

REMAKING MA63, RESTRUCTURING THE

■ BY DR ARNOLD PUYOK

In this article, the writer explores the Malaysia Agreement 1963 (MA63) from the perspective of a federation.

MA63 is not just about the nature of the relationship among the founding territories, the safeguards accorded to them, and their position in the federal constitution; it is also about how these distinct territories reluctantly merged to form a new "nation" called Malaysia.

I discuss the challenges facing Malaysia as a federation and explore how these challenges can be overcome. The change of government at the federal level in 2018 and the political shift at the regional level provide the opportunity to remake MA63 and restructure the Federation of Malaysia.

Understanding the concept of a federation

A federation is a formal division of legislative, executive, judicial and financial powers between the central government and the state governments. In Malaysia, this formal division of power is clearly stated in the federal constitution.

In addition, power rests heavily with the federal government under BN (Barisan Nasional) since independence until its fall in 2018. The federal government's dominance is most notable under former prime minister Tun Dr Mahathir Mohamad whose leadership hallmark is a strong government with a two-thirds majority in parliament.

A federal system is different from a unitary and a confederation. In a unitary system, power lies in the hands of the central government. The central government has a greater say in directing the affairs of people in local units, for instance, Brunei (unitary monarchy), Japan, Thailand, and so on.

In a confederation, power is held by the constituent units. The central government only plays a "coordinating role" — a case in point is the European Union (EU).

Federation of Malaysia 1957

The Federation of Malaysia 1963 has its origin in the Federation of Malaysia 1957. The Federation of Malaysia 1957 consisted of 11 Malay states in Peninsular Malaysia. The Federation of Malaysia was instituted by the British to ensure

a strong administrative system through the centralisation of power.

The main features of the Federation of Malaya were, among others, a strong central government, especially about power over the states on matters of religion (Islam) and Malay customs. The reason for the British to agree to a federal arrangement was to preserve state uniqueness while at the same time maintaining control over the country's financial and political affairs.

Federation of Malaysia 1963

The Federation of Malaysia 1963 is the expanded version of the Federation of Malaya to include the new states — Singapore (but expelled in 1965), North Borneo (Sabah and Sarawak). The structure of the new federation was discussed as early as before the inception of Malaysia.

Britain's initial idea was to form a "super-federation" consisting of governments of Malaya, Singapore and the three Borneo territories — Sabah, Sarawak and Brunei — with complete autonomy in internal affairs by each government. Britain agreed with the federal structure only if it was supported by the people and the states attained self-rule first.

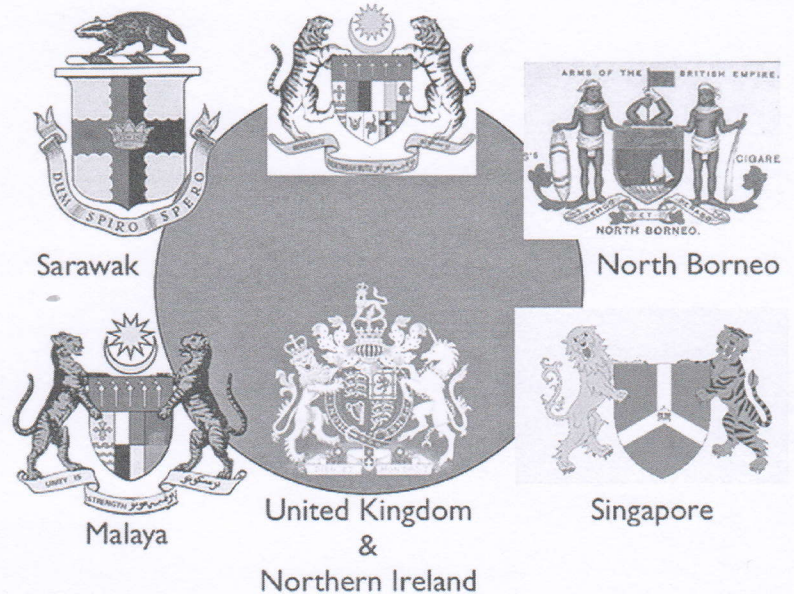
The Federal Constitution is quite clear about Malaysia's federal system and the status of the states within it (Article 1).

However, questions have been asked whether there were constructive discussions among the founding fathers on the far-reaching consequences of the federal system that Malaysia would adopt to Sabah and Sarawak.

First, did they unanimously agree on the proposed federal structure and the status of the East Malaysian states under the federation? Second, did our leaders consider the long-term implications of a federal system with a strong central government adopted from the British? And third, did they rigorously discuss the principles that would guide the country's nation-building process?

Despite the many weaknesses of the federal system, it is considered practical to Malaysia given its vast area and heterogeneous society.

