

The Philippine Claim To Sabah

by H.G. Tregonning

On September 18, 1968, the President of the Philippines signed into law Senate Bill 954. This Bill states "The Republic of the Philippines has acquired dominion and sovereignty over Sabah." Sabah, formerly North Borneo, is part of Malaysia. This action of President Marcos was tantamount to a denial of Malaysia's territorial integrity. Naturally enough, in Malaysia and elsewhere, it was viewed as a highly provocative act. Years earlier, on January 20, 1962, the Manila *Free Press* had asserted that "North Borneo is ours", and this claim in the meantime had become part of Filipino politics, to bedevil relations with Britain and then Malaysia. The act of Marcos introduced a new and most dangerous element into the quarrel. His move, as President, escalated it to make it far more than previously a question of national prestige and national involvement.

It is one thing for newspapers to assert, and politicians to claim, that the territory of another State rightfully belongs to them. This is a quarrel that can be contained. When however the leader of that State signs into a law a definite statement that this territory belongs to his country, we move to a situation far graver, far less open to manoeuvre. The issue becomes one that can be contained only with difficulty.

Germany demanding the Sudeten-land and Japan demanding Manchuria, are examples of how other border land problems were solved once they became issues between nations. War between nations, more often than not have been over disputed territory. It is not necessary to move outside Asia to find innumerable examples.

This claim has been active in the Philippines since 1961. It is not the purpose of this short monograph however to outline the varied developments, such as the newspaper campaigns, the lobbying business men, the political opportunists, the Presidential involvement and finally the conferences with Britain and then Malaysia that have characterized this, because throughout it all Sabah itself, Britain, and then Malaysia, have remained perfectly aware that this claim has no validity whatever. It is the grounds on which this claim is made, and on which this confidence is based that I propose to examine.

It is necessary that the principles and precedents on which Malaysia regards Sabah as an integral part of its territory be made clear.

Sabah, before joining Malaysia in 1963, was a dependency of Britain. The story of the occupation of Sabah by the British begins in a sense with James Brooke—the young Englishman who secured in 1841 the cession from the Sultan of Brunei of the Sarawak River. In return for an annual payment

(which was compounded finally into a lump sum) he secured in perpetuity full sovereign rights to this river, the southernmost claimed but one of many quite uncontrolled by Brunei.

Brooke was a private individual, not connected to the British Government. It decided, for reasons of its own, to secure its own territory, and in 1846 negotiated for and secured from the same Sultan of Brunei the island of Labuan. This was the period of off-shore island settlements by the British, moving east from India to China. Penang (1786) and Singapore (1819) had preceded Labuan; so too had a short lived settlement north of Sabah on Balemangan Island (1773-1775, 1803-1805);¹ and Hong Kong, (1846) was to follow. From Kuching on the Sarawak River, and Labuan Island, British influence spread.

Amongst the Singapore firms that had traded with Sarawak even before the time of Brooke had been Moses and Johannes, which had exported anti-mony ore. Moses, an American, felt that Brooke's idea was worth copying. In 1865 he sailed across to Brunei and secured from its Sultan a cession for ten years of the rivers north of Brunei with rights and powers similar to those granted to Brooke in the south.

Moses had no intention, however of settling in Borneo. He had none of the strong character and lofty idealism of Brooke. He had come to Brunei to make money and he endeavoured to sell his rivers at a profit as soon as the cessions had been made. In Hong Kong he interested two minor American merchants, Joseph W. Torrey and Thomas B. Harris, and promising subsequent payment they took over the cession from Moses in October 1865.

Torrey was vested with all the rights and powers of a sovereign ruler by the Sultan of Brunei, and although the cession remained for ten years only, a settlement of some 60 Chinese and 12 Americans was made on the Kimanis River, in North Borneo. It failed to take root, however, and was abandoned in late 1866. Torrey then endeavoured to sell his rivers and in 1870 he managed to secure the attention of another business man in Hong Kong, Baron von Overbeck, an Austrian. After several years of discussions and a search in Europe for funds, the latter in January 1875, purchased all of Torrey's rights for \$15,000, and the pair went across to Brunei. Here however, the Moses cession having lapsed, the Sultan of Brunei—who had never been paid by either Moses or Torrey—refused to cede any rivers to Overbeck unless he was first paid in full. Overbeck however secured cessions from the heir to the throne and for the time he had to be content with that.²

