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August 31, 1951

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DRAFT OF LIBYAN CONSTITUTION

Summary of Major Provisions:

A brief summary of each section of the draft follows:

a) Preamble.

The preamble sets for that the people of Cyrenaica, Tripolitania, and the Fezzan have decided to form a union under the Kingship of the Emir, which will be a democratic, independent and sovereign state.

b) Part I - The Nature and Form of the State.

Libya's sovereign rights are indivisible and inalienable; it is an hereditary, federal and representative monarchy. Frontiers and the national flag are prescribed. The state religion is Islam, and Arabic, the official language.

c) Part II - The Rights of the People.

The first article concerns Libyan nationality. Besides blanketing in the Moslem Libyans, it permits naturalization of foreigners (e.i., Italians) who have resided in Libya for ten years beginning January 23, 1943 (the date of the British occupation).

The remainder of the articles (2 through 27) constitute the Libyan bill of rights.

Comment: Mr. Dajani, the legal adviser to the National Assembly said that the bill of rights was based on the first ten amendments of the American Constitution and on the United Nations Declaration of Human Rights. He thought it would compare very favorably with the other Near Eastern constitutions. This feature of the Constitution will no doubt be used to rebut Egyptian and Arab League criticism expected in the Sixth General Assembly concerning the undemocratic character of the Libyan government.

d) Part V; Public Powers.

After setting forth that sovereignty derives from the nation, this Part prescribes that legislative, executive and judicial powers must be exercised in accordance with the Constitution. Legislative power is the prerogative of the King and Parliament; executive power of the King; and judicial power of the courts.

e) Part VI; The Rights of the King.

The Emir is named King of Libya by the nation. His dynasty is hereditary and succession is primogeniture save where the King has no sons. In this case, the King may name his heir. Failing this, both houses of Parliament meeting

jointly may elect a successor by two-thirds vote. Provision is made for a Regent or Council of Regency. Other articles govern his relations with Parliament (they are those of a constitutional monarch). Under Article 27 he shall declare war, make peace, and conclude treaties, and he shall inform the Parliament with appropriate explanations of his actions. The article goes on to require the consent of Parliament for an offensive war or for treaties of the following types:

- a. Treaties of alliance
- b. Treaties involving any reduction of the sovereign rights of the state.
- c. Treaties involving any expense to the Public Treasury
- d. Treaties prejudicial to the public or private rights of the Libyan citizens.

Articles 25 through 36 grant a number of powers to the king, such as the right of pardon and the creation of titles.

f) Part VII: The Ministers.

After defining and setting forth the qualifications of ministers, responsibility for government is placed on them for directing internal and foreign affairs of the state. The cabinet will be responsible to the king with the lower house having the right to pass a vote of censure which is referred to the king for action. The cabinet must resign, however, after more than two votes of censure against it. One vote of censure against an individual minister is sufficient to force his resignation. At least twenty members must propose this vote of censure; eight days must elapse before discussion and two more before being put to a vote. Other articles give Ministers access to both houses and prohibit personal gain from their positions.

g) Part IX: The Judicial Power.

The judicial system is to be determined by law except for the Federal supreme court. Detailed provisions are laid down to safeguard the independence of the supreme court judges. Other provisions establish its supremacy among Libyan courts.

h) Part X: The Provinces.

All powers not entrusted to the federal government are reserved to the provinces. Governors ("Walis") are appointed by the king and shall be responsible for enforcement of federal law. Provinces shall have an executive and an elected legislative council. The functions of the "walis" and these councils shall be determined by provincial organic law.

i) Unnumbered Part - The Parliament.

The Parliament will consist of two houses; the Senate is to have eight members from each province (24 in total), half of whom shall be appointed by

the king and half elected by the legislative councils of each province. The house will be elected by universal male suffrage with one deputy for each 20,000 inhabitants or major fraction thereof, provided that no province shall have less than five deputies.

Senators must be at least forty years old; their term of office being eight years, with half of them being replaced every four years. Deputies must be at least thirty and will hold office for four years.

Upon dissolution of the chamber, new elections must be held within three months and the new chamber convened not more than twenty days after elections.

Other provisions of this section relate to parliamentary procedure, bye-elections, immunities, etc.

PART III. OTHER CONSTITUTION INFORMATION.

Certain parts of the constitution are not yet available, among them those sections relating to Finance and General Provisions. Announcement has been made in the local press that they are presently being drafted.

The division of powers between the federal and provincial powers has been determined by a resolution of the National Assembly passed unanimously August 18, 1951. This decision was taken prior to the promulgation of the constitution because the UN Coordination Committee found it essential in scheduling the transfer of powers to the Libyans.

This list divides the powers of government into three categories.

1. Powers in which the federal government has full authority. These are generally foreign affairs, defense, communications, customs, currency, economic development, and higher education.

2. Joint Powers. Legislation for the exercise of these powers falls to the Libyan government, while the provinces must implement the laws. These powers are chiefly concerned with financial and economic subjects.

3. All other powers which are reserved to the provinces. The National Assembly, in approving this list, reserved the right to amend the list to make it consistent with the other chapters of the Constitution.