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Extract from the memorandum from the  
Prime Minister of Libya, Mr. Mustafa Ben  
Halim to The King.

(January 1955)

TOP SECRET

An extract from the memorandum presented by the Prime Minister of Libya, Mr. Mustafa Ben Halim to The King.

"And now with these points in view, I have the honour to submit this memorandum on the light of experience in other countries, and of local experience of the existing system, and as a result of my reasonable experience in several government posts in Libya prior to its independence - during the Emirate in Cyrenaica - and after independence as a Nazir in the province and then as a Minister in the Federal Government and lastly as the Prime Minister of Libya.

The aim of this memorandum is to remedy the existing machinery of government and administration by making it more efficient and productive and less confusing and costly. By doing this I feel that I am faithfully serving my great King and my beloved country. I also sincerely believe that the suggested remedies and plans contemplated should be accomplished and executed by the King himself who feels a special responsibility towards his loyal subjects who love Him and will stand as one solid block behind Him. I further have no hesitation in saying that if these changes are not accomplished and executed during the reign of the King, it will then be most difficult to have them accomplished after Him.

This country had chosen the Federal Form of Government in 1950 - 1951 for many reasons. The following reasons are some of them.

1. The desire to safeguard the small populated provinces (Cyrenaica and the Fezzan) against the dominating influence of the large populated province.
2. Some remains of many old differences were still existing in many minds at that time.

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3. The long distances between the developed centres of the provinces, the existence of vast deserts between them and the lack of good means of communication between them. This last factor is still existing to some extent until now.
4. The desire to prevent the Italians from returning to Cyrenaica.
5. It may have occurred to the King to create special possibilities for Him to supervise the activities and dangerous conduct of some members of the Sennusi family.

The Western Powers have encouraged and backed the Federal form of Government in Libya because they had thought that this system will enable them to partition the country between them into spheres of influence.

After the Anglo-Libyan treaty it appears now that Great Britain is no more interested in the existence or continuation of the Federal system in Libya. The same thing does not apply in the case of France, for she still desires the continuation of the Federal system with the hope that through it she can devour the Fezzan.

We can safely say therefore that the encouragement and backing of the Western Powers to adopt the Federal system of Government in Libya in 1950 - 51 was in no way sharing or backing the point of view of Cyrenaica, but it was a mere coincidence where two personal interests met.

Before independence both Cyrenaica and Tripolitania had each a Cabinet. Upon independence the title of minister in the province was changed into that of Nazir and the provincial Cabinet was changed into an executive Council presided over by a Wali.

In some of the Royal Decrees appointing the Walis the appointment was made after consultation with the Prime Minister, and in some others the appointment was made without the knowledge of the Prime Minister.

The working of the constitution was satisfactory although

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there were many difficulties and problems which resulted mainly from conflicting interpretations to some articles of the constitution. There was clear disagreement between the Prime Minister and the Wali of Cyrenaica - Mr. Mohammed Sakisly. The relationship between the Prime Minister and the Wali of Tripolitania was a good one without any incident of importance. Around the middle of the year 1953 Mr. Fadel Ben Zikri the Wali of Tripolitania was dismissed and a new Wali was appointed without the knowledge of the Prime Minister. I know that the Chief of the Royal Diwan, the late Mr. Omar Shemeeb, informed the new Wali that he has nothing to do with the Federal Government and he has to deal directly with the Royal Diwan. This grave step and attitude was the beginning of a painful regime of disagreements and conflicts between the Prime Minister Mr. Mahmoud Muntasser and the Wali of Tripolitania Mr. Sadeek Muntasser. A new serious phase then started by the feeling of the Walis that they are not subject to the Federal Government in any matter and that the latter has no control over them for they are only responsible to the King in the administration of their provinces. This state of affairs resulted in one important constitutional question remaining without an answer. The question is that if the Walis who exercise executive powers are only responsible to the King who is Himself not constitutionally responsible, where then is the chain of responsibility which must exist in every truly democratic form of government.

However, things continued to proceed in manners of this kind until I was called to form a new cabinet. I then adopted a policy of using my personal friendship and good relationships in making things go with ease. By this means and nothing else things seemed to move on a smoother path. By the middle of 1954 the organic laws of the provinces were amended and a president of the executive Council was appointed to be with all the Nazirs solely responsible to the Legislative Council. The Wali, however, remained responsible to the King for the supervision over the province. And here again a new regime of conflict and misunderstanding started between the Walis and the presidents of the

/executive

executive Councils. This used to increase or decrease according to the nature of the persons concerned. It reached its zenith between the previous Wali of Tripolitania - Mr. Sadeek Muntasser and the president of the executive Council. The good nature and fine manners of Hussein Mazik, Wali of Cyrenaica, made many confusions and conflicts between him and the president of the executive Council seem to appear very little important.

