered street demonstrations in February 1980. As a consequence, the prices of all food items. The federal National Council appointed a special 10 - members committee headed by its speaker Tiryam Umran Tiryam to find a possible solution to the crisis. Also, the cabinet directed the then minister of petroleum and mineral Resources, Dr. Mani Said al-Utayba to investigate the reasons for the Price rise and ways to control prices. Meanwhile, President Zayed allocated 200 m dirhams ($53m) to subsidise the price of petroleum


products in the Northern emirates. The resulting low prices were, however, applicable only to the UAE citizens. This timely move had earned Zayed of the support of thousands of citizens from various walks of life, students, governmental officials and tribesmen. The popular mood was in favour of consolidating the federation. This development was widely interpreted as an expression by people of their dissatisfaction over the slow-pace of federalization. However, they were not against their rulers, on the contrary, they were supporting them, but they wanted them to work together for the sake of the future of the region, a matter which inevitably necessitated that each ruler should voluntarily give up some of his powers. This can be said as the first instance of mass participation in the affairs of the state ever since the formation of the UAE in 1979.

During the FNC debates, the Deputy-speaker, Hamad Bushabab revealed that the Council had already advised the government two years before to establish a National Fuel Distribution Company to replace the foreign firms. Under the constitution, each emirate has its own separate fuel policy. The then minister of petroleum complained that his ministry was no longer able to exercise real

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70 MECS, 1979-80, p. 429.
71 Taryam, n. 18, p. 243.
72 Article 123 even concedes the right of each emirate to retain its membership in the Organisation of Petroleum Exporting Countries (OPEC) and the Organisation of Arab Petroleum Exporting Countries OAPEC.
control over petrol distribution.\textsuperscript{73} The FNC formed a committee in December 1980, Chaired by its Speaker, Tiryam ‘Umran Tiryam, to study the ways and means needed to establish a permanent constitution. The committee was confronted with the following issues:

a) The scope of federal powers, and; would borders between the emirates become meaningless? Would local institutions merge with the federal bodies? Would the federal army replace the local ones?

b) The establishment of an elected legislature, entailing the introduction of some kind of democratic practice.

Even by 1995, none of the issues could be resolved. In an interview, President Zayed said, “everything happens at its proper time as in Kuwait”. When asked about introducing a parliamentary system, he declared, “we are ... thinking of promoting and laying down sound bases for forming the needed methods which would, in turn, bolster representation and participation - we would leave the social process to take its course gradually until suitable circumstances prevail.”\textsuperscript{74} The Tiryam committee decided to ask the Supreme Council to consider closer integration. It maintained that the federation would never be able to solve any problems unless it became truly unified. Another problem regarding budget was solved with Abu Dhabi and Dubai reaching an agreement. They agreed to contribute a half of their oil revenues to

\textsuperscript{73} MECS, 1979-80, n. 70, p. 429.

\textsuperscript{74} MECS, 1980-81, p. 503.
the federal budget and to clear their dues to the budget by depositing the amount with the Central Bank. 75

The quinquennial extension of the provisional constitution has always been an occasion to incite a heated debate on whether to have a proper federation or not. For example, a local opposition weekly warned the parties to take a quick decision before 'the boat sinks'. Prolonging the provisional constitution for another five years, the weekly claimed, would amount to 'certain suicide' for the federation which had been faced with threats from two directions: the ever-increasing number of aliens and its neighbouring states' territorial ambitions. The only way to tackle these dangers was to introduce a constitution which took into account the domestic and regional changes since the UAE came into being. 76

While delivering the opening address to the new federal council on 28 December 1981, President Zayed summed up the federation's first decade and reviewed its regional as well as international affairs. He also sets its future goals:

1. Strengthen the concept of The federation should continue to present development projects and plans;

75 MECS, 1979-80, n. 70, p. 430.

76 MECS, 1981-82, p. 524.
2. Reinforce internal security and to fight 'subversive currents and tendentious idea', as well as corruption.

3. Strengthen the concept of 'sound democracy give youth the opportunity to shoulder responsibility' with in a frame work of 'commitment to society's values'.

