

RESEARCH NOTES # 1

# Philippine-Malaysia Dispute over Sabah: A Bibliographic Survey

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The Philippine-Malaysia dispute over Sabah was, and still is, a contentious diplomatic issue. In the interest of understanding its complexity (and one cannot discount that someone might be interested in the near future), a bibliographic essay, one that lists all available literature which directly or obliquely deals with the subject, is here undertaken. Thus, this work has compiled a list of books, journal articles, theses, dissertations, and monographs, introduced with brief notes on their publication arranged chronologically and thematically and pointing out some major points that might provoke the reader into engaging into one or more of its debatable aspects. This bibliographic survey in a way assesses the production of knowledge around the Philippine-Malaysia dispute over Sabah.

**KEYWORDS:** Philippine claim to Sabah, Philippine-Malaysia relations

The thorny issue of Sabah in terms of its diplomatic and political significance between the Philippines and Malaysia has been dealt with in a number of legal and historical articles, books and monographs. Although some books partly discuss Sabah, they provide relevant and interesting information about its other unknown but crucial aspects. This bibliographic survey aims to collect and appraise pertinent materials, primary and secondary sources with respect to the dispute over Sabah.

As a dependency of the Sulu Sultanate before and after the Deed of 1878,<sup>1</sup> Sabah was an integral part of Sulu territory. Although the British North

Borneo Company assumed the territorial rights over Sabah from 1878 to 1946, which period was interrupted only by the outbreak of World War II, still Sabah's historical development before and after 1878 should be situated in the context of Sulu's history. On this basis alone, Sabah should be incorporated as part of the areas to be studied in Philippine history, or in smaller scale and scope, in the history of Sulu and Mindanao. However, before 1675,<sup>2</sup> Sabah belonged to the Sultanate of Brunei and as such, Sabah was crucial in the historical and political development of Brunei as a sultanate.

## MACAPAGAL: ESTABLISHING THE PHILIPPINE CLAIM

Sabah, also called North Borneo at present, belonged to the territory of Malaysia. The Philippine government had formally filed a claim to Sabah during the administration of President Diosdado Macapagal on the basis of a historical and legal fact. His successor, President Ferdinand Marcos initially took a conciliatory posture towards Malaysia; but in 1968, the Jabidah massacre, as will be explained later, was exposed bringing the two parties to the claim in constant state of insecurity. Until now, the Philippine claim to Sabah has been ‘suspended in animation’ for both parties concerned. As of press time, the Philippine government has not issued any pronouncement to withdraw its claim to Sabah; while Malaysia takes a wait-and-see attitude toward the issue, although underneath, seemingly peaceful relations are maintained, between the two countries. Malaysia, in an effort to help the Philippine government resolve the secessionist problem in Mindanao, acts as negotiator and mediator between the Moro Islamic Liberation Front (MILF) and the Philippine government. Nonetheless, the Sabah dispute still remains.

Although the Philippine government acted on several measures to express its intentions on Sabah, only during the time of Macapagal did the claim really take its necessary course. When the North Borneo Cession Order of 1946<sup>3</sup> was announced and published six days after Philippine independence from the United States, Francis Burton Harrison, former governor-general and now special adviser to the Republic on foreign affairs, noted the political and legal impact of the said Cession order and deemed it as an illegal act, as it unilaterally entered into an agreement without consulting other parties involved. In this case, the other party was the Sultanate of Sulu, which under the present setup was under the sovereignty of the Philippine Republic. In 1950, after a careful study of the Philippine claim, Macapagal, then a congressman together with other colleagues filed a resolution for the pursuance of the claim by the

government. A year later, the Philippine Congress enacted a statute, *ex abundante cautela*,<sup>4</sup> that the establishment of a consulate in Singapore should not be viewed as a waiver to the Philippine claim. By virtue of the Ramos Resolution in 1962, which urged Macapagal to execute measures in pursuit of the claim to Sabah. This initiated a series of diplomatic engagements between the Governments of the Philippines and the United Kingdom.

The result of these exchanges of notes between the Philippines and the United Kingdom through their respective diplomatic officials was the meeting held in London from January 28, 1963 to February 1, 1963. The Philippine delegation, composed of Ambassador Salvador P. Lopez as vice-chairman, Defense Secretary Macario Peralta Jr., Justice Secretary Juan R. Liwag, Senator Raul S. Manglapus, Congressmen Godofredo P. Ramos and Jovito R. Salonga and Ambassador Eduardo Quintero, was led by Vice President Emmanuel Pelaez as chairman. In this meeting, the Philippine panel outlined the historical and legal foundation of the Philippine claim vis-à-vis the arguments presented by the British delegation.