In the Fezzan where the Wali is the uncle of the president of the executive Council who is often absent from the province, no conflict between them about the exercise of their powers came to my notice.

In my opinion the aforementioned amendment of the organic laws was nothing but an unfruitful attempt to answer the question of the chain of responsibilities. It also appears that this attempt was far from prescribing a wholesome treatment for an existing disease.

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This is a brief review of the factors that prompted the adoption of the Federal form of Government in Libya and a small picture of some of the difficulties that appeared between the Federal Government and the provinces on one side and between the provincial administrators themselves on the other side.

It is a common criticism of Federal Constitutions that they are rigid and complicated. It is also commonly known that periods of wars and economic depression affect to a large extent Federal Unions by changing the control of powers and making them more centralized. Prof. K.C. Where in his recent book "Federal Government" deals at length with this aspect in Chapter 12.

The Indian Constitution which is one of the most recent Federal Constitutions in the world empowers the President by issuing a Proclamation to authorize the central government in cases of emergency to assume either partial or complete control

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of the powers of a state according to the circumstances of the emergency.

If peace and prosperity, as is known, are in truth pre-requisites for the successful working of Federal Government in well established Federal democracies; and if these countries tend to change their system of government in grave political and economic crisis and depressions into a unitary system of control, what could be said of the suitability of the Libyan Constitution to the needs of a country like Libya that suffers from lack of economic and financial resources and requires a long time for its development.

The Libyan Constitution is too rigid for among other things it did not provide for the possibility of centralizing the control of powers in cases of political crisis and economic depression.

I have read the draft report of the two experts in Public Administration of the U.N. Technical Assistance Mission in Libya. It contains strong criticism of the great financial extravagance and the lack of co-ordination in the administration. Sections 65,69, 70, 71, 73 and 74 of Chapter 3 deal with this at length. Special attention should be given to Section 32 of this report (Page 6 of the report).

In this connection I find it my duty to convey to the King the recommendation of Messrs. Elvins and Hynes of Australia and Ireland respectively. These two experts of the U.N. on Public Administration expressed in Section 33 of their report, after careful considerations of the conditions in Libya, the following recommendation

"We may say here that it is our opinion, based on considerations of efficacy of government, of economy and of administrative efficiency, that a unitary system of government possesses outstanding advantages and would be better suited to the needs of Libya."

In a discussion with Sir Alec Kirkbride, the former U.K. Ambassador in Libya he told me the following:

"Before I came to Libya they gave me at the British Foreign Office a copy of the Libyan Constitution. After studying

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it I was surprised for I found it difficult to apply in a union between England and Scotland although both are greatly advanced in education and civilization."

The important drawbacks and disadvantages of the Federal form of government after it had been operating and applied in Libya for the last three years are the following:

- A). The weakness of the necessary ties between the different parts of the units of the state as a result of the ambiguity of the constitution with regard to matters of jurisdiction and also as a result of the missing chain of responsibilities.
- B). It is very expensive and very costly due to the nature of the Federal Union in comparison with the capacity of the country to operate it and with the small budget and national income. This is a most important factor, and because of the grave and underlying dangers in connection therewith I have written an independent memorandum in connection with this subject.
- C). Federal Government makes a big demand on a community's human resources. To operate it well there must be available a supply of men with capacity to govern. Such supply must be sufficient/<sup>not</sup>for one government only but for many. This is not available amongst Libyans and will not be available for many years.
- D). Non-stability and the necessity for constant changes in the political set-up. This fact is made still more difficult by the existence of very few men with qualifications.
- E). <sup>C</sup>onstant conflicts between the units of the state as a result of the extreme provincial feeling. This is clearly shown in competitions for local self interests and purposes.
- F). Artificial and undue expenditure resulting from competitions between provinces to create new posts and to elevate quickly their officials.

Now after summarizing briefly the reasons for the adoption of the Federal form of Government in Libya and after enumerating its chief drawbacks and disadvantages, there remains the remedy

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to be considered and a way out to be adopted.

