

5-23-2012

The Philippine Claim on North Borneo: Another Look

S.J. Parpan

Follow this and additional works at: <https://archium.ateneo.edu/phstudies>

Recommended Citation

Parpan, S.J. (2012) "The Philippine Claim on North Borneo: Another Look," *Philippine Studies: Historical and Ethnographic Viewpoints*: Vol. 36: No. 1, Article 1.

DOI: <https://doi.org/10.13185/2244-1638.1213>

Available at: <https://archium.ateneo.edu/phstudies/vol36/iss1/1>

This Article is brought to you for free and open access by the Ateneo Journals at Archium Ateneo. It has been accepted for inclusion in *Philippine Studies: Historical and Ethnographic Viewpoints* by an authorized editor of Archium Ateneo.

philippine studies

Ateneo de Manila University · Loyola Heights, Quezon City · 1108 Philippines

The Philippine Claim on North Borneo: Another Look

Alfredo G. Parpan, S.J.

Philippine Studies vol. 36, no. 1 (1988) 3–15

Copyright © Ateneo de Manila University

Philippine Studies is published by the Ateneo de Manila University. Contents may not be copied or sent via email or other means to multiple sites and posted to a listserv without the copyright holder's written permission. Users may download and print articles for individual, noncommercial use only. However, unless prior permission has been obtained, you may not download an entire issue of a journal, or download multiple copies of articles.

Please contact the publisher for any further use of this work at philstudies@admu.edu.ph.

<http://www.philippinestudies.net>
Fri June 27 13:30:20 2008

The Philippine Claim on North Borneo: Another Look

ALFREDO G. P ARPAN, S. J.

In the aftermath of the February Revolution (22-25 February 1986), which ousted the Marcos regime, the Aquino-Laurel administration declared its intent to resolve "frontally" the issue of the Sabah claim "once and for all, one way or another," and that such a frontal decision would be resolved through "justice and self-determination." The Sabah dispute, Laurel said, will be faced "frontally and will be resolved under this administration. It is a nagging problem that this administration will resolve once and for all, one way or another." Also a Reuters item in *Manila Times* (12 April 1986) reported that Aquino told a Sabah newspaper soon after taking power that "the issue should be resolved through justice and self-determination"¹ in conformity, of course, with the Manila Accord of 31 July 1962, signed by Indonesia, Malaya and the Philippines.

A decision, however, of the Constitutional Commission (7 July 1986) to delete the phrase "historic right and legal title" from the territorial provision of the 1973 Charter, drops in effect the twenty-four-year-old Philippine claim on Sabah contrary to the intent of the proponents. In the 1973 Charter, the provision reads:

The national territory comprises the Philippine archipelago, with the islands and waters embraced therein, and all the other territories belonging to the Philippines by *historic right or legal title*, including the territorial sea, the air space, the subsoil, the seabed, the insular shelves and other submarine areas over which the Philippines has sovereignty or jurisdiction. The waters around, between, and connecting the islands of the archipelago,

1. Cf., for example, the *Manila Bulletin*, 4 March 1986.

irrespective of their breadth and dimensions, form part of the internal waters of the Philippines.²

Willy-nilly it would seem, the Concom preempted any Philippine foreign policy move (again contrary to the intent of the proponents of the amendment, e.g., to give a free hand to the president), and intended only to improve relations with Malaysia without forfeiting the claim to Sabah. As Concom delegate Joaquin Bernas said, the change of phraseology was to avoid the

continuing irritation it has generated among neighbors; moreover the amendment embodies a flexible concept which would permit, not just the present government but any future government to include in the Philippine territory any area over which it may exercise sovereign jurisdiction at that time.³

Now that the immediate "irritant" (the controversial phrase which Kuala Lumpur saw as "the unilateral assertion of the Philippine claim over Sabah as indeed it is") has been removed, will Kuala Lumpur honor once more its commitment to the 1963 Manila Accord which it had unilaterally rejected in the Bangkok talks of June-July 1968?⁴