The Philippine government published the proceedings of this meeting under the title *Philippine Claim to North Borneo Volume I* (1964). Emmanuel Pelaez, Vice President and concurrently Secretary of Foreign Affairs in his preface of the book, wrote that it was released to put forward and stake the Philippine claim to North Borneo on valid and legal grounds. This book has four parts. The first part starts with excerpts from the president’s State of the Nation Address with reference to the claim to North Borneo; followed by the second part, the Opening Statement of Vice President Pelaez in the British-Philippine Talks held in London. The third part “The Historical and Legal Bases of the Philippine Claim to North Borneo” lays the legal and historical arguments of the Philippine claim, which includes the statements made by Congressman Salonga before the London Ministerial Meeting and by Mr. Eduardo Quintero before the Legal Committee. The appendices, which constitute the last part of the book, contain 33 copies of the original documents.<sup>5</sup> One was in

the original Spanish while some have been translated into English from the original Arabic and Malay texts. Others had been originally written in English. These form the basis of the Philippine claim over Sabah and the preceding diplomatic communication between the Philippines and the United Kingdom.

Macapagal was forced to initiate the filing of the claim of Sabah because Sabah was being considered as a member of the proposed concept of Malaysia broached by Prime Minister Tengku Abdul Rahman on May 27, 1961 in Singapore. After the London talks, the United Kingdom agreed to relinquish its sovereignty and jurisdiction over Singapore, Sarawak and North Borneo in favor of the creation of the Federation of Malaysia. On September 16, 1963, instead of the scheduled August 31, 1963, after the conduct and results of the *United Nations Malaysia Mission* were known, the Federation of Malaysia was established. Macapagal, with expressed reservation on the result of the UN Mission, refused to recognize the government of Malaysia in the belief that it would prejudice the Philippine claim to North Borneo and recalled the Philippine Ambassador in Kuala Lumpur. Only in August 1964 were the consular relations between the two countries reestablished after Macapagal met the Tunjku in Phnom Penh.

### **MARCOS: FOMENTING AND MANAGING A CRISIS**

When Marcos assumed the reins of government, relations with Malaysia were still unstable and insecure. It was only in June 1966 that both governments, with the plan of raising their own consulates to embassies, issued a communiqué.

It was also during this administration that the second tome of the *Philippine Claim to North Borneo (Sabah) Volume II* (1967) was published barely three years after the first. This volume was divided in to two parts excluding the Appendices. Part One “Historical Notes on the Philippine Claim to North Borneo” consisted of six sections

namely: The Disputed Territory; The Sulu Sultanate Institution; Relations of the Sultan of Sulu with Foreign Powers; the British North Borneo Company; The Transfer of the North Borneo Territory from the Company to the British Crown; and The Transfer of the North Borneo Territory from the British Crown to Malaysia. Part One was the result of a study by an ad hoc committee composed of UP Professors Cesar Adib A. Majul, Perfecto Fernandez, and Serafin D. Quiason among others. Part Two was the “Report on the Anglo-Philippine Talks held in London from January 28 to February 1, 1963 (Extract).” The Appendices include: the various multilateral agreements among the three countries – Philippines, Malaysia and Indonesia; and diplomatic communications between the Philippines and Malaysia, the Philippines and Indonesia, and Great Britain and the Philippines from August 1962 to January 1966.

Only later would the Marcos administration face the critical point of the Philippine claim and the possible breakdown of Philippine-Malaysia relations when the *Jabidah* massacre controversy in March 1968 was exposed. Moros had been recruited for a plan to stage a rebellion and eventual occupation of Sabah under the codename Project *Merdeka*. This led to the Bangkok Talks from June 17 – July 15, 1968 between the representatives of the Philippines and Malaysia, in an effort to settle the dispute. However, the talks ended in failure and further worsened the diplomatic relations between the two countries. In September 1968, the Philippine Congress passed a law known as Republic Act No. 5446, which categorically stated that “this act is without prejudice to the delineation of the baselines of the territorial sea around the territory of Sabah, situated in North Borneo over which the Republic of the Philippines has acquired dominion and sovereignty” (Noble, 1977, p. 181). In November of the same year, diplomatic ties between the two countries were severed. Only a year later in December did the Philippines and Malaysia resume diplomatic relations.

