

THE PHILIPPINE CLAIM TO NORTH BORNEO

by

ORLANDO M. HERNANDO

A. B., University of the Philippines, 1951
Ll. B., Central Philippine University, 1955

A MASTER'S THESIS

submitted in partial fulfillment of the
requirements for the degree

MASTER OF ARTS

Department of Political Science
College of Arts and Sciences

KANSAS STATE UNIVERSITY
Manhattan, Kansas

1966

Approved by:

Joseph Hajda
Major Professor

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PREFACE

This study grew out of a desire to discover whether there is really a valid basis in international law for the Philippine claim over North Borneo. A number of articles which appeared in Philippine magazines and newspapers from 1957 to 1963 discussed the claim. There was no telling whether the filing of the claim was merely motivated by political reasons or whether there was a valid reason vital to the interest of the Philippines.

The writer's curiosity was further whetted by the lack of material on the subject in American books and magazines. At least one published article extensively discussed the claim. One book discussed the claim insofar as it related to the political affairs of the Federation of Malaysia. References to the claim in magazine and newspaper articles seemed vague and rested on no sound sources of information.

Some difficulty was encountered in securing materials for this study, a number of which had to come from the Philippines. For securing these materials, the writer of this study is heavily indebted to his father, his wife, his youngest sister, and two loyal friends.

Acknowledgement is also made of the invaluable assistance given by Professors Wallace F. Caldwell, Merlin Gustafson, Louis H. Douglas, and Joseph Hajda which led to the final development of this study.

CHAPTER I

INTRODUCTION

A new territorial controversy has emerged on the international scene: The Philippine claim to North Borneo, now called Sabah, a member State of the Federation of Malaysia.

Scant attention was given to the claim when it was first formally filed in June 22, 1962 by the Republic of the Philippines through a diplomatic note transmitted to the British Foreign Office. Most people did not anticipate that the Philippines would make such a claim believing that Great Britain had clear title to the territory.

The claim since then has been overshadowed by later political developments in Southeast Asia such as the struggle between the Netherlands and Indonesia over West New Guinea and the present aggressive policy of confrontation which Indonesia now pursues against the Federation of Malaysia.

The claim has not yet been settled. Because it subsists, the dispute has disrupted normal relations between the Philippines and the Federation of Malaysia and has created feelings of rancor and bitterness between them.

I. THE PROBLEM

Statement of the problem. It was the purpose of this study (1) to present the basis of the Philippine claim to North Borneo; (2) to test the validity of the claim according to applicable rules and principles

of international law in relation to the competing British claim; and (3) to examine the means by which international law provides for the settlement of such a dispute.

Importance of the study. First, this study is important because the settlement of the dispute is directly related to the disrupted political relationships between Malaysia and the Philippines. Its settlement, however, must depend on whether a valid claim exists for the Philippines.

While the original claim was legalistic in nature, a number of reasons have been variously suggested to explain the Philippine claim: (1) that it was merely a manifestation of Philippine nationalism or "jingoism," or that (2) it reflected merely the result of Philippine President Diosdado Macapagal's search of a foreign policy distinctively Filipino and not American in inspiration. Thus, Willard A. Hanna suggests that the legal basis for the claim has undergone the following elaborations and modifications not altogether consistent:¹

1) Malaysia is an artificial and unstable Federation, an invitation to Chinese Communist subversion, which can readily spread from Singapore through Borneo into the Philippines. In any event, Malaysia is likely to be Chinese dominated and an affront, therefore, to all Southeast Asian nationalists.

2) Malaysia cannot protect North Borneo (from Communist China or from Indonesia, for instance), but the Philippines can.

3) Indonesia is the coming power in Southeast Asia and, like it or not, the Philippines must get along with Sukarno, by cautiously supporting Sukarno on the Malaysia issue, and the Philippines can convert Indonesia into a responsible

¹Willard A. Hanna, The Formation of Malaysia (New York: American Universities Field Staff, Inc., 1964), p. 3.

neighbor. Thus, the Philippines can assert its own leadership in Southeast Asia and strengthen the anti-communist cause.

