SECRET.

C.P. (45) 199.

4th October, 1945.

CABINET.

POLICY IN REGARD TO MALAYA.

MEMORANDUM BY THE SECRETARY OF STATE FOR THE COLONIES.

At their meeting on the 3rd September, 1945, the Cabinet approved the policy in regard to Malaya outlined in C.P. (45) 133. In connection with the question of the extent, method and timing of publicity for this policy, and in consultation and agreement with the Lord Privy Seal, as Chairman of the Colonial Affairs Committee, I represented to the Prime Minister the following views and proposals as being matters for very urgent decision in the current situation in Malaya.

2. Publicity in any detail about our Malayan policy commits us to the fulfilment of that policy. This means that we cannot allow ourselves to be deterred by an obstinate attitude on the part of any or all of the Malay Rulers with whom Sir Harold MacMichael will have to deal in his forthcoming mission. I regard it, however, as very essential, quite apart from the matter of publicity, that His Majesty's Government should now affirm their intention to carry through, in spite of obstruction on the part of any particular Malay Ruler, the policy which they have approved. All our plans for the Malay States depend upon the success of Sir Harold MacMichael's efforts to secure jurisdiction in each and all of the States. It is essential that his hand should be strengthened by the firm assurance that he can, if necessary, make it clear to any recalcitrant Sultan that we intend to carry our policy through. I attach as an Annex to this paper an explanatory memorandum, which I propose that Sir Harold should hand to each Sultan on opening discussions. It will be seen that this Memorandum leaves no doubt of His Majesty's firm intention to carry their plans into effect. This, then, is the first point on which definite assurance needs to be given.

3. I then envisage three phases of publicity. The first phase will be a statement in general terms, designed to create public interest in the direction of that unity and common citizenship in Malaya which our policy will entail. I shall require some discretion as to timing, but I would propose to inaugurate this phase by a public reference, during the next fortnight, to these two points of unity and common citizenship. I attach, as Annex II to this paper, a brief statement which I would use as a basis.

4. The second phase must be expected to follow after possibly only a short interval. This phase will involve a more explicit statement of our intention to form a Malayan Union and of certain contingent proposals, such as the securing of jurisdiction from the Malay Rulers and the splitting up of the present colony of the Straits Settlements. It will also involve an explicit statement about the separate treatment of Singapore.

5. It will be best if this second phase of publicity can synchronise with Sir Harold MacMichael's work. Information as to our detailed intentions will inevitably be disclosed in Malaya as soon as he opens discussions with any Sultan, since it is necessary for the success of these discussions that he should give each Sultan an outline of the future Malaya and of their own place in it. It would be a mistake from the point of view of this country and of the Straits Settlements to let our policy leak out from the first of the Malay Rulers with whom Sir Harold MacMichael establishes contact; and therefore an authoritative exposé of the second phase should be made by myself in London at or about the time when Sir Harold starts his work in Malaya. He is expected to do so during the first half of this month, and I therefore propose to make a statement in the House of
Commons after it reassembles, in which I shall (a) outline the specific proposals referred to in paragraph 4 above, and (b) promise a full disclosure in the form of a White Paper as soon as circumstances permit.

6. This White Paper would constitute the third phase. It could not, of course, be laid until preliminary steps, such as the negotiation of the new Agreements with the Sultans, had been completed.

7. In proposing the early inception of a programme of publicity, I am influenced by very recent information as to the present political state of affairs in Malaya. This information indicates that politically the most difficult body of Chinese in the Peninsula (the main group of the Resistance Movement and largely Chinese ('Communists')) have set before themselves a goal which corresponds in very many respects with our own policy. It is not too much to say that the whole of our relations with the Chinese population of Malaya may be fundamentally affected by a timely statement of our intentions.

8. To sum up, I recommended—

(a) that we should affirm His Majesty's Government's intention to carry through the policy which they have approved, in spite of possible obstacles in the form of, for instance, recalcitrance by any or all of the Sultans.