HISTORICAL BACKGROUND

In 1704, the Sultan of Sulu, by virtue of a cession from the Sultan of Brunei whom he had helped in suppressing a rebellion, became sovereign ruler of most of North Borneo (present-day Sabah). The Sultanate of Sulu, founded by Abu Bakr in the midfifteenth century, preceded and outlasted both Spanish (1565-1898) and American (1898-1946) occupation in the Philippines. While the Sulu Sultanate lost its temporal sovereignty in Philippine territory (retaining only its ecclesial authority) during the American regime, the sovereignty was upheld and acknowledged by the Americans (and British) over North Borneo. Nor did the Sultan of Sulu lose sovereignty or dominion by virtue of the

2. Jose N. Nolleto, *The New Constitution of the Philippines, Annotated* (Caloocan City: Philippine Graphic Arts, 1975), pp. 55-56. See also *Business Day* (7 July 1986) and *Malaya and Manila Bulletin* (8 July 1986). Concom delegate Felicitas Aquino voted for the change on the understanding that it does not exclude the possibility of a claim on Sabah. Similarly Jose Bengzon.

3. *Malaya*, 8 July 1986.

4. Leon Ma. Guerrero's "The Right to Sabah: Reply to Malaysia" in his book, *Prisoners of History* (New Delhi: Embassy of the Philippines, 1972), pp. 127-33.

Treaty of Capitulation with Spain on 22 July 1778. As Salonga asserted, the United Kingdom is "estopped from raising the point." The United Kingdom had always declared that Spain's control over Sulu and its dependencies was merely "nominal," that Spanish claims were merely "paper claims" and that "sovereignty remains in the Sultan of Sulu" (Correspondence of 1881-82). Moreover, North Borneo was not included in what was surrendered to Spain, namely, "la isla de Jolo y sus dependencias."⁵

In 1978 (January 22), the Sultan of Sulu, Mohammed Jamalul Alam, leased ("ceded" according to British) North Borneo to two European adventurers, Overbeck and Dent, for the sum of \$5000 to be paid each and every year. The document of 1878 written in Arabic script and in the Malay language used the word *padjak*. The English translation of Maxwell and Gibson renders the Malay verb as *cede*; that of Prof. Harold Conklin of Yale University, *lease*. So does the Dutch scholar, Dr. Anceau, and such is the meaning of the Spanish *arrendamiento*. A Filipino historian alludes to the "odd way" Tregonning uses the word "cession" in his book, *Under Chartered Company Rule*, e.g., "the cession for ten years"—"when cessions were due to expire," etc.⁶ In his book, *The Dimensions of Conflict in Southeast Asia*, Bernard K. Gordon reluctantly admits that "even Malaysian officials do not deny that its usual meaning today is lease" but then casts doubt about its meaning in 1878. The Philippine's Quintero, at the London meeting with the Legal Committee, presented documents to show that the Deed of 1878 was a lease agreement and not a deed of sale.⁷ At that time too, Quintero added, the Sultan of Sulu was receiving annually from his properties in North Borneo the amount of \$5,000 (3,000 from pearl fisheries and 2,000 from edible birds' nests). Why then should he sell them for the same amount?

After the 1878 contract, Alfred Dent organized the "British North Borneo Company" and applied for a Royal Charter which was finally awarded in 1881. In response to Spanish and Dutch protests, the British Foreign Minister Lord Earl Granville disclaimed any British intention to assume either dominion or sovereignty over North Borneo and categorically stated that "sovereignty remains vested in the Sultan."

5. *Philippine Claim to North Borneo*, Vol. I (Manila: Bureau of Printing, 1969), pp. 26-27 (henceforth, *PC I*); Dr. Cesar Adib Majul's "The Sulu Sultanate and Its Original Acquisition of Sabah" in the National Historical Commission publication, *Symposium on Sabah* (Manila: NHC, 1969), pp. 25-36. Majul offers an earlier date for the cession: 1675.

6. Serafin D. Quiazon in *Symposium on Sabah* (Manila: NHC, 1969), pp. 18-19.

7. *The Dimensions of Conflict in Southeast Asia* (New Jersey, 1966), p. 15; *PC I*, pp. 32-35.