This period from 1968 to 1976 saw an upsurge on the number of publications on the Philippine

claim to Sabah. Marcos himself had issued policy statements about the Philippine claim as it was affected by the disruption of diplomatic relations with Malaysia. In a radio-television chat on July 21, 1968, a transcript of which was published as *Our stand on North Borneo issue*, Marcos, one day after the withdrawal of Philippine diplomatic corps in Kuala Lumpur, reiterated the Philippine government pacific policy in its efforts to pursue the claim and advocated the recourse to filing the case at the International Court of Justice (ICJ). In another television interview on September 22, 1968, Marcos issued another policy statement published as *Pursue Sabah claim by peaceful means*, in which he maintained his stand on the legality of the Philippine claim and that his administration will pursue it peacefully. He also assured the public that the government was ready for any act of military aggression. When Moro secessionism in the South was rearing its ugly head and Sabah turned out to be the staging ground for the rebels, Marcos in his 49-page essay *Breaking the stalemate: towards a resolution of the Sabah question* (197- )<sup>6</sup> decided to withdraw the claim “for it is sufficient in my judgment that withdrawal of the claim is in the overall interest of the Republic; that is the key to stability and peace and development of our Southern borders” (p. 48). This statement, however, was not tantamount to withdrawing the claim per se because it was not legally binding on both the Philippines and Malaysia; but it was a tactic to defer immediate resolution of the conflict. Nonetheless, these essays and the other materials were primary sources and are essential in any study to be undertaken on the thinking of Marcos with regard to Sabah during this period.

Meanwhile, the Philippine government also published a booklet *The Facts about Sabah* (1968) containing a question-and-answer narrative on the Philippine claim written for the enlightenment of the general public. On this same year, the government also published the *Memorandum on the Philippine claim to North Borneo* containing 61 points of clarification regarding issues surrounding the Sabah question with the last point

arguing for “the return of North Borneo to the rightful sovereign and owner, the Republic of the Philippines” as “the best solution of this dispute” (p. 63). Narciso Ramos, the Secretary of Foreign Affairs, in his *Philippines brings the Sabah dispute to the United Nations* (1968), the text of the statement he delivered before the UN General Assembly on October 15, 1968, specifically called for the Malaysia case to be submitted to the World Court in concurrence with the clamor of Arturo Tolentino, member of the Philippine delegation to the United Nations in his *The Philippines challenges Malaysia to bring the Sabah issue to the world court* (1969), a text of his reply to the Malaysian statements of October 15 & 16, 1968 delivered before the UN General Assembly on October 25, 1968. Tolentino first issued a succinct rebuttal to the points made by Mr. Radakrishna Ramani of Malaysia, and then, dared Malaysia to bring the dispute to the International Court of Justice. Constancio B. Maglana, a member of the House of Representatives published *Sabah is Philippines* (1969), a privilege speech delivered on March 27, 1968, which, besides laying the basis for the Philippine claim to Sabah, also advocated the prosecution of the claim.

One of the first foreign scholars to have extensively analyzed the Philippine claim to Sabah was Michael Leifer, author of the monograph *The Philippine claim to Sabah* (1968). There were a number of Filipino– or foreign–authored articles or pamphlets published on the claim. These included the articles of Lorenzo Sumulong, “A Report on Malaysia and on the Greater Malayan Confederation in connection with the Philippine claim to Sovereignty to a portion of North Borneo” (1962); Bernabe Africa, “The Legal Status of the British Occupation of North Borneo” (1963); Martin Meadows, “The Philippine Claim to North Borneo” (1962); Pacifico Ortiz, “Legal Aspects of the North Borneo Question” (1963); and Leigh R. Wright, “Historical Notes on the North Borneo Dispute” (1966). Some of these articles were legal in nature; some dealt with the issue historically and legally in the context of Philippine and Malaysian

claims on Sabah. However, Leifer's 75 page-narrative was a major departure from these articles and a contribution to the Sabah issue since it was the first to put it in its proper historical context. The monograph provides a good background of the Philippine claim to Sabah although it relied heavily on the volume published by the Philippine government.<sup>7</sup> The writer, once a visiting research associate at the Institute of Asian Studies in UP in 1965, utilized newspaper articles as source materials and other relevant articles and books in order to place the Sabah issue in the context of the Macapagal administration from 1961 to 1965. Leifer analyzed Macapagal's statesmanship on the issue as "more probably related to diplomatic gain than to expectation of substantial domestic political advantage...initiated by a man whose sense of vision was imperfect" (pp. 72-74).