4) The British have shamelessly manipulated Malaya and Malaysia. They exercised pressure upon Tengku Abdul Rahman to resist Indonesian and Philippine moves of conciliation at the time of the Manila Conference and during the subsequent United Nations "assessment" of public opinion in Borneo. Malaysia is thus a creature of the British, the United Nations assessment is invalid, and the Tengku, just as Sukarno says, lends himself to British "neocolonial" designs by failing to support the basic new principles of Southeast Asian determination of Southeast Asian affairs.

5) "Maphilindo"--Macapagal's proposal for a "loose confederation" of the Philippines, Indonesia, and Malaysia, recently readjusted to allow for membership of all Southeast Asian states except North Vietnam is the answer to the Malaysia crisis.

These political arguments may have been raised by the protagonists to the dispute to becloud the legal nature of the dispute as it is understood in international law.

Thus, secondly, this study is important because there should be established a valid basis for the Philippine claim to prove that there is a justiciable issue not one merely raised by the Philippines for ulterior political motives. The basis must be clearly shown in order to show that the claim rests on a strong foundation in international law. In the words of R. Y. Jennings, a British publicist:²

It is not enough to have rules of law. If the law is to be effective there must also be courts to determine the application of the law to the circumstances of a particular dispute. The more sophisticated and developed the law, the more there will be need of such determination. Moreover, the jurisdiction of the court ought in a developed system to be obligatory,

²R. Y. Jennings, "The Progress of International Law," The British Yearbook of International Law (London: Oxford University Press, 1959), pp. 339-340.

in the sense that one party to a dispute can take his adversary before the court whether he be willing or no.

Third, this study is important because the peaceful resolution of the dispute by methods recognized in international law, as for instance, by adjudication by the International Court of Justice might have far-reaching results in Asia. A recent study revealed that comparatively few Asian and African countries have accepted the compulsory jurisdiction of the International Court of Justice under the optional clause of its Statute.³ Further, as the record shows, these countries have generally been reluctant to go before the Court for the settlement of their disputes in the short time that most of them have become independent. Two reasons have been advanced for this situation: First, a lawyer-like fear that the states might lose the case so that it seems more advantageous to leave the matter unsettled; and secondly, some of these states consider an international litigation an unfriendly act to be avoided insofar as possible.⁴ The Philippines has repeatedly urged Britain, in the beginning, and later Malaysia to give their consent to let the International Court of Justice settle the case. Both nations have refused.

Fourth, this study is important in that it seeks to examine the validity of the rules of occupation, cession, and prescription as well those referring to the colonial protectorate and the territorial lease as methods of acquiring title to territory in international law as applied to the competing Philippine and British claims to North Borneo.

³R. P. Anand, "Role of the New Asian-African Countries in the Present International Legal Order," The American Journal of International Law, LVI (April, 1962), p. 393.

⁴Ibid.

Methods of investigation. The methods used are legal and historical. Historical research was utilized to discover the basis of the competing Philippine and British claims. Legal research was resorted to as a means of laying the legal foundation for the competing Philippine and British claims in international law.

Sources. Resort has been had to books, periodicals, documents, writings of publicists, cases decided by international tribunals, and other sources acceptable to the International Court of Justice.

Bias of the researcher. The writer of this study is a Filipino but he trusts that his legal and academic training are sufficient to prevent him from the development of a personal bias. This study was made not to bolster or strengthen the claim of the Republic of the Philippines, a matter that is perhaps safely entrusted to more capable and competent hands.

Difference of the study from other studies. This study differs from other studies in that it attempts to present both the historical and legal basis for the Philippine claim to North Borneo in relation to the competing British claim. It also seeks to analyze the basis of the Philippine claim within the context of applicable principles of international law without presuming to anticipate the judgement of the International Court of Justice. It also seeks to examine the means by which a dispute of this nature might be settled peacefully according to methods recognized in international law.

Importance of competing British claim. The question of the Phil-

ippine claim to North Borneo cannot be adequately investigated without looking at the competing British claim which is now succeeded to by the Federation of Malaysia. The territory of North Borneo had long been administered by British nationals and in 1946 was formally made a colony of the British Crown.