Both the British Foreign Office and Parliament have repeatedly affirmed this position, once consistently clarified in parliament debates in 1885, 1889 and in 1892.⁸ As of 1892, despite the grant of a Royal Charter in 1881, the Protocols of 1877 and 1885, and the so-called Protectorate Agreement of 1888, the territorial situation in North Borneo remained the same as before these events i.e., 1) The North Borneo Company continued as administrator of the territory; 2) The Company was still purely a commercial enterprise and 3) The powers and authority of the Company were derived from the Sultan of Sulu. Actually, the Protectorate Agreement did not bring any territorial change.⁹

A truly crucial year in Philippine history, 1898, saw the proclamation of independence (12 June) in Kawit, Cavite and the Treaty of Paris (10 December) ending the American-Spanish war and ceding the Philippines (with Guam and Puerto Rico) to the U.S.A. The following year witnessed the birth of Asia's first republic (23 January) and the inevitable Fil-American War (1899-1902).¹⁰ While it was in progress, Gen. John C. Bates concluded an agreement (20 August 1899) with Sultan Jamalul Kiram II providing, among other things, recognition of American sovereignty in Sulu and religious freedom. Abrogated in 1904, it was followed by the Carpenter Agreement of 22 March 1915, similar in many respects to the Bates Treaty. In a letter of 4 May 1929, Governor Carpenter stressed that the signing of the Agreement meant the "termination of all the rights of temporal sovereignty" which the Sultan had previously exercised in Sulu within American territory. But with regard to North Borneo,

It is necessary. . . that there be clearly of official record the fact that the termination of the temporal sovereignty of the Sultanate of Sulu within American territory is understood to be wholly without prejudice or effect as to the temporal sovereignty and ecclesiastical authority of the Sultanate beyond the territorial jurisdiction of the U.S. Government, especially with reference to that portion of the island of Borneo which, as a dependency of

8. *Philippine Claim to North Borneo*, Vol. II, pp. 40-46. Henceforth, *PC II*.

9. Cf. pp. 46-47. Nicholas Taring, *Sulu and Sabah* (Kuala Lumpur: Oxford University Press, 1978), pp. 346-49, explains the "evolution" of the change.

10. For a conspectus of this period, cf. Teodoro A. Agoncillo and Milagros Guerrero, *History of the Filipino People* (Quezon City: Malaya Books, 1970), esp. 215-64. Also, Gregorio F. Zaide and Sonia Z. Pritchard, *History of the Republic of the Philippines* (Metro Manila: National Book Store, 1983), pp. 241-68.

the Sultanate of Sulu is understood to be held under lease by the Chartered Company which is known as the British North Borneo Company.¹¹

In 1946 (4 July), Philippine Independence was restored with the rebirth of the American-sponsored Third Philippine Republic.¹² Just six days after, the British annexed North Borneo without notice to its owner, the Filipino Sultan of Sulu of the Republic of the Philippines. It was, as a former American Governor-General, Francis Burton Harrison, Special Adviser of Foreign Affairs to President Roxas, described it, "an act of political aggression which should be promptly repudiated by the government of the Philippine Republic."¹³ And to think that the aggressor-country was but a recent signatory of the Atlantic Charter which declared, among other principles, that the signatory countries sought no territorial or other aggrandizement.¹⁴

Unfortunately, in the excitement attendant on the rebirth of a nation ravaged by war and other internal problems, not much attention was given to the matter. It would take the administration of the fifth President, Diosdado Macapagal, (after Roxas, Quirino, Magsaysay and Garcia) of the Third Philippine Republic to pursue the matter with relative vigor. Not that there had been no other nongovernment attempts, especially from the heirs of the Sultan of Sulu, to press the matter in the interval.¹⁵ In fact, on the very same day (22 January 1878) the lease (*cession* according to the British), was effected, the Sultan wrote letters to the Governor of Jolo and the Captain-General of his desire to revoke the *lease*. Even before the official 1962 action, there were attempts to terminate the lease, e.g. the proclamation of Sultan

11. American Governor Francis B. Harrison (1913-21) made it even more explicit: "It is true Governor Carpenter's contract or treaty with the Sultan of Sulu deprived the Sultan of his temporal sovereignty in the Philippine Archipelago, but this did not interfere with the Sultan's status of sovereignty over British North Borneo's lands." *Philippine Claim*, Vol. I, p. 28.