4. Adhere more strictly to Islamic law, teachings and principles.\(^7\)

The UAE federation had entered its second decade both with promise as well as problems. Many an inherent problem remain unsolved. For example, the Federal National Council tried to assert its constitutional rights but in vain. The FNC had challenged the power of government to legislate during the council's recess. By June 1982, the FNC was allowed to debate issues like oil policy and the control of foreign banks.

The new Iran under the Islamic revolution started treating the regimes in the Gulf with contempt. Moreover, the Iran-Iraq war, which broke out in September 1980, had an adverse affect on the security environment of the region. Six Gulf States - Saudi Arabia, UAE, Oman, Kuwait, Bahrain and Qatar- established the Gulf Co-operation Council (GCC) on 4 February 1981. It's objectives were to promote and deepen mutual co-operation and co-ordination in all spheres in view of the bonds between these states, represented by their special relationships and by common traits born out of a common

\(^7\) Ibid., p. 525.
creed, similarity of government systems, unity of heritage, similarity of political, social and demographic make-up and cultural affinity.°

During the opening session of the FNC in 1984, an editorial in Al-Khalij called upon the government directly to delegate its legislative power:

The people are the 'original party' to the historic contract which gave rise to the federation as a step on the road towards complete, comprehensive fusion. We do not think that any one imagines that the 'original party' will refrain from two basic tasks that are the core of participation: legislation and the monitoring at all levels of various aspects of national activity".°

The call for introducing greater democracy in the federation was linked to other demands for strengthening federal institutions vis-à-vis those of the individual emirates. It was also a fact that revenues received by Abu Dhabi and Dubai from their overseas investments were not available to federal government. It is noteworthy that the out-spoken Al-Khalij was published in Sharjah, whose ruler, Sheikh Sultan Iban Muhammad al-Qusimi, was foremost among the rulers to advocate the need to strengthen representative institutions. He reportedly proposed a contribution of 20 percent of oil revenues for education and social service, as well as a ceiling on

78 Taryam, n. 18, p. 248.
defence spending.\textsuperscript{80} Abu Dhabi and Dubai having monopoly over the offices of the President and Federal Prime Minister, any strengthening of the FNC was tantamount to a shift in power at the federal level to a body where the smaller emirates enjoyed a great voice.\textsuperscript{81}

This was the time that Iran-Iraq war was at its peak. All GCC states had taken a clear stand in favour of Iraq but the UAE refused to identity itself with Baghdad. Because the UAE was faced with budgetary problems and the main trade partner to Dubai was Iran. So the UAE was allowed to maintain cordial relations with both Iran and Iraq. The Deputy Supreme Commander of the UAE and heir apparent of Abu Dhabi, Sheikh Khalifa Iban Zayid, explained the country’s policy towards the Gulf war by stating that good relations with both countries would be a prerequisite for any UAE effort to bring an end to the war. Throughout, the refrain was a simultaneous stress on the UAE’s Arab ties with Iraq and its “ties of neighbourhood and Islamic brotherhood” with Iran.\textsuperscript{82}

The extension of the provisional constitution in 1986 again proved to be a catalyst to initiate a debate on Federalism. Conflicting opinions were expressed on the Distribution of powers and the shape of federal structure. Unaffected by this factor, the country’s foreign policy entered the realm of realpolitik. The UAE established contacts with rival groups both at regional

\textsuperscript{80} Financial Times (London), January 21, 1986.

\textsuperscript{81} The Times (London), November 16, 1983.

\textsuperscript{82} Emirates News (Abu Dhabi), May 22, 1984.
and global levels. The country maintained close relations with pro-western Jordan, Morocco and Egypt as well as the pro-soviet Syria, Libya and Algeria. Towards the end of 1984, the UAE established diplomatic relations with China and the Soviet Union.

A coup attempt in Sharjah on 17 June 1987 had exposed the weaknesses of the country once again. Sheikh Abdul Aziz, brother of the ruler who was away in London, announced the abdication of his brother on grounds of financial mismanagement. Later the Supreme Council declared the coup attempt to be null and void. Finally, this problem was solved with the federal help in achieving consensus.