Under the auspices of the National Historical Commission, a conference on Sabah was held and the proceedings were published in a book entitled *Symposium on Sabah* in 1969. Invited speakers were Dr. Serafin D. Quiason who talked about the English trade expansion in Mindanao and Sulu in "English Trade and Politics in the Mindanao-Sulu Area: 1684-1888"; Dr. Cesar Adib Majul who documented the acquisition of Sabah by the Sulu Sultanate in "The Sulu Sultanate and its Original Acquisition of Sabah"; Atty. Ethelwoldo E. Fernandez who dissected the legal aspects of the Philippine claim in "The Philippine Claim to Sabah: Legal Aspects"; Mr. Armando D. Manalo who narrated the historical development of the Philippine claim in "Historical Aspects of the Philippine Claim to Sabah"; and Prof. Rolando N. Quintos who explored the possible alternatives for the solution of the Sabah dispute in "The Sabah Question: Prospects and Alternatives."

The latter, Prof. Quintos, offered some thought-provoking ideas about possible alternatives for the Sabah question. The other articles were mere reiterations of the Philippine government's position on the claim. The first two articles were historical studies on the political and economic development of the Sulu Sultanate. Prof. Quintos, on the other hand, speaking in his private capacity as a citizen

of the Philippines, argued that the issue of Sabah should be seen in its two aspects: first, the legal aspects of the claim as regards the proprietary rights of the heirs of the Sultanate; and second, the question of political jurisdiction over Sabah. In order to solve the deadlock between the Philippines and Malaysia during that time, Prof. Quintos arrived at his idea of a just settlement of the dispute: "Let the Philippines be willing to accept the justice of the Malaysian appeal to self-determination and accept as final the conclusion of the U.N. Secretary General of September 1963, if, in return, the Malaysians are willing to submit the purely legal claim of the Philippines in support of the proprietary rights of the Kiram heirs in Sabah to the World Court or to a mutually acceptable mediating body" (pp. 82-83).

## CONTESTING LEGAL CLAIMS

It would be very interesting to compare the work of Atty. Ethelwoldo E. Fernandez and other legal articles written by Filipinos<sup>8</sup> with the work of non-Filipinos, namely Malaysian Mohammed bin Dato Othman Ariff, *The Philippine Claim to Sabah: Its Historical, Legal and Political Implications* (1970), which discusses extensively the legal issues surrounding the claim; and Singaporean S. Jayaratnam's "The Philippine Claim to Sabah" which was serialized in three parts in the *Singapore Undergrad*.

Ariff's work was submitted as his thesis for the Diploma in International Law in 1967, the product of a two-year postgraduate course at Cambridge University. He was affiliated with the Office of the Attorney General in Malaysia. The book provided a brief background of the dispute in Chapter 1 while Chapter 2 and 3 articulated the documented and legal bases of the British claim to Sabah citing specific treaties, agreements and acts. In an incisive legal analysis, the author aimed to demolish the legal basis of the Philippine claim to Sabah point by point in Chapter 4. In Chapter 5, the author further clarified the legal foundation of the United Kingdom's claim to Sabah based on possession

and consolidation “through peaceful and continuous display of State activities and her interests and relations in the territory, coupled with fact of acquiescence on the part of both the Sultans of Brunei and Sulu and of the other States of the state of affairs existing then...” (p. 49). In the subsequent chapter, the author provided the basis for the integration of Sabah to Malaysia and cited the principle of self-determination, the Sabahans having already expressed their desire to remain in the Federation. In the concluding chapter, the author suggests, that in view of the lack of viability of certain modes of settlement like the filing of the claim at the International Court of Justice or by way of negotiation, conciliation and other modes of settlement, peaceful settlement of the dispute “would require the Philippines to drop the claim and concentrate all their efforts to work closely and cooperate with Malaysia within the context of ASA and ASEAN” (p. 64). However, this kind of suggestion was unacceptable, at least to the heirs of the Sultan, given their proprietary claims to Sabah, as noted by Prof. Quintos.

S. Jayakumar was the vice-dean of the Faculty of Law, University of Singapore. He was of the opinion that the Philippine case “is weak and tenuous...” (25 November 1969: 10). Following the study of Mohammad bin Dato Othman Ariff, Jayakumar also invoked the idea of effective occupation on the part of Great Britain of Sabah since 1878 which granted the British North Borneo Company a charter of corporate character. The author contended that “the Philippine claim is at most, an abstract or inchoate one based on the historically derivative rights of the heirs of the Sultan of Sulu (Ibid). Neither the Philippines nor the heirs of the Sultan have exercised sovereignty or been in effective occupation of Sabah since 1878. The Philippines formally presented its claim only in 1962. United Kingdom was the State, which had effective occupation until 16 September [1963] when Sabah became part of Malaysia in accordance with the wishes of the people (as determined by the UN Secretary-General). Malaysia, for purposes, of international law, is now the State in ‘effective occupation’ and exercising sovereignty over Sabah” (Ibid.).