A federal structure is also timely to accommodate Sabah and Sarawak. What remains an issue until today is the status of Sabah and Sarawak in the federation: are they the 12th and 13th states? Are Sabah and Sarawak "equal



partners" with Peninsular Malaysia combined? Has their status been deliberately demoted from being "equal partners" to mere 12th and 13th states by the federal government?

Notwithstanding the unending polemics over Sabah and Sarawak's status, they have considerable power and autonomy in the federation. Their special position in the federation is part of the conditions set by local leaders before Sabah's and Sarawak's incorporation into the Federation of Malaysia.

The conditions were put forward because Sabah and Sarawak were culturally unique and were less politically and economically advanced than Malaya. It is also to weigh against possible domination by West Malaysia.

The importance of MA63

MA63 is a hot button issue in Sabah and Sarawak. It is an emotive issue just as the Malay rights and Islam to the Malays in Peninsular Malaysia.

MA63 is an agreement between the United Kingdom, Northern Ireland, Federation of Malaya, North Borneo, Sarawak and Singapore to form a new nation called Malaysia. Special rights and privileges were given to

Sabah and Sarawak as part of their conditions to be incorporated into the new country.

The justifications for these rights and privileges were:

- Sabah and Sarawak's cultural and religious distinctiveness from Peninsular Malaysia;
- The huge territories and massive resources they contribute to the federation;
- Problems of poverty and underdevelopment in these states;
- The 1963 pact between the Federation of Malaya, United Kingdom, North Borneo, Sarawak and Singapore; and
- International law basis to the guarantees for Sabah and Sarawak" (see Shad Saleem Faruqi 2012, *The Bedrock of Our Nation: Our Constitution*, pp. 24)

MA63 has 11 articles and annexes. Article 8 in particular necessitates the implementation of the assurances for Sabah and Sarawak as contained in the Inter-Governmental Committee Report (IGC).

The signing of the agreement was significant because it paved the way for the enactment of the Malaysia Act (Act No. 26 of 1963) which sealed the formation of Malaysia. With the enactment of the Malaysia Act, the Federal Constitution took over from the Malayan Constitution as a new "document of destiny" for

Malaysia (Shad Saleem 2012).

'Breaches' to MA63?

Most debates on MA63 are focused on the breaches to the assurances for Sabah and Sarawak. Sabah and Sarawak accuse the federal government of undermining their autonomy and want their position as "equal partners" and control over natural resources (oil and gas) be restored.

They are also unhappy about the tendency of federal authorities to centralise decision-making at the expense of state autonomy. Some of these concerns are genuine and must be rectified. And any attempt to do so must not be solely based on regional sentiments.

There were attempts by the state and federal governments to address their conflicts but federal-state relations continue to sour. One of the reasons for the persistence of the federal-state conflict is that very often the Sabah and Sarawak issues are exclusively seen from the perspective of East Malaysia only.

This problem is compounded further when opportunist politicians use MA63 to pit East Malaysia against Peninsular Malaysia. Some are more interested in raising the anti-Peninsular Malaysia sentiment

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rather than solving the core problem of the federal-state conflict.

This has to change. Sabah and Sarawak issues must be seen collectively as a national problem. MA63 should not be seen from the Sabah and Sarawak 'angle' alone but from the perspective of the Malaysian federalism.

Some people in Peninsular Malaysia perceive MA63 as the struggle to restore the rights of Sabah and Sarawak when in fact it is about strengthening the spirit of the Malaysian federalism.

MA63 is about preserving the characters of each of the different entities in the federation.

It is the bedrock of the Malaysian federalism. It lays the foundation for the federal constitution that outlines the relationship between the different territories in the federation. The Federal Constitution preserves the special position of Sabah and Sarawak. The rights and privileges for both states are clearly stated in the Federal Constitution, as illustrated in Table 1.

Redefining 'equal partnership'

Many have interpreted equal partnership based on Article 1 of MA63 in which the eleven states in the then Malaya are seen as representing one component and the other two components being Sabah and Sarawak.

Our founding fathers did not define equal partnership clearly nor was it extensively discussed in the committees tasked to propose the constitutional safeguards for Sabah and Sarawak.

In 1976, Sabah and Sarawak's status is said to be relegated or downgraded to mere "states" just like the other "ordinary" states in Peninsular Malaysia.

For some, the amendment was done as part of a nation-building effort to integrate Sabah and Sarawak into Malaysia's parliamentary federal system (see Edmund Langgu 2016, "The '1976 amendment' Is an inclusive nation-building effort", <https://www.malaysiakini.com/letters/360760>).

On April 9 2019, a motion was tabled to amend Article 2 (1) of the Federal Constitution to restore Sabah and Sarawak's position as equal partners in the federation. It, however, failed as out of 197 members of parliaments attended, 138 voted against the motion while 59 abstained.