Importance of Indonesian claim. While Indonesia is at present engaged in guerrilla infiltration of North Borneo (or Sabah) her claim will not be investigated or discussed in this study.

II. DIVISIONS OF THE STUDY

This study is divided into six chapters. Chapter I is the introduction.

Chapter II deals with the geography and history of North Borneo with particular reference to the interests of Great Britain and the Republic of the Philippines.

Chapter III deals with the historical and legal basis of the Philippine claim.

Chapter IV discusses the competing claim of Great Britain (now succeeded to by the Federation of Malaysia) and the rebuttal of the Philippine Government.

Chapter V discusses the rules and principles of international law applicable to the dispute and the means for the settlement of this dispute as provided for in international law.

Chapter VI deals with the summary and the conclusion.

CHAPTER II

BRIEF HISTORY OF NORTH BORNEO

Some attention was directed to the North Borneo territory in 1962 when Malayan Prime Minister Abdul Rahman proposed the formation of a new Federation of Malaysia.¹ At that time, Willard A. Hanna described North Borneo as

racially the most complex, economically the most swiftly developing, politically the most retarded, strategically perhaps the most important of all the prospective members of what could prove to be Southeast Asia's most stable, prosperous, and progressive nation.

North Borneo has been in the past and remains today something of an international curiosity, an extreme and generally agreeable combination of anomaly and anachronism. It was for many centuries the domain of pirates, slavers, and head-hunters. It emerged late on the stage of modern world history by way of three colonial experiments which culminated rather remarkably, the first in victory for "the natives"; the second in the investiture of a highly popular White Rajah; and the third in the replacement of an American would-be rajah by the most paternalistic and hence the least lucrative of the British chartered companies.²

Geographic facts. North Borneo is located on the northeast tip of Borneo, third largest island in the world. It has an area of 29,388 square miles, the greater part of which is covered by jungle, unpopulated with very little communications except for jungle tracks and rivers which serve as highways to the interior.

In 1957, its total population was 454,421 broken down into racial

¹Willard A. Hanna, The Formation of Malaysia (New York: American Universities Field Staff, Inc., 1964), p. 40.

²Ibid.

components as follows:³

Malay	26,429
Chinese	104,542
Indian	3,180
Dusuns, Badjaos, Illanuns, Sulus, Obians, Binadans, and others	<u>320,270</u>
Total	454,421

Geologically, Borneo as a whole still forms part of the Sunda shelf, that is, of the old plinth projecting from the continent of Asia,⁴ from which it is now separated by the shallow Java and China Seas.⁵ To the north the land falls away quickly to great depths of ocean.

Most of the island is covered by dense forest and the central massif slightly north of the equator is still partially unexplored. Like most tropic lands the climate is hot and humid.⁶

Early history.⁷ Very little is known of Borneo until the sixteenth century. Kublai Khan is said to have invaded the country in 1292, the same year when Marco Polo was reported to have found Islam established by "Saracen" traders at Perlak, a small port on the north coast of Sumatra. Islam was spread to Borneo and other parts of the Archipelago by Indian and Arab traders and merchants along the sea routes.

³Robert O. Tilman, "Malaysia: The Problems of Federation," The Western Political Quarterly, XVI (December, 1963), p. 901.

⁴Charles Robequain, Malaya, Indonesia, Borneo, and the Philippines (London: Longmans, Green and Co., 1954), p. 216.

⁵K. G. Tregonning, Under Chartered Company Rule (Singapore: University of Malaya Press, 1958), p. 1.

⁶Ibid.

⁷Much of the material here is taken from K. G. Tregonning's book Under Chartered Company Rule, pp. 2-3. See also Owen Rutter, British North Borneo (London: Constable and Company, Ltd., 1922).

In the fourteenth century the Sultan of Brunei was said to be a vassal of the Madjapahit of Java but in 1370 he transferred his allegiance to China. From 1415 to 1425 tribute was sent from Brunei to China. In the fifteenth century a sister of the Chinese governor of the settlement married Sultan Mohammed who first introduced the Mohammedan religion into Brunei. The present royal family of North Borneo is said to trace their descent from this couple.