Overbeck had ventured into this project with insufficient funds. During 1876 he searched frantically for more capital. He approached Bismark; and the Austrian Government. Neither were interested. In Hong Kong however

1. I have dealt with this interesting early episode in my book *North Borneo* (London : HMSO, 1966) pp181-187

2. For a detailed account, see my article 'American Activity in North Borneo, 1865-1881'. *The Pacific Historical Review*, Berkeley, November 1954.

the possibilities of developing North Borneo appealed to the young (33) head of the old Hong Kong firm, Dent Brothers. Alfred Dent advanced Overbeck £10,000 on condition that the chief control of the affair be handed over to him; and then sent him back to Brunei to secure a clear title to territory.

Overbeck decided to seek a completely fresh cession of the northern rivers from the Sultan of Brunei. He would start anew. In this he was supported by the British Governor of the Colony of Labuan, W.H. Treacher. (Later to serve in Perak). On December 29, 1877, the Sultan of Brunei and the heir to the throne, Penggiran Temenggong, ceded with all the powers of sovereignty four grants of territory, from Gaya Bay on the west coast (where Kota Kinabalu is today) round to the Sibuco River on the east, for a yearly payment of \$15,000.

At the end of these negotiations in Brunei Overbeck sailed for Sulu. Treacher accompanied him. Why is it that suddenly Sulu enters the story? Overbeck learnt at Brunei that although the Brunei Sultan claimed the east coast of Borneo, if anyone was in actual possession it was Sulu. In addition, there was a long and confused history of conquest, of first Brunei and then Sulu securing *de facto* and also *de jure* possession of this area.

The east coast of Borneo at that stage (and of large parts of it still today) was uninhabited swamp or virgin jungle. A few *kampongs* of natives existed in terror far up the rivers, as remote as possible from the Suluk, Brunei and other pirates who prowled the coastline looking for slaves. No State existed; just jungle. Ownership of this was not valued, and so, little disputed. Brunei had theoretical sovereignty over it and Sulu at one time had some claim to it, or had had their assumed control in some way recognised by others. So Overbeck on Treacher's advice, decided to be on the safe side and to secure a Document of sorts from Sulu also. Brunei's grants are in terms stated to be grants of territories belonging to the Sultan whereas those from the Sultan of Sulu refer to grants of all his rights and powers over the territory—whatever they were—but certainly not sovereignty.* Both Brunei and Sulu at one time had controlled it, or had had their assumed control recognized. So Overbeck, at Treacher's insistence, decided to be on the safe side and to secure an identical cession deed from both. He sailed to Sulu.

In Sulu he found a Sultan hard pressed by the Spanish. The Spanish had settled in the Philippine Islands in the 16th century. From their colonial outpost of Manila, they had slowly expanded their control through the islands of the Philippines, converting to Christianity the pagans they conquered. In the south however, where the eastern limits of Islam lapped the Sulu Archipelago, they had made little impression. They tried repeatedly. Zamboanga was built as a southern sally port, to both help defend and to extend Spanish—Christian power. Occasional sorties into Sulu territory would be successful. Sulu strength would revive however, and the Spanish would withdraw. In

* See the narrative in the statement and application to Her Majesty's Foreign Secretary for a Charter.

1873 the Government of the Philippines launched yet another campaign. It attempted a blockade of the archipelago. British and German ships were intercepted. In addition, Spanish and Filipino troops brought pressure to bear. In 1876 they assaulted Jolo, the main island. The struggle was in an acute stage when Overbeck arrived. The Sultan remained defiant and entered into negotiations with him.

On 22 January he secured a grant of all the rights and powers Sulu claimed on Sabah for an annual rental of \$5,000. Indeed the Sultan offered them rights over a larger area and Overbeck had some difficulty in persuading the Sultan to give him what he wanted and no more. This is only consistent with Overbeck making doubly sure of what he had already got from Brunei. In addition, the Sultan appointed Overbeck "supreme and independent" ruler of these territories. The Sultan claimed that he possessed the land as far south as the Balik Papan River, and wished that to be named the southernmost limit of the ceded territory. But the Dutch were in South Borneo, and Overbeck was not anxious to clash with a foreign power. He inserted the Sibuco River, further north, as the southern limit of the cession. The Sultan reluctantly agreed.