As 1988 entered, the UAE’s fortunes appeared brighter. The cease-fire in the Iran-Iraq war, which had inflicted great economic losses on the UAE, was followed by hopes of economic revival by virtue of the country’s position as a regional entrepot. Carrying the banner of Arab Solidarity, the UAE further consolidated its position in the regional and inter-Arab arena while also serving as a mediator. 83

Sheikh Rashid, the ruler and founder member of modern Dubai and Vice-President and Prime Minister of the UAE, died at the age of 76. There was a smooth transfer of power. Sheikh Rashid had taken rulership from his father in 1958. Because of his shrewd and energetic direction Dubai transformed from village town into a

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thriving port-city. Later, he joined with Sheikh Zayed of Abu Dhabi to create the UAE after the British withdrawal from the Gulf in 1971. He had sometimes been described as the 'best director in the Gulf' rather than a ruler of a traditional Arab State.84

The death of Sheikh Rashid prompted the comprehensive government reorganisation in a decade. The new ruler of Dubai, Sheikh Maktum Ibn Rashid Al Maktum, was installed as Prime Minister and Vice-President of the federation. The new cabinet had two striking features. A new generation of leaders emerged with Sheikh Zayed's two sons Sheikh Sultan and Sheikh Hamdan were appointed as Deputy Prime Minister and Minister of State for Foreign Affairs respectively. The most prominent change in cabinet was the replacement of the veteran oil minister, Mani Said al-Utayba, who had held the post since the founding of the UAE, by a young technocrat, Yusuf Ibn 'Umayyir Ibn Yusuf. These changes and reliance on traditional Majlis methods of reflecting public opinion received wide-spread endorsement.85

Nevertheless, by the early 1990s Abu Dhabi became preoccupied with the Gulf crises and the collapse of the Bank of Credit and Commerce International (BCCI). The federal structure, however, was quietly moving ahead.

The Gulf crisis had its positive effects on the structure of the seven-state federation. The most

84 MECS, 1992, p. 700.  
85 Ibid.
prominent feud that threatened to overshadow the
development of the federation - the Abu Dhabi - Dubai
rivalry - was gradually being replaced by cautious
partnership. Even the decision of Dubai - owned Emirate
Airlines to fly for the first time from Abu Dhabi in
January 1993, was regarded to be significant. It can be
cited as an evidence - but not enough at that - that
after all Dubai is not so detached. 86

CONCLUSION

That the United Arab Emirates has survived as a
federation with constitutional governance is in itself a
great achievement. It has been extending the Provisional
Constitution of 1971 once in every five years, thus
exemplifying the fragile nature of the Constitution. This
fragility derives, to a large extent, from the peculiar
political circumstances. A federation by definition
involves the division of powers among the constituent
units on the one hand, and a central authority that keeps
them united on the other.

A written and rigid constitution is a pre-requisite
for such an arrangement. A very important and classical
federal principle is that all the constituents of a
federation are equal. The unique feature of the UAE is
that the constituents units have retained their unequal

status within the federation. Among the seven Sheikhdoms, Abu Dhabi and Dubai are playing prominent roles of keeping together all the components, by assuming larger roles for themselves. They are not only the sources of stability but, some times, threaten the very survival of the federation.

The UAE has been able to withstand all the trials because its rulers have given more importance to traditions and conventions rather than the provisions of the constitution. This gave them the essential flexibility to steer clear of any political turmoil. Unlike in 1971 or few years there after, nobody now questions the viability of the UAE’s political system.

It has been the foresight and hard work of the federal president and the ruler of Abu Dhabi, Sheikh Zayed, which made the UAE’s federalism an exemplary model in the entire Middle East. Being the largest as well as richest, Abu Dhabi has been a unifying force since 1971. According to Malcolm C. Peck, “Sheikh Zayed has been prepared to make very considerable political sacrifices for the UAE’s success, as was evident in his willingness to accord parity to Dubai within the federation”.

The absence of political parties and elections can be justified as almost 80 per cent of the population are immigrants. At the same time, the introduction of modern political concepts such as adult franchise, elections and political associations can not be postponed for ever. The

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87 Peck, n. 31, p. 130.
UAE leadership appears to have realised this imperative. As long as the country could safeguard the present, temporary arrangement, it can be said to be on the right track to become a full-fledged democratic federation.