12. Philippine historians consider the Japanese-sponsored wartime republic under Jose P. Laurel (1943-45) as the Second Philippine Republic. Thus, for example, the treatment by Zaide and Pritchard, "The Japanese Occupation and the Second Philippine Republic," *History of the Republic*, pp. 337-51.

13. *The Sabah Dispute* (Manila: North Borneo Office, 1969), pp. 11-17, especially Document No. 60. An American firm representing the legal heirs of the Sultan of Sulu had, earlier (18 June 1946), denounced the annexation of North Borneo by the British Crown as "an unauthorized act of aggression." Cf. Document No. 55.

14. The Atlantic Charter, a statement of fundamental principles for the postwar world issued jointly by Roosevelt and Churchill, after a series of meetings (9-12 August 1941), specifically stressed as its first principle "the renunciation of territorial or other aggrandizement by Britain and the U.S.A." Cf. A.W. Palmer *A Dictionary of Modern History: 1789-1945* (Middlesex, England: Penguin Books, 1964), p. 35.

15. *Philippine Claim*, pp. 34-35.

Esmail Kiram on 25 November 1957 that the termination would take effect on 22 January 1958. Attempts were also made much earlier, on 15 June 1946.¹⁶

THE PHILIPPINE CLAIM UNDER MACAPAGAL

On 22 June 1962, the Republic of the Philippines officially filed its claim of sovereignty, jurisdiction and proprietary ownership over North Borneo as successor-in-interest of the Sultan of Sulu. Because it was actually the Philippine response to a May 24 aide-memoire that the British Crown "enjoys sovereignty over North Borneo and that no valid claim to such sovereignty could lie from any other quarter. . .," the note suggested talks to be held at either Manila or London. In his State of the Nation address (28 January 1963), President Diosdado Macapagal declared that the filing of the North Borneo claim was "the most important action taken in the field of foreign relations" in 1962.¹⁷ After over five months of "calculated indifference and studied avoidance" London finally agreed and the long sought ministerial talks were held in the British capital (28 January to 1 February 1963). Philippine Vice-President Emmanuel Pelaez, chairman, stated the Philippine case thus:

It is our legal position that the Sultanate of Sulu had been recognized by the United Kingdom as the sovereign ruler of North Borneo; that the aforesaid contract of 1878 whereby the Sultan of Sulu granted certain concessions and privileges to Overbeck and Dent in consideration of an annual tribute of 5,000 Malayan dollars (about 570 pounds or 1,600 U.S. dollars) was one of lease; that whatever be the characterization of the contract, Overbeck and Dent did not in any event acquire, as they could not have acquired, under applicable rules of international law, sovereignty or dominion over North Borneo; that the British North Borneo Company did not acquire, as in fact it was not authorized to acquire, sovereignty or dominion over North Borneo, that the British Government consistently barred the British North Borneo Company from acquiring sovereignty or dominion over North Borneo by maintaining that the same resided in the Sultanate of Sulu; that, as a consequence, the British Crown, on the strength of the North Borneo Cession Order of 1946, did not acquire from the British North Borneo Company sovereignty or dominion over North

16. *Sabah Dispute*, esp. Document Nos. 54, 68 and 71. Cf. Tarling, *Sulu and Sabah*, pp. 314-35, on Filipino agitations for the return of North Borneo even in the early twenties.

17. *Diplomatic Agenda of Philippine Presidents* (Manila: Foreign Service Institute, 1985), pp. 116. Also *PC I*, p. 5.

Borneo, since the Company itself did not have them; that the said Cession Order was a unilateral act which did not produce legal results in the form of a new title; and that the Sultanate of Sulu which in 1957 publicly and formally repudiated the Cession Order and terminated the lease contract of 1878, continued to exist, in reference to North Borneo, until the Philippines, by virtue of the title it had acquired from the Sultanate, became vested with sovereignty and dominion over North Borneo. We are prepared to discuss with you in detail each and every proposition in the preceding statement of our legal position as well as other matters pertinent to the issue.¹⁸