Treacher, the British Governor of Labuan, had witnessed these negotiations. After their completion he wrote to the British Government. This letter is for all to see, in the Public Record Office in London. Treacher's faded ink is still clear. So too is the Treaty of Cession signed by Overbeck and the Sultan of Sulu. It reads:

'We, Sri Paduka Maulana Al Sultan Mahomet Jamal Al Alan Bin Sri Paduka Al Marhom Al Sultan Mohamet Fathlon, Sultan of Sulu and the dependencies thereof, on behalf of ourselves, our heirs and successors and with the consent and advice of the Datoos in Council assembled hereby, grant and cede of our own free and sovereign will to Baron de Overbeck of Hong Kong and Alfred Dent of London as representatives of a British Company co-jointly, their heirs, associates, successors and assigns forever and in perpetuity all the rights and powers belonging to me over all the territories and lands being tributary to us on the mainland of the island of Borneo commencing from the Pandassan River on the north-west coast and extending along the whole east coast as far as the Sibuco River in the south and comprising amongst others the States of Paitan, Sugut, Bangaya, Labuk, Sandakan, Kina Batangan, Mumiang and all the other territories and states to the Southward thereof bordering on Darvel Bay and as far as the Sibuco River with all the islands within three leagues of the coast.

"In consequence of this grant the said Baron de Overbeck and Alfred Dent promise to pay us compensation to His Highness the Sultan Sri Paduka Maulana Al Sultan Mohamet Jamal Al Alan his heirs or successors the sum of five thousand dollars per annum.

"The said territories are hereby declared vested in the said Baron de Overbeck and Alfred Dent co-jointly, their heirs, associates, successors

or assigns for as long as they choose or desire to hold them. Provided however that the rights and privileges conferred by this grant shall never be transferred to any other nation or company of foreign nationality without the sanction of Her Britannic Majesty's Government first being obtained.

"In case any dispute shall arise between His Highness the Sultan, his heirs or successors and the said Baron de Overbeck or his Company it is hereby agreed that the matter shall be submitted to Her Britannic Majesty's Consul General for Borneo.

"The said Baron de Overbeck on behalf of himself and his Company further promises to assist His Highness the Sultan, his heirs or successors with his best counsel and advice wherever His Highness may stand in need of same.

"Written in Lipuk in Sulu at the Palace of His Highness Mohamet Jamal Al Alan on the 19th Moharam A.H. 1295, answering to 22 January 1878."³

Before proceeding any further, note the rivers named in this agreement. This is one fact that has never been in dispute. These rivers do not equal Sabah. These rivers, except for one small stream, are on the east coast of Borneo. Apart from the minor Pandassan River in the northwest, they include not one single west coast stream. No one would say that the Kelantan, Trengganu and Pahang Rivers equalled Malaya. Nor equally as justly, can anyone claim that these east coast rivers equal Sabah.

The Sabah of today equals all but one of these former Suluk Rivers, together with a considerable number of west coast streams. These were ceded by Brunei between 1877 and 1902. They include the Pangalat, Tempasuk, Putatan, Papas and Klias, Kawang, Papas Damit, Inanam, Mengkabong, Menggatal, Api Api, Simbulan, Natas Tambalang, Kinarut, and Membaku Rivers. A whole chapter of my book *A History of Modern Sabah* (University of Malaya Press, 1960) is devoted to the negotiations with Brunei undertaken by the British for these streams during these years. They do not concern Sulu in the slightest. Nobody involved would consider for a moment that the west coast of Sabah at this time was not controlled by Brunei. No one would dispute that the cession agreements have not been accepted and honoured. In all of this the Sulu Sultanate had no possible interest or claims.

There are two other points to consider. The agreement with Sulu named the Sibuco River. This is now part of Kalimantan, that is, Indonesian Borneo. If, the Philippine Government claims Sabah on the basis of the Sulu Agreement would it not be logical for it to claim this river as well? And thirdly, Sabah includes the island of Labuan. Ceded to the British in 1846 by Brunei, this, as clearly as the entire west coast, never was part of Sulu. Should it now be part of the Philippines? And what of the other islands, such as Balembangan and Banggi?