It is obvious that the King will expect the new suggested plan to leave out all the disadvantages and defects of the old system, but at the same time keep any advantages found in the old system.

The new suggested form of government should be directed to achieve the following:

1. There must be a chain of responsibility and it must be well defined and understood.
2. There should be simplicity and no complications.
3. Complete economy in the set-up.
4. Keeping some of the advantages which it was expected to arrive at under the old system.
5. Strengthening the powers of the executive and avoiding the application of extreme principles of Democracy.
6. The simplicity of the Judicial administration.

The new suggested constitution should deal with the subject of the succession to the throne of Libya. This is more so if the King has no son to become heir to the throne.

I take the liberty here to discuss this point frankly. It is a well known fact to the King that H.R.H. Mohammed Rida is a very nice charactered gentleman; he is extremely honest and pure but he lacks strong determination and political wisdom and the required experience in political affairs. This could not be considered a defect in the ordinary person, but still a strong determination and political wisdom are essential for the head of the state.

The present system of government in Libya has so far and we hope it will continue for long to be under the good direction and the wisdom of the King and his foresight and unrivaled political experience. Any form of government here if it is to be strong and stable must always depend on the personality of the head of the state and on his wisdom. To say the King reigns but does not rule is true of old democracies with people enjoying high standards of education, national and social culture, but this is far from being true here.

It is for this reason that the new proposed constitution must guarantee to the Libyan people a top and strong national

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leadership.

With the frankness which the King knows in me and in my capacity as the man now responsible before God Almighty and the King for the affairs of the people of this country for whose interests the King himself has so long sacrificed and worked for, I dare say now that if the King has no male son to become the heir to the throne, the only solution would then be to declare a Libyan Republic while the King is alive and to take all necessary steps in the provisions of the new constitution to safeguard the quick selection of the coming Presidents of the Libyan Republics in a manner that will spare the country the political shakes that usually accompany the elections of new Presidents.

The new organization of the state may be described as a strong central union. We could keep the legislative authority as it now exists under the constitution but without the local legislative Councils in the provinces. The Senate with equal representation from the provinces could counter-balance the lower House where the provinces are represented according to their population.

I also suggest that 3/5 of the Senate should be appointed by the King and appointment should be based on qualifications and long experience. This was unfortunately disregarded by previous Libyan Governments.

The new Constitution should contain express provision giving equal opportunities to all Libyans as well as to all the provinces. By this the less developed provinces which were affected and the damages of the last war will not be neglected. I will also suggest that the new Libyan Constitution should expressly provide for a certain percentage of the public revenue to be spent on development plans in the provinces. By this means it is hoped that the competition now prevailing in the provinces to recruit more government employees will be stopped.

In theory we have a period of 20 years of economic stability because of our agreements with the foreign powers. If we continue following the policy so far followed, no doubt the result will be an increase in our deficiency and further disorganization

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in our internal administration. This state of affairs if continued might lead to our gambling with our independence itself.

To make the new administration less complicated I would suggest that each province should have a wali appointed by Royal Decree and graded as a deputy minister. He should be directly responsible to the minister of interior. The wali will be assisted by an executive council composed of the heads of departments in the province.

It is my opinion also that all the joint powers enumerated in Article 38 of the Constitution should be transferred to the Central Government and assumed by it. The provinces should be left with powers connected purely with internal affairs such as permanent residence, emigration to the provinces, municipalities and such other functions.

I will point out the important role to be played by the Minister of Interior under the new system. It will be this Ministry that will assume most of the powers exercised now by the provinces. This is the reason why the Minister of Interior should be chosen with great care.

Financially speaking under the new system the state will have only one budget. The provinces could express their requests and needs for the execution of their necessary projects which the national government will look into favourably in accordance with its financial capacity. Here again I will mention the big and important role to be played by the Minister of Finance. If this Ministry is intrusted to an honest and able man he will be in a position to help the less advanced units of the state without the great troubles and conflicts we now experience and go through every year at the time of the distribution of the grants to the provinces.

The Judicial structure should also be simplified and the Police Force given back their powers of investigation for the maintenance of peace and order.

These are briefly the outlines of my thoughts for the new suggested structure of government. I have been very frank and at times very severe in my criticism, but these thoughts were

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prompted by my feeling of sincerity and loyalty to my King and Country. I hope I will be excused if I have unduly touched any matter of special delicacy, but I feel it is my great responsibility towards the peoples of this country, the affairs and interests of which the King has graciously bestowed the honour on me to manage and look after.