On the contrary, the Philippine case as stated in the paper of Atty. Fernandez was premised on the historical and legal interpretation of the 1878 Deed of Lease (for the British, it was cession) executed by the Sultan of Sulu to Baron de Overbeck and Alfred Dent. The position taken by the government with regard to the transfer of sovereignty from the British North Borneo Company to the British Crown of Sabah was illegal and “an act of naked political aggrandizement...” somewhat imperialistic. Hence, the transfer of sovereignty from the British Crown to the Federation of Malaysia of Sabah was unwarranted since the Philippines had a claim on Sabah. The Philippines preferred the settlement of the dispute by the International Court of Justice for the following reasons: (1) the World Court is an impartial body; (2) the Philippine claim to Sabah is a legal issue to be adjudicated by a third party and (3) the World Court as the third party would objectively judge the case base on its legal merits and not on political passions or other extrajudicial considerations.

Thus, anyone interested in the legal assertions of both parties should consult and study the above articles besides other writings on the subject. It would be very illuminating if one, who is armed with a legal education especially in international law, could compare the legal arguments of both sides.

## **THE CLAIM AND ITS RELATION TO FOREIGN POLICY**

An elaboration of some aspects partially explored by Michael Leifer can be seen in the work of Gerald Sussman’s *The Sabah claim and Maphilindo: a case study of Philippine foreign policy decision-making* (1975), a Master’s thesis submitted to the defunct Philippine Center for Advanced Studies (PCAS) in UP. Sussman looked at the creation and demise of MAPHILINDO, Macapagal’s brainchild and a modified version of the “Greater Malayan Confederation” “as a response to regional tension” (p. 48) caused by

the Philippine claim to Sabah and Sukarno's *konfrontasi* policy against Malaysia.

The most extensive work on the Philippine claim was Lela Garner Noble's *Philippine Policy toward Sabah: Claim to Independence* (1977), an expanded and revised version of her Ph.D. thesis titled *The Philippine Claim to North Borneo* at the Fletcher School of Law and Diplomacy in 1965. Noble's contention was, although the Philippines could gain little from the pursuit of the claim, Philippine foreign policy on the Sabah Question from Macapagal to Marcos was basically a demonstration of Philippine independence from external interference, namely the US, and an attempt to improve the national image. Noble studied Philippine policies pertinent to the claim from its historical antecedents until 1976. In other words, the work covered Philippine policies on the claim during the Macapagal and Marcos administration. The study, however, is limited as it covered only the first twelve years of the Marcos regime. It is open to any scholar, therefore, to continue with a study of state policies on the Philippine claim to Sabah during the remaining nine years of the Marcos regime. The author of this essay, for one, has planned to undertake this in his preliminary work entitled "Marcos and the Philippine-Malaysia Dispute over Sabah (1965-1986)."

Noble's work can be seen as an update of the dissertation written by Nestor M. Nisperos submitted to the University of Pittsburgh in 1969. Nisperos focused on Philippine foreign policy with special reference to the claim before 1969 and thus, was able to discuss such policy during the first term of President Marcos as well as antecedents to these policies crafted by previous administrations.

Paridah Abd. Samad and Darusalam Abu Bakar (1992) wrote "Malaysia-Philippine Relations: The Issue of Sabah", which tackled and discussed the "the pattern of relations between Malaysia and the Philippines in the context of the Sabah dispute" (p. 555). However, the reader is warned about the paper's scholastic integrity. Some passages of the paper were intentionally lifted

from various sources without citing the authors. It was outright plagiarism and the following is an example. On page 554, first paragraph, the second and third sentences were deliberately lifted from the speech of the Malaysian Ambassador to the Philippines Datuk Emam Mohammed Haniff during a symposium at Ateneo de Manila University, September, 1989 subsequently published in the *Foreign Affairs Journal* (1989). There are other passages taken from other sources without the necessary citations. Nonetheless, the paper presented political and security repercussions of the Sabah dispute between Malaysia and the Philippines with regard to the Moro secessionism in the South, the overlapping of territorial boundaries, Malaysian incursion into Philippine waters, the issue of Filipino refugees and illegal immigrants in Sabah from the Macapagal to the Aquino administrations.