3. Public Records Office, London. F.O. 12/54. In despatch of Governor Labuan to F.O., 22. January 1878.

Following this agreement Overbeck deposited in Sandakan Harbour one of his young men, W.L. Pryer,⁴ as Resident of the East Coast. On the west coast he left two others, W. Pretymann and H.L. Leicester. For the next few years, while Dent in London floated a Company to secure more capital, these young men slowly established law and order in North Borneo.

In 1881 Dent (who had bought out Overbeck) finally secured the qualified support of the British Government. It was anxious to safeguard the flank of its trade route to China, but it was unwilling to accept the financial hazards of a new colonial territory. Having ascertained, however, from its legal advisers that the deeds of cession were clear, the British Government in 1881 passed an order in council which conferred a Royal Charter on Dent's British North Borneo Company.

This Charter permitted the Company to administer the territory it had acquired, and kept the British Government quite free of any financial responsibility. It stipulated however that the Company had to remain British, had to eliminate slavery in the area it governed, had to respect native rights, and had to secure Governmental approval before appointing any governor. These restrictions were accepted by Dent in order to secure the 'face' and prestige of a Royal Charter.

In 1888, after the Chartered Company had become embroiled in disputes with the Rajah of Sarawak and while European overseas colonial penetration was accentuating the rivalry between them, the British Government went a step further. By Treaties with Sarawak, Brunei and North Borneo, it established a Protectorate over them; that is, they were left free to govern themselves internally but the British Government took over all their foreign affairs. This was an inexpensive way of keeping out all foreign powers.

These Protectorate Agreements, which recognized the boundaries of Sarawak, Brunei and North Borneo (Sabah), were never challenged by any other party. Innumerable Atlases, maps and charts, embodied these territorial units in toto, and no power ever disputed them. These Agreements were the basis of affairs, constituting the clear position in international law, until 1945. The Pacific War had devastated the entire region. None of these States had the assets to rebuild. Britain moved in, and Sabah—along with Sarawak—became a Colony, to receive immediately very considerable assistance from the Treasury of London.

On the east coast the Chartered Company never established a firm control over the Sibuco. At the news of the Overbeck negotiations the Dutch reacted strongly, and moved north from their settlements in the south. Before Pryer in Sandakan could move South—Darvel Bay was a mass of pirates and he had quite enough to do where he was—the Dutch were near at hand. For a time even the area where Tawau, the territory's most bustling port, is now situated was in jeopardy. One of the difficulties was that with the vague and faulty

4. Pryer's work in Sandakan, and his brush with the Spanish, is dealt with in my "William Pryer, the founder of Sandakan." *Journal, Malayan Branch, Royal Asiatic Society*, May 1954.

mapping then available, no one was quite sure just where was the Sibuco. In 1819 it was decided to settle for a parallel of latitude and 4° was accepted as the coastal boundary. In 1912 the inland boundary was finally demarcated by a mixed Boundary Commission and agreed to by the Dutch and British Governments in 1915.

Spain also reacted to these agreements. It based its claim to North Borneo on its pretensions of being the overlord of Sulu. In 1851, in a shortlived burst of successful warfare, it had beaten Sulu to its knees. In the treaty of capitulation Sulu admitted itself to be a vassal of Spain. On the basis of this treaty Spain lodged a claim for all the possessions of the Sultan in North Borneo. But in that same treaty there was a description of the territories of Sulu and no reference to North Borneo rivers was made; nor in correspondence between 1851 and 1881 had the British Government ever recognized any claim of the Spanish to sovereignty over Sulu.

Negotiations with Spain were entered into, however, partly to satisfy the demands by Germany for apologies and retribution by Spain for injuries to German traders between Singapore and Sulu. In March 1885, by the Madrid Convention between Spain, Germany and Great Britain, the latter two recognized Spanish sovereignty over Sulu. Spain for its part renounced all its claims to the former Sulu possessions on the mainland of North Borneo. Shortly after this Rizal, one of the greatest of Filipinos, wrote to the British and asked whether he could emigrate to a part of North Borneo with a group of discontented Filipinos. He was in a depressed mood and once he had recovered he remained in Manila. But he too had recognized British sovereignty.