Legend says that amongst the traders who sailed the sea lanes of the archipelago were three sons of a rich Hadramaut merchant who had married the daughter of the Sultan of Johore. One took the faith to the Philippines; another became Sultan of Sulu; while the third, the eldest married the daughter of the Chinese-blooded Sultan of Brunei, in north-west Borneo, and became, on the death of his father-in-law, the reigning Sultan.

The Chinese Annals from as early as the seventh century A.D. and the detailed accounts during the Ming Period (1369-1644) tell of the Chinese as having been in Brunei for a long time. Trade was frequent and settlements of the Chinese were established on the river banks. Pepper, grown on the rich slopes of the river banks, found ready sale in South China. Its cultivation became the monopoly of the Chinese. The presence of the Chinese and the knowledge of the power they possessed influenced Brunei to shake off the overlordship of Madjapahit and Brunei thus became the first of the states of the archipelago to send ambassadors to China. In the fifteenth century Brunei embarked on a career of conquest. The arrival of a Muslim Sultan to the throne gave fresh vigor to Brunei expansion. Piety gave to piracy the necessary impetus for the increase of the power of Bru-

nei. Up to 1511, when Malacca was conquered by the Portugese, Brunei's wealth grew.

Many Muslim traders fled from the Christians and sought a new centre in Brunei, standing stilt-like on a shallow bend of the only Bornean river without a sand bar at its mouth. She became the bazaar of the northern islands, and when the first European arrived she was at the height of her power, having subjected all the rivers of the north and west Borneo, and beyond. Pigafetta, chronicler of Magellan, visited Brunei in 1521, and was received with royal pomp and state.⁸

The first detailed description of Borneo appears in the chronicles of Pigafetta who notes that in Brunei there were many signs of wealth. Letters were known, several of the arts flourished, and Chinese metal coin was in common use.⁹

But while Pigafetta and his companions were treated with lavish hospitality by the Brunei natives, the Spaniards returned this royal reception with cruel plunder and acts of piracy. The record of this first voyage of any importance to the island is marred by piratical activities that would contribute to the decline of that once prosperous country. The next 400 years of Borneo history is one of decline.

The three great modern influences on the archipelago, the European, the Chinese and Islam, had all arrived; but they were to pass her by. For nearly 400 years the story of North Borneo is one of decline. The power and the ardour of the Sultan diminished. The conquered territories broke away, were ceded away, or lapsed into feudal isolation. The Chinese stopped coming, for they found greater wealth and security near the European trader, and he had found richer prizes elsewhere. Brunei's importance as a trading centre steadily diminished, and as trade decreased poverty and the tenets of the new religion stimulated a great increase in piracy. Slowly she

⁸Tregonning, op. cit., p. 3.

⁹Rutter, op. cit., pp. 86-90.

disintegrated.¹⁰

An economy based on piracy, slave trade and headhunting created an unfavorable situation that deterred the Europeans from coming into Brunei. But demands of commerce forced the Europeans to consider clearing the seas of mischievous pirates who wrought havoc on their trade. They began to think of establishing settlements on the island of Borneo by which they might protect their commerce.

The two most powerful rulers in the area were the Sultans of Brunei and Sulu. The Sultan of Brunei's sultanate dated from 518 A.D. and that of Sulu from 1380 A.D. Up to 1704, the territory that was known as North Borneo was part of the territory of the Sultan of Brunei until he ceded it to the Sultan of Sulu in gratitude for the latter's assistance in quelling an insurrection.¹¹

Early European attempts to settle on North Borneo. After 1760, a common feature of the histories of Malaya and northeast Borneo was the development of official British interest in those regions. This was seen in the effort of the East India Company to establish a British settlement either near Malacca Strait or in the lands bordering on the South China Sea. A number of considerations dictated this interest:¹²

First, the settlement was to be an entrepôt where South east Asian produce could be collected for shipment to Canton to help finance the Company's growing investment in tea.

¹⁰Tregonning, op. cit., p. 3.