A recent publication that tackled the Sabah issue was Arnold M. Azurin's *Beyond the Cult of Dissidence in Southern Philippines and War-torn Zones in the Global Village* (1996). Part Two of Azurin's work was particularly devoted to the Sabah claim. One interesting sidelight of this work was that Azurin convincingly argued for the dropping of the Philippine claim, which he labeled as "irredentist and retrogressive", quoting the Filipino Muslim leader Jainal Rasul who had pointed out: "Except perhaps for the proprietary rights over the Sabah claim of the Sultan and other concessions for Region 9, the better part of wisdom is to drop this claim, once and for all, in order to face realities and promote better ASEAN relations" (p. 116).

A more recent study on Sabah in the context of Bangsa Sug (Sulu Nation) was Asiri Abubakar's *Bangsa sug, Sabah and Sulus' quest for peace and autonomy in Southern Philippines* (2000). This doctoral dissertation dealt with the "continuing sense of identification among the Sulus with Sabah and its implications to Philippines-Malaysia relations and the peace process in Southern Philippines particularly the quest for autonomy among the Sulus." (p. xi) Abubakar makes a case rather belatedly for the inclusion of two important

issues in the negotiation between the government of the Philippines and the Moro National Liberation Front (MNLF) that had been overlooked. These are the identification of Sulus with Sabah through the defunct Sulu Sultanate which is further reinforced with the influx of Filipino immigrants to Sabah; and the strategic location for trade of the Sulu-Sabah area since the heyday of the Sultanate which will continue to play a significant role within the Brunei, Indonesia, Malaysia, Philippines – East Asian Growth Area (BIMP-EAGA). Abubakar, therefore, provides a new angle and a fresh perspective on how to look at the Moro problem in the South that can be applied in the continuing negotiation of the Philippine government with the Moro Islamic Liberation Front (MILF).

### **OUTSIDERS' VIEW (OR MAINLY THE BRITISH SIDE OF THE QUESTION)**

Other books could be of interest to anyone studying the Philippine claim, some of which provide the historical development of Sabah. These could open perspectives of outsiders on the claim.

K. G. Tregonning, former Raffles Professor of History in the University of Singapore, wrote *A History of Modern Sabah 1881-1963* (1965) first published as *Under Chartered Company Rule* (1958). The present edition includes a chapter dealing with Sabah as a British colony from 1946 to 1963. The author utilized unexploited papers of the British North Borneo Company in tin trunks in London still to be sorted in order to narrate first the failed American attempt to colonize North Borneo and then, the vicissitudes of the company's growth, expansion and administration of North Borneo. The position of the author regarding the Philippine claim on Sabah can be summarized as follows: (1) the agreement between the Sulu Sultan and Dent and Overbeck was one of a cession and not a lease<sup>9</sup>; (2) several treaties and international conventions had excluded North Borneo from the territory of the Philippines either during the Spanish or American period.<sup>10</sup> K. G. Tregonning also wrote

*North Borneo* (1960) a travel book he composed after he spent two months there in 1957.

Originally Michael H. Baker's MA thesis submitted to Stanford University *Sabah: the First Ten Years as a Colony, 1946-1956* (1965) should be read side by side with Tregonning's. Baker studied and assessed the ten-year postwar development in Sabah in terms of political governance, trade and industry, social services, agriculture and communications after devoting a chapter on Sabah's history from its earliest history to the advent of World War II.

Leigh R. Wright wrote *The origins of British Borneo* (1970), a book based on the author's thesis presented for a Ph. D. degree at the University of London. Wright explored British policy changes from 1860 to 1888 from having commercial interests on the island to eventually lording over it under a chartered company. Wright's study reveals that the shift was mainly a reaction to the French presence in Indochina, also fueled by German interests on the area, which led Great Britain to sign an agreement with Germany and Spain to delineate and secure her colonial sphere in Borneo.

In *Modernization in East Malaysia, 1960-1970* (1972), James P. Ongkili examines the modernization program of Borneo and Sarawak, referred to as East Malaysia, that begun during the colonial period from 1946 to 1963 and intensified after their incorporation into the Federation of Malaysia. Nonetheless, the book discusses briefly the Philippine claim at the end of Chapter 2. In contrast to Ariff's offer but in consonance with Prof. Quintos' proposal, at the conclusion of the chapter, Ongkili advocates the settlement of the dispute by paying the Sulu Sultan's heirs for their proprietary rights.<sup>11</sup>

In Chapter Four of *The politics of belonging: political change in Sabah and Sarawak* (1974) Margaret Clark Roff includes a whole chapter on the political situation in Sabah between 1962 and 1970 with a note in passing about the Philippine claim. Roff's work, especially this chapter, can be used as a way of seeing the claim in the context of Sabah's politics.