Thirteen years later the Spanish had left the East, and the United States of America, by reason of its conquest of Spain at Havana and Manila, had assumed—not without an heroic and glorious nationalist struggle by the Philipinos—the administration of the Philippines. It became the *de jour* successor to Spain as the Government of the Philippine Islands. In the Treaty of Paris (1898) whereby the Spanish surrendered their territory, the boundary was stipulated (as it had been in the Manila Convention of 1885) to be nine miles off the coast of North Borneo.

In the disorder of the hand-over the North Borneo Government attempted to secure by purchase from the Sultan of Sulu the two islands that lay on the horizon from Sandakan. He accepted \$3,200 from the Company representative, but then told the U.S. agent who was present at the discussions that although North Borneo had been ceded, the islands belonged to the U.S.A. Its reaction was swift; a U.S. warship visited all the islands in the Sulu Sea more than nine miles from the Borneo coast and planted on them the U.S. flag. By an agreement of 1907 the U.S. waived its right to administer the two islands lying off Sandakan; but by the Boundary Convention of 1930 they were included within the U.S. territory. (Although the Company, by a gentleman's agreement, remained in possession.)

This Boundary Convention merely confirmed the Overbeck cession and the 1885 Manila Convention. It established the boundary of the Philippines nine

miles out from the Borneo coast. It is the legally recognized, internationally accepted boundary of the present day successor to the Spanish and American Governments, the Republic of the Philippines. It is the boundary as given in Article 1, "The National Territory", of its own constitution, which was ratified by plebiscite on March 11, 1967.

The claim for Sabah, based on this Sulu Agreement, built up in the Philippines by an irresponsible Press and fostered by ignorant politicians, is focussed almost entirely upon one word in the 1878 Overbeck Agreement. This in the English version says the Sultan of Sulu shall cede. This is now denied, although the original participant, the Sultan himself, quite obviously accepted it. The word used was *padjak*. It is maintained that he meant not to cede but to lease these rivers.

We are all aware that the Malay and Indonesian tongues are developing rapidly. Obsolete words are being discarded, new words are being accepted and adopted, new meanings are being given to others. The language of Malaysia today is not the language of Sulu 100 years ago, and certainly when attempting to assess what was the meaning of *padjak* a hundred years ago, it is basic to seek for the intent. What did the Sultan intend to do, when he signed the Agreement? How else can one interpret his subsequent actions than that he saw his Agreement as a cession? The evidence can not be denied. It is clear and irrevocable.

Equally as clear is how the nations of the world accepted it. The Philippine claim is attempting one of those word games which flies in the face of a number of unchallenged international agreements. The Spanish Convention of 1885; the Treaty of Paris in 1898; the Washington Treaty of 1900; the Anglo-American Treaty of 1930; the Constitution of the Commonwealth of the Philippines in 1935; and the Constitution of the Republic of the Philippines in 1947; all these define the boundaries of the Philippine Islands. All place that boundary off the coast of Sabah. Not one of them advances a claim for Sabah. Never throughout this period was there any suggestion that the Sultan of Sulu did not in fact cede his rivers.

A few other points appear to be worth considering. Firstly, it should be remembered that although the Government of the Philippines abolished the political powers of the Sultanate of Sulu on March 22, 1915, it did not, of course, eliminate the Sultan. He secured a pension and remained the spiritual head of the Suluks. It should be recognized then that the abolition of the Sultanate did not abolish the Sultan nor his line of succession; and the successor of the Sultan is not the Government of the Philippines.

With this understood, then it must further be allowed that it is the successor of the Sultan, if anyone, who is entitled to lay claim to any land "leased" by his ancestor. As I understand it, the heirs of the Sultan have made this clear. What they have not made clear to their own or to anyone else's satisfaction since 1936, when a court case in Kota Kinabalu deliberated on it, is just who is the Sultan. On this point they still disagree, and so the cession money continues to bank up in Sabah.

For this too should be noted. The British Government throughout honoured all the financial responsibilities entered into by Overbeck with the Sultan of Sulu. Every year the Budget of the State included the identical item: "cession money". North Borneo never dishonoured the agreement, nor has Sabah. It has never once defaulted nor infringed upon it in any way. "Ceded" or "leased"; but the agreement says also "in perpetuity". This it will continue to observe; and in view of this, one wonders why it is not left as it is?