In the meantime, of course, Brunei had erupted in revolt (8 December 1962) and the Indon konfrontasi with Malaya had begun (20 January 1963). The British explained why they found the Philippine claim "Not well-founded" and the Philippines claimed the alleged title of the British Crown over North Borneo "as without basis." Both agreed to pursue further discussion through diplomatic channels. Seeing that the Malaysia project was going through as scheduled, the Philippines proposed, since the issue was clearly legal, to submit the dispute to the International Court of Justice, a proposal the United Kingdom summarily rejected. Macapagal expressed his country's determination (5 February 1963) to take all necessary steps to realize the claim but "through all available peaceful means."¹⁹

At the Manila Summit (30 July to 5 August 1963), three Southeast Asian leaders (Indonesia's Sukarno, RP's Diosdado Macapagal and Malaya's Tunku Abdul Rahman Putra) signed three documents: the Manila Accord of 31 July 1963, the Joint Statement and the Five-Point Manila Declaration of 5 August that initiated the MAPHILINDO.²⁰ In

18. *PC I*, p. 13. Cf. also Pacifico Ortiz, S.J., "Legal Aspects of the North Borneo Question," *Philippine Studies* 11 (1963):18-64.

19. For the RP proposal and the UK rejection, cf. *PC II*, p. 58. For Macapagal's February 1963 resolution, cf. *Manila Times* (6 February 1963). Also, Republic of the Philippines, *Official Gazette*, vol. 59, no. 6 (11 February 1963). On the Brunei revolt, cf. Mas Mahini Kaul, *The Philippines and Southeast Asia* (New Delhi: n.p., 1978), pp. 78-79. For the Indon-Malaysian konfrontasi, cf. James P. Ongkili, *Modernization in East Malaysia: 1960-1970* (Kuala Lumpur-Singapore: Oxford University Press, 1972), esp. 9-25. *PC II* devotes all of its Part II, pp. 72-100, to a "Report on the Anglo-Philippines Talks held in London."

20. MAPHILINDO (an acronym for Malaya, the Philippines and Indonesia) was envisioned as a close-knit confederation of the three predominantly Malay countries "working together in closest harmony, but without surrendering any portion of their sovereignty. It was actually an expansion of the 1961 ASA (Association of Southeast Asia) with the further inclusion of Indonesia and Singapore. For a very provocative treatment of the matter, cf. George Farwell, "Discord in Maphilindo," *Mask of Asia—the Philippines* (Melbourne: F.W. Chesire, 1966), pp. 139-51. Also, Mas Mahini Kaul, *The Philippines and Southeast Asia*, esp. the chapter on Philippine-Malaysian Relationship, pp. 72-103.

the Manila Accord, all three countries reaffirmed their "adherence to the principle of self-determination for the peoples of non-self governing territories." In paragraph 12, the Philippines made it clear "that its position on the inclusion of North Borneo in the Federation of Malaysia is subject to the final outcome of the Philippine claim to North Borneo." Moreover,

. . . . the Ministers took note of the Philippine claim and the right of the Philippines to continue to pursue it in accordance with international law and the principle of pacific settlement of disputes. They agreed that the inclusion of North Borneo in the Federation of Malaysia would not prejudice either the claim or any right thereunder. Moreover, in the context of their close association, the three countries agreed to exert their best endeavors to bring the claim to a just and expeditious solution by peaceful means, such as negotiation, conciliation, arbitration, or judicial settlement as well as other peaceful means of the parties' own choice, in conformity with the Charter of the United Nations and the Bandung Declaration.²¹

In 1963 (16 September), the British-sponsored Federation of Malaysia came into being after being postponed on 31 August to give time to the United Nations team to finish its job. But in the midst of its operation (cut short from the proposed thirty days to ten!) came the British announcement that the new Federation (minus Brunei) would be proclaimed on that date irrespective of the outcome—an act described by the Secretary-General himself as a "slap at the UN."²² Both the Philippines and Indonesia rejected the UN findings, broke off diplomatic relations with Kuala Lumpur. Indonesia resumed its armed konfrontasi along its Kalimantan borders and landed troops on peninsular Malaysia (September of 1965). Singapore withdrew (seceded) from the Federation and became fully independent on 9 August 1965.