Nicholas Tarling, author of various books on Southeast Asia, in his well-researched *Sulu and Sabah: a study of British policy toward the Philippines and North Borneo from the late eighteenth century* (1978) situates Sulu and Sabah in the context of British policy beginning in the 18<sup>th</sup> century until 1963. For anyone who wishes to study the Philippine claim to Sabah, Tarling's book is an essential contribution toward understanding the dispute. Regarding his appraisal on the bases of the claim, Tarling demonstrates a rare unbiased position only a superb historian can offer. Tarling acknowledges the lease agreement, not cession, between the Sulu Sultanate and Overbeck-Dent duo and holds the position that the Philippine government did not inherit the Sulu Sultanate's sovereignty over Sabah by virtue of the 1885 Protocol. However, one could raise objections to this. Echoing again Quintos' and Ongkili's propositions, Tarling states categorically that: "the alternatives [for the solution of the dispute] would then be: the continuation of the lease in perpetuity and the payment of rent-cession-money of \$5 300 p.a., with any arrears; or its termination so as to leave Great Britain, and thus Malaysia, in sovereign possession, with the compensation to the heirs of the Sultanate" (p. 349).

Cyril Alliston in his work *Threatened paradise: North Borneo and its peoples* (1966) has written a short remark consisting only of three paragraphs, disclosing his position that the Sultan of Sulu ceded the territory to Baron Overbeck, Alfred Dent and their "heirs, associates, successors and assigns" their inheritors and beneficiaries which includes the British crown in 1946, thereby legitimating the claim of the successor-state, the Federation of Malaysia.

Although barely touching on the dispute, James Francis Warren's *The North Borneo Chartered Company's administration of the Bajau, 1878-1909: the Pacification of a Maritime, Nomadic People* (1971) may provide insights and details on British policies regarding the claim and the Sulu

Sultanate. Concentrating on the company's first thirty years, Warren analyzes colonial policies that were used in the pacification of the Bajau, a maritime nomadic people plying the seas of Sulu archipelago.

## A BIBLIOGRAPHY AND COMPILATIONS

Also valuable prior to the conduct of research is the work of Graeme Powell *Sabah: a Bibliography of the Dispute between Malaysia and the Philippines* (1969), which contains newspaper articles and other source materials about the dispute before 1969.

One should also not exclude the hefty *The Philippine claim to a portion of North Borneo: materials and documents* (2003), an indispensable volume intended for the use of government officials, legislators, lawyers and researchers. It contains pertinent documents that in one way or another are related to the Philippine claim to Sabah. This volume, an updated and expanded edition of *Readings on the Sabah question* (1987) was necessary in the light of recent developments concerning the Philippine claim. In 2001, the Philippine government applied for permission to intervene in the *Case Concerning Sovereignty over Pulau Ligitan and Pulau Sipadan* between Malaysia and Indonesia which was being adjudicated at the International Court of Justice (ICJ). The ICJ rejected, with one member dissenting over the court's decision, the Philippine application to intervene. Merlin Magallona of the UP College of Law and Undersecretary at the Department of Foreign Affairs optimistically assessed the Philippine participation in the said case as something of an achievement for it allowed them to explain the side of the Philippine claim to Sabah in the highest international judicial body. The present volume contains the Philippine application for permission to intervene, the texts of the proceedings of the application and the judgment of the ICJ.

## CONCLUSION

This survey demonstrates the continuing fascination of scholars, both Filipinos and foreign nationals, with the Philippine claim to Sabah. Since this is only an introduction to the works available at the libraries accessed, it does not include other pertinent sources for anyone who wants to undertake an exhaustive study of the subject.<sup>12</sup> Nonetheless, some important works have been included and it is an exciting task for anybody to explore other materials not cited in this bibliographic essay.

## NOTES

<sup>1</sup> The Deed of 1878 refers to the agreement dated January 22 between the Sultan of Sulu, Jamal ul Azam and Baron Gustavus von Overbeck leasing the sultan's dominions in North Borneo in exchange of five thousand Malaysian dollars as annual rent with William Treacher, British governor of Labuan, as witness.

<sup>2</sup> This was Cesar Adib Majul's estimate in his book *Muslims in the Philippines* (1999) in contrast to the 1704 date proposed by K.G. Tregonning in his book *Under Chartered Company Rule* (1958), later republished in 1965 as *A History of Modern Sabah 1881-1946*.