Were it not that the original line of descent from the 1877 Sultan has become most complex and confused, this money would be paid out without question. No unobjectionable title to it however, has been established. Yet this at least is clear. Whoever is the descendant of the Sultan entitled to this money for the cession of the rivers, it is not the Government of the Philippines. How therefore can that Government consider it is entitled to the rivers for which money is paid?

It might be suggested that in the same manner as the Brunei Rivers were integrated into Sabah, by the payment of a lump sum once and for all, the Sulu cession money could be disposed of in a similar manner. It may have been such a thought that attracted the Philippine business men at the outset of this issue, in 1961-62. Here, they may have thought, was a chance of making money. Be this as it may, it is probably too late now to offer such a suggestion as a method of defusing the bomb, but perhaps the precedent of Brunei could be considered.

Whatever else is disputed, the Philippine Government must admit to two facts of life that weaken even more its scarcely tenable position. "Possession is nine tenths of the law", as the hoary old legal maxim tells us. Firstly, with the British, and then from 1963 onwards as part of independent Malaysia, for nearly 100 years now Sabah has developed without being possessed by the Philippines. No one would regard it other than blatant conquest, should it endeavour to do so now.

Secondly, prior to it joining Malaysia, the United Nations sent in 1963 a Mission to Sabah, to see whether in fact it wanted to join the new State. Both the Philippine Government and Indonesia had requested this. The response was clear. As the Report to the Secretary stated: "The Mission found that the great majority of the people of North Borneo have strongly supported the proposed Federation of Malaysia from the time of the elections down to the present. The Mission noted the high degree of unity reflected by national leaders." *United Nations, Malaysia Mission Report* (Department of Information, Malaysia, 1963 p. 121, para 240.) This Report was accepted. It was obvious that no-one in Sabah had any desire to join the Philippines: the whole concept was unthinkable.

Malaysia has the strongest of grounds in defending its territorial integrity. The Philippine Government may have been misled by the courtesy of its Prime Minister, the Tunku, and may forget that his deputy in Sabah, Tun Mustapha bin Dato Harun, himself of Suluk descent, is not a man prepared to take any territorial infringement without reacting. He has strong links far beyond

Sabah. He could well carry a considerable proportion of his fellow Moslems in Sulu, against Manila. As I wrote in a brief character study of Mustapha in my book *North Borneo*, "He is a small dark dagger of a man,... (and) "seen at Government House, a slim shy figure in white slacks and shirt, he attracts little attention, but on his own element, the sea, the tameness disappears and all the strength, virility and independence of the Suluk stands out. I saw him once from a Straits steamship, riding out a storm in a small Government launch. He was completely in his element and there was something primitive and dynamic about his lithe form that made me realise that the tameness was but skin deep, and that here indeed was not a Government Officer so much as a Suluk chief. Daggers are meant to be thrust..."

But let us not talk of war and daggers. The Philippines, one can only hope, fully realises that Malaysia is prepared to defend its territory, and Sabahans their State. Let us rather lift our eyes from this barren dispute over whether in 1878 it was "cede" or "lease" — and whether that matters — and look at the world today. It would be farcical if Malaysia entertained this claim. It might equally as wisely return Kedah, to Thailand. Johore once ceded Singapore to the British; but then, even earlier, Singapore was part of a Sumatran State. What country in Southeast Asia has territories another could not claim, or boundaries that are the same as a hundred years ago? Is it not childish to entertain such ideas? Is it not better to accept those that were defined and accepted by the rest of the world when the proud independent Southeast Asian State of today entered the United Nations?

It would be equally as disturbing if the Philippines continues to press its claims in the face of historical facts and international repercussions. The influential Australian journal, the *Bulletin*, urges the Philippines to launch a physical annexation, "in order that it might be fully confronted and in the process purged of the introversion, insularity, general corruption and intellectual dishonesty that have tragically become too much characteristic of Philippines life and politics." (The *Bulletin*, September, 28th. 1968, p. 32).

These are hard words advocating a harsh recipe. But surely it is not rash to surmise that the Philippines will isolate itself completely from the region, and from the European and American friends by pursuing this claim. No support from any quarter has reached it and discouraging comments have been made in quantity. Such opposition undoubtedly will continue. It once called itself a bridge between East and West. Now it has broken that bridge. Should it maintain this pressure, it may break its State as well, for one thing is clear; it has no claim to Sabah.