¹¹Rutter, op. cit., p. 93; Tregonning, op. cit., p. 11.

¹²D. K. Bassett, "The Historical Background, 1500-1815," in Wang Gungwu (ed.), Malaysia: A Survey (New York: Frederick A. Praeger, 1964), pp. 123-124.

Second, it was also hoped to attract to the British factory Chinese merchants not represented in the Co-hong at Canton and persuade them to introduce British cloth into the colder parts of China.

Third, the settlement was designed as a centre for the peaceful expansion of British trade and influence in the Dutch Indonesian empire.

Fourth, an additional factor in British policy was the strategic necessity for a naval base on the eastern side of the Bay of Bengal, from which to protect the Coromandel Coast against French ships based on Mauritius and Aceh.

In pursuit of this policy, a preliminary treaty was executed by the British with the Sultan of Sulu giving them access to the island of Balambangan.

In October, 1762, the British seized Manila. The temporary occupation of Manila by the British resulted in the release of the dispossessed and rightful Sultan of Sulu, a Spanish prisoner, by the British. In return for his reinstatement by the British, the Sultan in June, 1764, ceded to the East India Company all northern Borneo from Kimanis to Terusan Abai, together with Labuan, Palawan and Banggi.¹³ A settlement was started at Balambangan in 1773 but in 1775 it was destroyed by a raid of fierce Sulus and Ilanuns. A second settlement suffered the same fate.

Forty years later, in 1839, the British tried again. Through the efforts of James Brooke, a cession of a large part of Borneo territory was obtained by him from the Sultan of Brunei. This territory eventually became known as Sarawak.

Brooke's arrival in Borneo was simply part of the growing interest being focused upon Borneo by European powers. Various attempts had indeed

¹³Ibid.

been made by the middle of the nineteenth century by European powers to settle in Borneo. All these attempts ended in failure. The Portuguese satisfied themselves with infrequent trading expeditions while the Dutch clung precariously to the southern coast.

In 1846, Britain gradually strengthened her foothold in Borneo when she obtained Labuan Island from the Sultan of Brunei. The next year Britain ratified a treaty of friendship and commerce with Brunei.

From Labuan and Singapore, the British gradually cleared the coasts of the most dangerous of the pirates. This resulted in the destruction of Brunei's wealth and power. Thus, the British not only secured Sarawak to Brooke and his successors, they also opened up to other men of vision the potentialities of the Sultan's domain.

Two other nations were interested in Borneo. These were Spain and the United States.

Early in 1849 Brooke paid a friendly visit to the Sultan of Sulu. Spain noted this visit and other developments in Borneo as a threat to her holdings in the Philippines. Accordingly, in 1851, Spanish forces invaded the Sulu islands and compelled the Sultan to sign a treaty recognizing Spanish sovereignty. Earlier in 1836 Spain had signed a treaty of friendship and commerce with the Sultan of Sulu.

American interest in Borneo was not to make the sea lanes safe from piracy as the British wanted, but to obtain for herself the privileges of the most favored nation by treaty.

The first attempt of the United States to negotiate a treaty with Brunei in 1845 ended in failure. In 1850, however, the United States succeeded in securing a treaty with Brunei granting her the privileges of the

most favored nation. But the United States failed to take advantage of this treaty and Brunei became as neglected as before. Brunei stagnated and decayed.

North Borneo since 1865. Brunei's stagnation invited the attention of adventurers. The first of these men who saw enormous potentialities in the territory of North Borneo was a man named Claude Lee Moses. Moses came to Brunei in 1865 posing as the American consul. He was described as the man who first thought there might be money in North Borneo. He became the "vital first actor in a play that ended with Borneo as part of the Commonwealth."¹⁴

Moses came to North Borneo penniless. He even had to borrow money for his fare. But upon his arrival at Brunei he did not waste his time. Within a few days after his arrival he secured, on the promise of certain payments to the Sultan of Brunei and the Sultan's heir, the cession for ten years of a large tract of Brunei territory to the north. With the deeds in his pockets, he swiftly departed for Hongkong where he as quickly disposed of his holdings to two American businessmen, Joseph W. Torrey and Thomas B. Harris, and a Chinese partner, Wo Hang, who soon withdrew and was replaced by Lee Assing and Pong Ampong.¹⁵

In October, 1865, the four partners formed a company called The American Trading Company of Borneo with a capital investment of \$7,000. They decided to establish a settlement in Borneo.