Attempts of allies (including the U.S.A.)²³ to mediate among the three MAPHILINDO countries brought a series of talks in Bangkok (5-10

21. *Philippine Claim*, Vol. II, pp. 108-9. S.P. Lopez appealed to this pertinent provision of the Manila Accord at the Eighteenth General Assembly (8 October 1963). Cf. *The Philippines: 40 Years in the United Nations* (Manila: Foreign Service Institute, 1985), p. 157.

22. *PC II*, pp. 66-71. S.P. Lopez, the RP spokesman, cited the picturesque language of the Secretary-General in his speech to the UN General Assembly (8 October 1963). For the complete text, cf. *40 Years*, pp. 146-60.

23. U.S. President Lyndon B. Johnson sent Atty. General Robert Kennedy who succeeded in arranging talks between the three Maphilindo countries in Bangkok. Cf. Kaul, *The Philippines and Southeast Asia*, pp. 86-92. Diosdado Macapagal's memoirs, *A Stone for the Edifice* (Quezon City: Mac Publishing House, 1968), esp. the chapter on Sabah, pp. 268-75, and a number of invaluable appendices, e.g., correspondence with Rahman, pp. 493-97, etc.

February and 3-6 March 1964) and in Tokyo (June). Before the end of the year a proposal was made by the Philippines (19 November 1964) to submit the dispute to the International Court of Justice as a token of their adherence to the rule of law and the UN Charter. If Malaysia is persuaded, the note urged,

that the rights it acquired from the British Crown over North Borneo can stand critical scrutiny, it should welcome as it did in Phnom Penh [the meeting between Diosdado Macapagal and Tunku, 10-12 December 1964] the Philippine proposal in order to set at rest all questions regarding its possession and purported title.²⁴

To Macapagal's urging that they go to the International Court of Justice, Rahman had refused.

If you have got evidence as wanted by the British Government to prove your claim, only then would I agree to allow this matter to go to the World Court. I also mentioned that a reference to the World Court was not the only remedy open to both countries.

This was Rahman's version as recounted before the Malaysian Parliament on 15 October 1968. A few days later (25 October 1968), at the Twenty-Third Plenary Session of the UN General Assembly, the Philippines challenged Malaysia to bring the Sabah issue to the World Court.²⁵

THE PHILIPPINE CLAIM UNDER MARCOS

Ferdinand Marcos, who succeeded Macapagal in November 1965, decided to recognize Malaysia (to be in a better position, he said, to renew negotiations over Sabah). This he did in June 1966 and both governments issued a joint communique reiterating they would abide by the Manila Accord.²⁶

24. *PC II*, p. 71. For the Macapagal version of the Phnom Penh "dialogue," cf. his *A Stone for the Edifice*, pp. 272-73. For Rahman's cf. Kaul, *The Philippines and Southeast Asia*, p. 88.

25. Jose Nolleto, *The New Constitution*, for the complete text delivered by RP's Arturo Tolentino, pp. 536-48. To the Tunku's suggestion that RP "simply drop the case," a *Free Press*, editorial (22 June 1968) retorted: "What Thief Caught With the Goods Would Have the Case Taken to Court?"

26. Remarks on radio-television (21 July 1967). This action was widely criticized. Cf. *Free Press*, "Our North Borneo Claim--Malaysia and Marcos" (9 September 1967). The writer, Napoleon Rama, contended that Malaysia's cavalier posture was traceable to the administration's hasty and unconditional recognition of that country, p. 3.

In 1967 (7 August), the five-member Association of Southeast Asian Nations (ASEAN) was formed in Bangkok by Indonesia, Malaysia, Philippines, Singapore and Thailand.²⁷ Among its avowed major objectives in the ASEAN Declaration is one that this article wishes to underscore since it has been strikingly unheeded:

To promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries of the region and adherence to the principles of the United Nations Charter.²⁸

In 1968 (16 June to 17 July) came the breakdown of the Bangkok talks between Malaysia and the Philippines. Despite a written commitment by the chairman of the Malaysian delegation given during the fifteenth session (that they would discuss modes of settlement of the dispute), the Malaysians (at the seventeenth session) announced they would hold no discussions on the subject again. Thus, at the Twenty-third General Assembly meeting (15 October 1968), the Philippine spokesman appealed to the UN:

In a world sorely beset by the doctrine and practice of violence, the Philippines dares to assert before this body its unshakeable faith in rule, its firm belief in peace through law. If the United Nations is to remain faithful to the Charter and true to its vocation, it has an inescapable duty to encourage and support our earnest appeal to the rule of law.²⁹

Guerrero likewise declared in Bangkok:

If the issue of Sabah is a threat to the peace and understanding in Southeast Asia, then let us settle the issue, peacefully and in an orderly and fair manner, by going to the World Court. For what is a threat is not the issue itself; issues will always arise between men and nations in this disorderly world. *What is a threat is the unwillingness to settle it quickly, peacefully, justly and beyond cavil. (underscoring ours)*³⁰

27. Brunei, which had refused to join the Malaysian Federation in 1963, has since become the Sixth ASEAN partner as of 1 January 1984, upon assuming status as an independent, sovereign country. Cf. *Asia 1986 Yearbook* (Bangkok: Far Eastern Economic Review), pp. 116-18. For the latest on the ASEAN, pp. 86-88. Indonesia, pp. 155-62; Malaysia, 185-92; Philippines, 220-25; Singapore, 226-32; Thailand, 247-53.

28. Kaul, *The Philippines and Southeast Asia*, pp. 160-64, for a complete listing of the seven-point objective and some comments.

29. For the complete text, cf. *40 Years*, pp. 190-207.

30. Guerrero, *Prisoners of History*, pp. 124-25.

This and subsequent appeals (at the Twenty-fourth and Twenty-fifth General Assemblies) seem to have fallen on deaf ears.

From the beginning of this controversy on Sabah—first with the United Kingdom and now with Malaysia--the Philippines has endeavored to have the dispute elevated to the International Court of Justice for decision. We believe that the dispute is a legal dispute. Under Article 36, paragraph 3 of the Charter of the United Nations, legal disputes are, as a general rule to be referred to the International Court of Justice for decision. Until now, we have not succeeded in getting the United Kingdom or Malaysia to agree to refer the dispute to the International Court of Justice.³¹

In 1977 (4-5 August), at the opening of the Second ASEAN Summit at Kuala Lumpur, President Ferdinand E. Marcos of the Philippines (under Martial Law regime since 21 September 1972), declared that "the Philippines is taking steps to eliminate one of the burdens of ASEAN, the claim of the Philippine Republic to Sabah."³² Despite this famed "renunciation" speech, Kuala Lumpur remained understandably uneasy. There was not popular endorsement of this move in the restored 1981 *Batasan* (lawmaking body). And the 1973 Philippine Charter containing the "offensive" territorial provision remained untouched. Whatever the common and popular interpretation of the 1977 ASEAN Summit affirmation of Marcos, there was, it must be admitted, no explicit mention of the "dropping" of the claim.³³ All told, the Marcos statement at Kuala Lumpur could go down in history as a classic case of "doublespeak." To press the case, to bring the matter to adjudication at the World Court as the Philippine spokesmen at the UN had consistently opted, is simply another mode of "eliminating" this ASEAN burden, albeit a more complex one than simply "dropping it."

A LOOK TO THE FUTURE

The two options (press the claim or drop it) could be realized by any of a number of proposals. But, all must be guided by the principle of

31. *Idem.* p. 196. Cf. also the addresses of Romulo to the UN at the 1969 and 1970 General Assembly sessions, pp. 208-31. After his 30 September UN Address up to his retirement as Secretary/Minister of Foreign Affairs, Romulo seemed to have devoted himself to the ASEAN cause. Thus, a letter to the *Far Eastern Economic Review* (21 November 1985), p. 10.

32. "A Storm Over Sabah," *Asiaweek* (3 December 1982), pp. 24-33. That Marcos intended it to be a "renunciation" may be gleaned from the official entries of *The Diplomatic Agenda of Philippine Presidents: 1946-1985*, for August 3, 4, and 8, pp. 281-82.