I pray Almighty God to grant my beloved King a long and happy and successful life to accomplish upon his hands the changes and improvements desired.

Your Humble Servant  
Mustafa Ben Halim  
Prime Minister

(January 1955)

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TOP SECRET

The major difference between a unitarian form of government and a federal form is that in the former case the authority and control of the government extends directly into all parts of the State and all its servants owe a duty and loyalty to that government and thus directly to the constitutional Head of the State: whereas in the federal form there are apt to be conflicts of policies and authority between the central and provincial authorities and provincial servants owe a duty and loyalty to them and only indirectly to the central government and the Head of the State.

For these reasons a unitarian government can more effectively, rapidly and directly pursue policies directed at equalising and promoting the standards of the people, whether in health, education or economics. In this connection it should be remembered that the first duty of any government is to ensure, as far as possible, that all of the country's nationals, wherever they may reside in the country and whatever their social status, should have equal rights, opportunities and obligations. Only a unitarian form of government with overall authority can assume this responsibility with likelihood of success. No one Province can ensure that these basic principles can be applied as no one Province has any authority whatsoever over any other Province or over the people residing in another Province. The Libyan Constitution provides in the very early Articles, numbers Eleven and Thirty Five, that these overriding principles shall, in fact, apply in Libya, but with the existing federal system which provides for three separate and almost autonomous Provincial "Governments" and a Federal Government; the latter with no real authority - particularly in the all important fields of finance and economics, these basic principles cannot be applied. Already there are very grave disparities in the amounts spent in each Province on "services"; these disparities are bound to grow under the present system -

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competition is now a fact and, if allowed to continue will certainly grow, possibly to the final point of disintegration of the State of Libya. Libya is one country with one King and it follows that any requirement of the Libyan people as a whole, particularly for their economic and social well being, should be the responsibility of one Government, an impartial unitarian (or central) government, acting under the authority of the King and Parliament.

A unitarian is also a far less expensive, as well as a more efficient, form of government than is a federal form. Libya, through historical accident which will be referred to later, must for many years spend a larger proportion of her national income on the administration of government than is usual in modern states but the hard fact is that she cannot afford, even with foreign aid, to continue the present federal form of government. To do so will in the course of time impoverish the country. While if foreign aid should cease for any reason, financial and economic collapse would be inevitable.

Independent Libya inherited what is known to the law as a 'damnosa hereditas'. That is a bequest of property without means to support it. The Italians left here a physical and social structure which had never been self supporting and had been maintained only by subsidy from Italy. This situation from the financial standpoint was made worse by the fact that the circumstances surrounding her independence did not leave Libya an unfettered choice in the form of government adopted, and the federal form of government eventuated which we know today.

The broad result in financial terms to Libya is that the combined budgets represent some 70% of the total national income, as estimated by the U.N. Experts in 1951. Since then the national income has increased probably by about 15%. Even so the combined budgets are about 65% of the national income

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whereas in a modern Western unitarian State the budget should be about 20% of the national income. In Libya personal emoluments represent over 40% of the entire budgets; the corresponding factor in other modern States is about 24%.

The summation of these proportions is that the total cost of government servants emoluments in Libya is equal to 28% of the gross national income, whereas in other modern States it is about 4.8% only.

If a unitarian form of government had been adopted the difference in cost can be estimated on the basis of the current year's estimates, if certain assumptions which are essential attributes of such a form of government are made. These are - one legislative authority consisting of an upper and a lower chamber; one Council of Ministers comprising the Prime Minister and Ministers in charge of Departments organised on a national basis with provincial divisions (or sub-departments). Thus the existing Nazirs would have been provincial officers of the Central Government, in charge of officials responsible directly through the Permanent Under Secretary or Director (as the case might be) of their Departments to their Minister.

On these assumptions the savings on the budget for the current year can be estimated as follows:

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Ministry of Interior ...	286,000
Ministry of Finance and Economics ...	75,000
Ministry of Agriculture ...	7,000
Ministry of Health ...	7,000
Ministry of Education ...	28,000
Ministry of Justice ...	46,000
Ministry of Works and Communications ...	262,000
Provincial Legislative Councils ...	59,000
	<u>770,000</u>

/This estimate.....

This estimate makes allowance for the time factor involved in a change from one form of government to another and could be expected to increase as experience disclosed opportunities for 'streamlining' the administrative machine.