¹⁴K. G. Tregonning, North Borneo (London: Her Majesty's Stationery Office, 1960), p. 22.

¹⁵Tregonning, Under Chartered Company Rule, pp. 5-6.

By December, 1865, a settlement called "Ellena" was established at the mouth of Kimanis River, some sixty miles away from Brunei. As president of the Company, Torrey was appointed Supreme Ruler and Governor. The Sultan of Brunei gave him the titles of Rajah of Ambong and Marudu and Sir Majarajah of North Borneo. The Sultan gave him the power of life and death over the inhabitants, the right to coin money and make laws, and all other powers and rights exercised by a sovereign ruler.¹⁶

The settlement failed and the company went bankrupt. Torrey tried to interest the United States Government in his concession but got nowhere. In 1875 when his cessions were about to expire, Torrey met the Baron von Overbeck then serving as the Austrian Consul General at Hongkong. Overbeck was forty-four years of age, a large man of both courage and ability. Having assisted the Austrian government in some matters, he had been awarded a barony and a consulate in return.¹⁷

Overbeck's interest in the cessions dated as early as 1870. With the help of two friends, Overbeck therefore purchased for \$15,000 all the rights possessed by Torrey in the American Trading Company of Borneo on the condition that within nine months a renewal of the lease could be obtained. Overbeck visualized a highly profitable re-sale to his government, as yet colony-less in a colony-grabbing era.¹⁸

Overbeck and Torrey journeyed to Brunei where they unsuccessfully tried to get the aged Sultan of Brunei to renew the leases. They were

¹⁶Ibid.

¹⁷Ibid., p. 9.

¹⁸Ibid., p. 12.

more successful with the Sultan's heir, the Pengeran Tumonggong, but as the Sultan refused to affix his seal to the document, it was all but worthless.

At about the same time the Spaniards were engaged in one of their campaigns to conquer the Sulu Archipelago. One enterprising young man named W. C. Cowie, made money out of this campaign by running the Spanish blockade of Jolo, Sulu's principal island, and selling arms and other contraband to the Sulus.

On one of his trips to Hongkong, Cowie met Torrey who attempted to levy export duties on the former's goods shipped out of Sandakan. Cowie refused to pay. He informed Torrey that his North Borneo concessions were worthless because they had already expired and also because the territory really belonged to the Sultan of Sulu.¹⁹

Overbeck, in the meantime, had exhausted his original capital and had returned to London in an effort to secure additional funds from his backers. Near desperation, he turned to Alfred Dent, head of a business organization which formerly employed him at Hongkong. Dent agreed to put up ten thousand pounds on the condition that he would be given sole control of any North Borneo concession.²⁰

Overbeck returned to the Far East and with the money secured from Dent he was able to secure grants of territory from the Sultan of Brunei. Tregonning writes of this affair thus:

The Sultan, in three grants of territory from Gaya Bay on the

¹⁹Ibid., p. 11.

²⁰Ibid., p. 12.

west coast to the Sibuco River on the east, and from the Pengeran Tumonggong, in a grant of his west coast possession, the rivers Kimanis and Benomi, ceded to Overbeck and Dent, with all the powers of sovereignty, some 28,000 square miles of territory, embracing 900 miles of North Bornean coastline for a total yearly payment of \$15,000. This meagre rental reflects the state of affairs. The territory had long ceased to be under Brunei control and failed to bring in any revenue. The Sultan received \$15,000 for nothing, and he was well pleased.²¹

Having learned that a large portion of the ceded territory was in the hands of the Sultan of Sulu, Overbeck journeyed to Jolo where on January 22, 1878, he concluded an agreement with the Sultan of Sulu. The Sultan of Sulu granted Overbeck concessions in North Borneo in consideration of an annual rental of \$5,000.²²