(b) that there should be a phased programme of publicity commencing with a public statement by myself in general terms, continuing with a more detailed statement by myself in the House as soon as it reassembles on the 10th October, and concluding with a White Paper as soon as circumstances permit.

The Prime Minister approved my proposals subject to the Chiefs of Staff having no objection from the security angle. I have ascertained that they have no objection, and I am circulating this memorandum to my colleagues to keep them informed of the lines on which I am now proceeding in these Malayan affairs.

G. H. H.

Colonial Office,
4th October, 1945.

ANNEX I.

DRAFT OF MEMORANDUM WHICH SIR HAROLD MACMICHAEL WILL HAND TO THE MALAY RULERS IN EXPLAINING TO THEM HIS MAJESTY'S GOVERNMENT'S INTENTIONS AS REGARDS THE FUTURE OF MALAYA.

MEMORANDUM ON FUTURE CONSTITUTION FOR MALAY PENINSULA.

The Cabinet has finally confirmed the policy of creating a Malayan Union (as opposed to an extended Federation of Malay States) which will comprise all the Malay States in the Peninsula, together with the Settlements of Penang and Malacca. The Constitution of the Union will provide for a central authority (both Executive and Legislative) from which all other authorities in the Peninsula should derive their powers. (This postulate is inherent in the conception of a Union as opposed to that of a Federation.)

2. Subject to this basic conception the nine Malay States and the Settlements of Penang and Malacca will be retained as geographical units with their present boundaries to deal with such local affairs as may be devolved upon them by the central authority.

3. One of the most important matters to settle is the position of the Malay Rulers under the new Constitution. The idea that there should be an Upper Chamber of Sultans has been examined, but it is not felt that this would be appropriate. The possibility has been rejected partly because of the difficulty of devising satisfactory relations between the Lower and Upper Chambers partly because the Sultans do not possess the necessary qualifications to perform the functions of a Second Chamber in any real and effective manner, partly because a Second Chamber of Malay Sultans would be an inappropriate organ in the Government of a country of which important areas will be parts of the present...
British Colony of the Straits Settlements, and partly because it would be out of keeping with the proposal that Malayan Union citizenship should comprise not only Malays but people of every race who have made Malaya their homeland.

It is proposed, instead, that the Sultans collectively should form an Advisory Council to the Governor. The subjects with which this Council would be concerned would be principally questions of Mohammedan religion (in relation to which the special position of the Sultans has always been recognised), but other subjects would also be open for discussion in the Council either at the instance of the Governor or at the instance of any of the Sultans with the Governor’s consent. The functions of the Council are further described in paragraph 8 beneath. It would meet regularly under the presidency of the Governor and be regarded as a permanent body. Its meetings would be attended by all the ceremony necessary to maintain the personal dignity of the Sultans. It would not, however, impair the right of direct access between individual Sultans and the Governor. It is felt that the new position of the Sultans should be defined in the Constitution itself. When the time comes to negotiate the new Treaties this will be necessary to satisfy the Sultans, who will not be content to be told vaguely that “an appropriate position” will be allotted to them by the new Central Legislature.

4. Apart from the Governor, the three principal officers of Government will be the Chief Secretary, the Attorney-General and the Financial Secretary. The position of the British Residents or Advisers in each of the States should be modified. Before the war, the status of these officers was higher than that of any other officers save the High Commissioner, but with the establishment of the Union Government their importance will diminish and they should be made subordinate to the Chief Secretary of the Union Government. It is proposed that these officers, as well as the officers at the head of the two Settlements, should be uniformly styled “Resident Commissioners.”

5. It is proposed that Executive and Legislative Councils for the Malayan Union should be created with the following constitution:

The Executive Council should have 5 official and 5 unofficial members, in addition to the Governor. Of the official members the Chief Secretary, the Attorney-General and the Financial Secretary should be ex officio, while the other 2 would be nominated by the Governor. The unofficial members would also be nominated by the Governor. A racial basis should not be prescribed for such nominations, but in the first instance it would be desirable that there should be one European, one Malay, one Chinese and one Indian unofficial member, the Governor being left to nominate the most suitable unofficial to fill the remaining vacancy regardless of race. Save with the consent of the Governor, unofficial membership of the Executive Council would be confined to Malayan Union Citizens.