Amending Article 2 (1) without specifying equal partnership and how it will affect the country's federal structure will bring us to

Table 1: Special Provisions for Sabah and Sarawak in the Federal Constitution

Provision	Constitutional Guarantee
Financial	<p>Special sources of revenue under Part IV of the 10th Schedule</p> <p>Special grants under Article 112D (6)</p> <p>Special sources of revenue under Part V of the 10th Schedule</p>
Legislative	<p>Special legislative powers on items in the Supplementary State List and the Supplementary Concurrent List of the 9th Schedule</p> <p>Legislative powers on land, agriculture, forestry and local government (Articles 95D and 95E)</p>
Immigration	<p>Restrictions on West Malaysian lawyers practising in Sabah and Sarawak (Article 161B)</p> <p>Exclusive control over immigration (Article 161E [4] and Part VII of the Immigration Act)</p>
Judicial	<p>Special consultative processes relating to appointment, removal and suspension of judges in the High Court of Sabah and Sarawak (Article 161E [2][b])</p>

the path of uncertainty further down the road.

So, where do we go from here?

First, the provisions of MA63 must be effectively implemented particularly the recommendations of the IGC. But before this can be done, the state and federal governments must identify which jurisdictions must be returned to the state or remained under federal control.

One way of doing this systematically is through the formation of a federal-state relationship committee to monitor the implementation of federal and state policies and to ensure that the responsibilities of the federal and state departments do not overlap.

Second, any attempt to revisit MA63 must be done with the aim of restructuring the Federation of Malaysia in which the states are empowered to make decisions on their own according to their uniqueness and needs.

The formation of the MA63 Special Cabinet Committee is commendable but to ensure the sustainability of the Federation of Malaysia, the committee should

expand its scope to look into the aspect of decentralisation of federal power.

There is evidence linking decentralisation with good governance and economic growth (see Woo 2019, "Decentralisation the best bet for Malaysia's growth", <https://www.eastasiaforum.org/2019/03/24/decentralisation-the-best-bet-for-malaysias-growth/>).

Third, the narrative of MA63 in the post 2018 general election should be about strengthening the spirit of Malaysian federalism, creating a sense of belonging to the nation, and increasing a sense of pride towards

our nationhood as Malaysians.

MA63 is about solidifying and strengthening the relationship between people of Peninsular Malaysia, Sabah and Sarawak. The government could consider choosing any state in Peninsular Malaysia as a host for the celebration of Malaysia Day. By doing this, we acknowledge the fact that MA63 would only be possible with the merging of three distinct territories to form Malaysia.

We often hear people saying, "there would be no Malaysia without Sabah and Sarawak". Similarly, without Malaya as one of the MA63 signatories, Malaysia would not have been possible.

The younger generation yearn for a better Malaysia — a Malaysia that belongs to all irrespective of race, religion and regional origin.

They dream of a Malaysia where they can explore their talent and contribute to the development of their country. The new Malaysia is a promising start to realise the aspirations of our founding fathers through MA63.

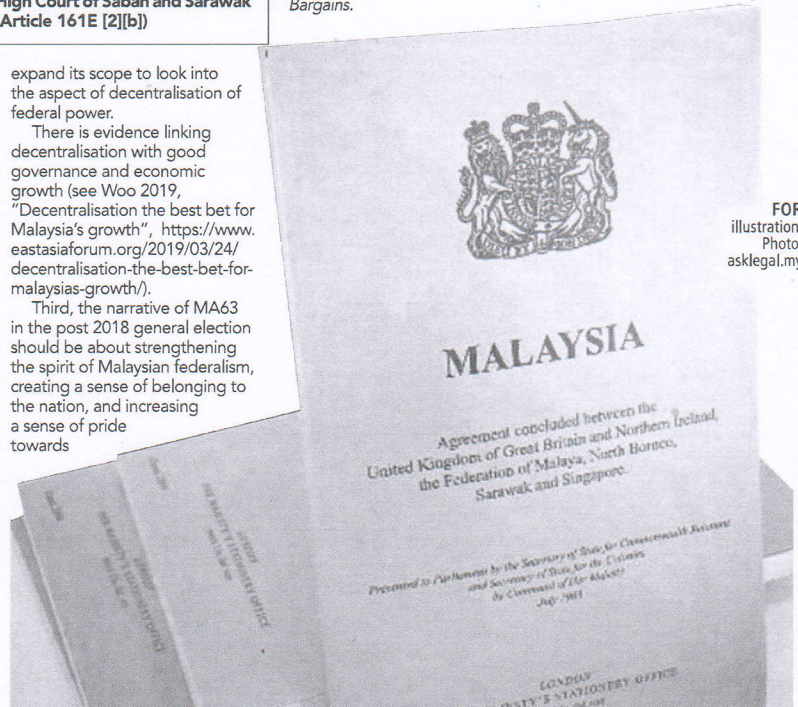
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He is currently working on a publication titled Sarawak: Quest for Autonomy and Renegotiating the Malaysia Agreement 1963 Bargains.

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