<sup>3</sup> The North Borneo Cession Order of 1946 laid the basis for the transfer of sovereignty and dominion from British North Borneo Company to the British crown which stated that "with effect from the fifteenth day of July, 1946, to the extent that the Crown should, as from that day have full sovereign rights over, and title to, the territory of the State of North Borneo and that said territory should hereupon become part of her Majesty's Dominions."

<sup>4</sup> Latin phrase used in legal texts, which means "out of excessive caution."

<sup>5</sup> The partial list of the documents are as follows: (1) Letter of Earl of Derby to Lord Odo Russell denying Spanish claim of sovereignty over Sulu, January 17, 1876; (2) Protocol of Sulu 1877; (3) Letter of Acting Consul General Treacher to the Earl of Derby dated January 2, 1878; (4) Contrato de Arrendo de Sandacan en Borneo, con el Baron de Overbeck, January 4, 1878; (5) Interpretation of the Moro Language of Mindanao translation of the previous communications in Arabic transcript of the contract which His Eminence, the Sultan of Jolo executed with the Baron de Overbeck, January 4, 1878; (6) Translation by Professor Conklin of the Deed of 1878 in Arabic characters found by Mr. Quintero in Washington, D.C., January 22, 1878; (7) Copy of

"Commission from the Sultan of Sulu appointing Baron de Overbeck Datu Bandahara and Rajah of Sandakan" obtained by Mr. Quintero in Washington, January 22, 1878; (8) Report of Acting Consul General W. H. Treacher to the Earl of Derby, January 22, 1878; (9) Letter dated July 4, 1878 from the Sultan of Sulu to the Governor Captain General of the Philippines denying that Sandakan was ceded to Overbeck; (10) Letter dated July 22, 1878 from the Sultan of Sulu to the Governor of Sulu stating that he will cancel the lease of Sandakan; and 23 more documents.

<sup>6</sup> The booklet does not show the year of publication but upon a close reading of the texts, it was no doubt published in the seventies.

<sup>7</sup> I am referring to the book *Philippine Claim to North Borneo Volume I* (Manila: Bureau of Printing, 1963) as mentioned in the preceding paragraphs.

<sup>8</sup> These articles are the following as stated in the preceding paragraphs: Lorenzo Sumulong, "A Report on Malaysia and on the Greater Malayan Confederation in connection with the Philippine claim to Sovereignty to a portion of North Borneo," *Philippine International Law Journal*. 1962;2 (1-2) Bernabe Africa, "The Legal Status of the British Occupation of North Borneo," *Philippine International Law Journal*. 1962: 2 (3) 388-409; Pacifico Ortiz, "Legal Aspects of the North Borneo Question" *Philippine Studies*. 1963: 11 (1): 18-64; and Republic of the Philippines, "Historical and Legal Bases of the Philippine Claim," *Philippine Claim to North Borneo* 1964. Manila: Bureau of Printing.

<sup>9</sup> K. G. Tregonning wrote: "The question of whether it was a cession or a perpetual lease (whatever that is) seemed a stupid word game" (1965: 245).

<sup>10</sup> The same author cited the Manila Convention of 1885, the Treaty of Paris of 1898 and US-UK Boundary convention of 1930 and at the same time, noted the acquiescence to these of the Philippine Constitution.

<sup>11</sup> Here is the full text of the conclusion: "It may be that the Philippines has been flogging a dead horse and Malaysia has been too hesitant to bury the carcass, while Sabah has had to bear the stench. Since the grant is one in perpetuity, it can either continue in force or, as the only real alternative, the annual payment of \$ 5 300 could be compounded and paid in a lump sum. A settlement of this nature should be done confidentially by diplomacy and mutual trust. Once the compounded sum is agreed upon by all parties concerned, a joint statement could be made, the Sulu Sultan's heirs duly compensated and the Philippines and Malaysia could move on to more natural political, social, economic and cultural cooperation" (1972: 25).

<sup>12</sup> Some of these include: Colmenares, S. P. 1990. *Philippine territorial claims: problems and prospects*. Honolulu, Hawaii: Philippine Studies Colloquium Center for Philippine Studies University of Hawaii at Manoa;

Sussman, G. 1983. Macapagal, the Sabah Claim and Maphilindo: The politics of penetration. *Journal of Contemporary Asia*. 13 (2): 210-228; Jacobini, H. B. 1964. "Fundamentals of Philippine Policy toward Malaysia" *Asian Survey*. 4 (11): 1144-1151; Butwell, R. 1964. "Malaysia and Its Impact on the International Relations of Southeast Asia" *Asian Survey*. 4 (7): 940-946; Starner, F.L. 1963. "Malaysia and the North Borneo Territories" *Asian Survey*. 3 (11): 519-534 among others.

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