The Legislative Council should have, besides the Governor, 21 official and 21 unofficial members. Fourteen of the latter should represent areas on a population basis, and the remainder should represent important interests throughout the Union; there has hitherto been no experience of any system of elections in Malaya, and for an initial phase at any rate it would be desirable that the unofficial members should be nominated by the Governor, who would be required to select suitable persons on the above representative basis as far as possible. Five of the official members would be the official members of the Executive Council and the remainder would be nominated by the Governor.

6. When Military Administration ceases and the new Civil Government is established in the Malay Peninsula, it is likely to be impracticable, even if it were desirable, to complete the formal instruments necessary to set up a Legislative Council immediately. To cover the interregnum between the end of the Military Administration and the setting up of a Legislative Council, the new Constitution should specifically provide for the Governor alone to be responsible for legislation, and for the establishment of an Advisory Council to assist him in this task. The Governor would normally consult this Advisory Council before enacting Legislation, but would not be bound to accept the Council’s advice. The instrument should not specify the precise number of official and unofficial members, but the Governor should be instructed to guide himself as far as possible, when making appointments by the intended composition of the Legislative Council as set out in paragraph 5 above.

7. The next question to be considered is the future of the State and Settlement Councils. In the past, the Sultans were Presidents of the State Councils,
but the Councils were largely composed of Malays, and made scant provision for any representation of non-Malay interests. In the new constitutional arrangements it would be inappropriate that a Malay Sultan should preside, and it will be desirable that the President of the State or Settlement Council of the future should be the Resident Commissioner. Exact membership cannot be defined in advance, but members should be appointed by the Governor after consulting the Resident Commissioner. As regards the nomination of unofficial Representatives, all practicable regard should be paid to the racial proportions of the settled population of each State and Settlement, but broader public interests should also govern selections.

The State and Settlement Councils should be empowered to legislate (a) on all matters which, in the opinion of the Governor in Council, are of a merely local or private nature in the State or Settlement, and (b) on all subjects in respect of which power is delegated to them by law by the Legislative Council of the Malayan Union.

8. In each State side by side with the State Councils there should be established Advisory Malay Councils to the Sultans, which should be presided over by the Sultan and whose members, subject to the Governor's approval, should be appointed by the Sultan.

The main functions of these Advisory Malay Councils would be in relation to matters affecting Mohammedan religion, but they would also advise the Sultan on other matters at the request of the Resident Commissioner and with the approval of the Governor. On matters of Mohammedan religion (with the exception of anything connected with the collection of taxes or tithes, which must be left strictly within the control of the Central Legislature or the State Councils), it is proposed that the Sultans should have powers of legislating in their individual States. In doing so, they would use their Advisory Malay Councils, which for these purposes would be virtually legislative bodies. Legislation resulting from this system would not, however, automatically and immediately become law, but would require the Governor's assent. The Governor would in no case grant or refuse his assent without consulting his own Advisory Council of Malay Sultans, though he would not be bound to accept their advice. It is felt that this proposal to leave legislative power on matters of Mohammedan religion in the hands of the Sultans individually and collectively (subject to the necessary checks as indicated above) should go a long way towards reconciling the Sultans to their new position, in that it would maintain their special status amongst their own Malay people in a field in which it has hitherto been always recognised. It is also felt that the proposal to refer legislation within this field to the Governor's Advisory Council of Sultans would lend reality to the deliberations of that body, which might otherwise be little more than a façade.