33. Also, see the remarks of a former foreign minister, Arturo Tolentino, *Business Day* (19 June 1985), p. 5.

justice and self-determination by which the Aquino administration vows to resolve "frontally" the North Borneo/Sabah issue. Whether the claim is to be presented or dropped, the right of the heirs of the Sultanate of Sulu (specific individuals or the entire inhabitants of Region IX) to a monetary settlement (dating back to the last payment of the heirs) must be guaranteed. And this, according to E.P. Patanne, is "a side-question now made complicated by the fact that there are a number of claimants."³⁴

Since Sabah (by the official 1962 cession of the Sultanate of Sulu to the Republic of the Philippines during Macapagal's administration) is part of the national patrimony of the Filipino people, the people must be consulted in a nationwide or regional referendum. And/or the national will must be expressed by the president endorsed by legislative action. The decision should not be left to the Foreign Office or Malacañang alone. Unless there is a "formal" renunciation there could always be danger of having the claim revived by more "adventurous" administrations. No president, said Macapagal (whose administration filed the original claim), has the authority to renounce the claim. "Only the Republic can renounce the claim through appropriate international agreements and not the President alone."³⁵

Fresh options must be afforded to the people of Sabah to remove any lingering suspicion of manipulation or defect of popular will as posed by the Indonesians and Filipinos to the 1963 UN proposal. "Unless Sabah becomes an independent state by itself, it shall be the continuing duty of our posterity to carry on the endeavor to return Sabah to the Philippines," Macapagal said in his interview with *Malaya* (18 June 1984). Indonesia and the Philippines had reservations about the findings of the UN survey teams and declined to welcome the new Federation of Malaysia because, in their view, the UN team had failed to comply with the agreements under the Manila Accord concerning a fresh approach, the presence of observers from the three countries to witness

34. Cf. *Manila Times* article (15 April 1986), p. 4. Also, 10 May issue on "RP to Revive Sabah Claim." The *Manila Bulletin* (19 May 1986), p. 11, reported the reappearance of "Sultan Hadji Muhammad Julaspi, sole heir of Jamalul Kiram and principal claimant to Sabah." Also, John Shirm's articles in *Malaya* (18-20 June 1984) on the "Sabah Update" and Romy Mapile's articles on Sultan Julaspi's proprietary claim *Manila Bulletin* (23-25 March 1986). For Sulu Sultan Jamalul Kiram III, the proprietary and sovereign rights and powers over Sabah belong solely to the "hamba-rakyat" (people) of the "Astanag Sug" (Sulu Sultanate). Cf. *Manila Times* (10 May 1986).

35. Cf. *Malaya* (18 June 1984), p. 2.

the proceedings and the timetable of operations which was cut from six weeks to ten days.³⁶

The decision of the Aquino-Laurel administration to resolve the North Borneo/Sabah problem "frontally" is well-taken. Certainly Malaysia subscribes as well to the principles of justice (called for in monetary settlements for the heirs of the Sultan of Sulu)³⁷ and self-determination that from the very start the Philippines had bound itself to and consistently reaffirmed at every conference table from London to Manila, Kuala Lumpur, Bangkok and the UN Assembly Hall.

While a "formal renunciation" is indeed called for from the Philippines, there must also be insistence on "fresh options" afforded to the Sabahans for their future by way of a genuine referendum however superfluous Kuala Lumpur might regard this exercise.³⁸

The time for name-calling is past. The ghosts of colonialism in the ASEAN region should be finally laid to rest. Kuala Lumpur and Manila should truly subordinate their respective "national interests" to the ASEAN common good or, better still, identify the former with the latter.³⁹

36. S.P. Lopez's "Philippine Policy Statement" at the UN (8 October 1963), esp. in *40 Years*, pp. 154-57.

37. Nicholas Tarding presented a proposal on how this may be done. Cf. *Sulu and Sabah*, pp. 349-50. Also James P. Ongkili, *Modernization in East Malaysia*, p. 25. For a more updated assessment, cf. Mapili's article *Manila Bulletin* (25 March 1986), p. 5.

38. Ongkili, *Modernization in East Malaysia*, p. 24.

39. Cf. e.g. Rolando N. Quintos' "The Sabah Question: Prospects and Alternatives" in *Symposium on Sabah*, pp. 63-82.