9. It is proposed that the organisation of the Courts should be as follows:

It is suggested that there should be a separate High Court of the Malayan Union with a Chief Justice at its head. In addition to the Chief Justice, there should be judges of the High Court stationed at various suitable centres throughout the Peninsula. In accordance with previous practice and the dictates of economy the Chief Justice and the Puisne Judges of the Supreme Court in Singapore should be declared *ex officio* judges in the High Court of the Malayan Union and *vice versa*. In practice the Court of Appeal, whether sitting in the Union or in Singapore, would invariably be composed of the two Chief Justices and one Puisne Judge. There seems to be no reason for creating a separate Court of Appeal, which would involve the appointment of Appeal Judges. The new constitution should provide for Appeals to the Privy Council from the Court of Appeal of the Malayan Union.

10. In order that the future Malayan Union may become a reality, it is felt that, subject to the exceptions noted below, all State and Settlement properties should be transferred to the Union Government, which should assume full liability for State and Settlement debts. The Union would take over all revenues from the States and the Settlements, their cash, bank balances, securities, &c., all State land, mines and minerals and all railways, ports and harbours (with the exception of the port and harbour properties vested in the Penang Harbour Board). The exception to this wholesale transfer of property relates to the residences and estates of the Sultans themselves and any buildings and land which are used for purposes of Mohammedan religion, as well as property pertaining to the endowment of Mohammedan religious institutions. It is felt that the above properties should be excluded from transfer to Union ownership, on the grounds that they are closely bound up with the Sultans' personal prestige,
and with the position (which it is proposed to preserve) of the individual Sultans as leaders of their Malay subjects in their States in matters of Mohammedan religion.

In making provision for the exemption of these properties from transfer to Union ownership, it is important to bear in mind that no commitment should be given to the Sultans which would prevent the Defence authorities from acquiring the necessary rights in property which they might require at any time for strategic purposes. Provided such commitments are not given, it is felt that this aspect of the matter need not be specifically mentioned in the new Constitution. The mere exemption from transfer to Union ownership does not place the property in question irrevocably beyond the control of the Service authorities. The new treaties with the individual Sultans will themselves give His Majesty the power to legislate in each State. It is important, in fact, to distinguish in this connection between exemption from transfer to Union ownership and exemption from His Majesty’s jurisdiction. The latter is, of course, not proposed.

11. In order further to safeguard the personal position of the Sultans, it is felt that special provision should be made as regards their emoluments. These cannot actually be exempted from transfer to Union control (i.e., left to be provided out of State funds), since under the new Constitution the States will have only those revenues which they may receive or collect by the decision of the central Legislature of the Union. But it should nevertheless be ensured that the Sultans’ personal allowances are continued from year to year on a scale appropriate to their dignity and position.

12. Finally, it is proposed that there should be express provision in the Constitution empowering the Courts to interpret it, and laying down that in case of conflict, Ordinances of the Malayan Union must prevail over enactments of State and Settlement Councils.

ANNEX II.

BASIS FOR PUBLICITY (PHASE I).

The Japanese have now been evicted from Malaya, and the time has come to lay down the broad lines which our future policy must follow, if we are to fulfil our duty towards Malaya and its people. From now on we must think of Malaya as one country with one destiny, that of eventual self-government within the British Commonwealth, a destiny to which all the inhabitants of Malaya can contribute. The conditions under which this goal can be reached must be fostered in Malaya. The essential rights of the Malaya must be safeguarded, but henceforth each of the races forming the population of Malaya must have the full opportunity of helping to build the country’s future, of developing and enjoying on a basis of common effort and common opportunity the great material wealth of the Peninsula, and of reaping the benefit of their efforts, provided they in fact regard Malaya as an object of loyalty. They must be citizens of Malaya, with all the rights and obligations which that term implies. No one must rely upon past privilege, or regard Malaya simply as a source of material wealth. While it is to the advantage of all the world, and not only Malaya, that the production of her mineral and agricultural resources should be restored and developed by industry and research, it is right that the Malayan people should be assured of their share in the rewards of their industry and should be able to feel the country’s wealth reflected in their own fuller standard of life.