Dent, in London, soon found that he could not dispose of the concessions to a foreign power because of a provision in the agreement prohibiting any transfer of the territory without the consent of the British government. He, therefore, decided that the land should be developed by a British company. With the assistance of a powerful friend in the Foreign Office, Dent applied for a Royal Charter. In his application Dent said that his proposed company would not seek to impose any monopoly of trade; nor would it permit any foreigner, whether European, Chinese or other to own slaves; and it would abolish by degrees the system of slavery prevailing in the ceded territory. It would respect native rights and institutions, give equal treatment to all in the courts of justice and it would accept the system of raising revenue by means of strictly controlled farms which was in force in the colonies of Labuan, Hongkong, and the Straits Settlements.²³

²¹Ibid., p. 14.

²²Ibid..

²³Ibid., p. 21.

It was some time before Dent got what he wanted. In November, 1881 a Charter was granted to the British North Borneo Company by an Order in Council.

The Charter empowered the Company to acquire all the powers of the Provisional Association, and went on to stipulate that the Company must remain British in character; must not transfer any of its grants without the permission of the British government; must suppress slavery; must not interfere with the religious or other customs of the natives; and must take the advice of the British government if it disagreed with either the Company's treatment of the natives or its dealings with foreign powers. The appointment of its chief representative in Borneo was to be subject always to the approval of the British government, while the provision of facilities for the Royal Navy and a prohibition of a monopoly of trade were further stipulations.²⁴

The grant of the Charter evoked diplomatic protests from the Dutch, Spanish, and American governments but these did not in any way affect the administration of North Borneo by the Chartered Company.

In 1888, North Borneo, under the administration of the Chartered Company, was formally designated a British Protectorate.²⁵

Legally, the administration of the Chartered Company of North Borneo ended in 1946, but in fact it ceased after the Japanese invasion of the area in 1941.²⁶

The Japanese invasion of North Borneo resulted in such devastation that it is not surprising that the company decided to sell its sovereign rights to the British Crown for upward of 2,000,000 pounds.²⁷

²⁴Ibid., p. 27.

²⁵Hanna, op. cit., p. 43.

²⁶Tregonning, Under Chartered Company Rule, p. 213.

²⁷Osgood Hardy and Glenn S. Dumke, A History of the Pacific Area in Modern Times (Boston: Houghton Mifflin Company, 1949), p. 356.

On July 15, 1946, the administration of the Chartered Company was terminated and the area proclaimed a crown colony of Great Britain with capital at Jesselton.²⁸

On September 16, 1963, the colony of North Borneo with its name changed to Sabah formally joined the new Federation of Malaysia.²⁹

²⁸Ibid., p. 355.

²⁹Hanna, op. cit., p. 1.

CHAPTER III

HISTORICAL AND LEGAL BASIS OF THE PHILIPPINE CLAIM
ON NORTH BORNEO

The Philippines and North Borneo had close historic links dating as far back as the beginning of history. Authoritative western scientists were said to have traced land bridges which, during several geologic periods, connected Borneo with the Philippines.¹ Charles Robequain points out the links between the Philippines and Borneo as follows:²

That the Philippines formed part of the East Indies cannot be disputed. Admittedly, the mountains of Formosa can be seen in clear weather from the top of Iraya, a mountain on the island of Batan off the north Coast of Luzon. But the connection with the islands to the south is stronger and, owing to the bifurcation of the group, has more than one link. The sills that separate deep basins and break the surface to form the Talaud and Sangihe Islands join the Philippines to Celebes; and two submerged ridges, still broader and shallower, from which emerges the Sulu Islands and Palawan, connect the group with Borneo.

The forms of life also point to the inclusion of the Philippines to the East Indies. . . . The freshwater fish are related to those in Borneo, not to those in Formosa. . . .

The peculiarity of the Philippines also appears in their population. They are obviously similar to the rest of the East Indies in the superposition and juxtaposition of ethnic groups and modes of life and in the succession and mingling of waves of cultural influence. Nearly all the streams of migration which have helped to form the existing population seem to have come from South-eastern Asia and mainly by way of Borneo. Most of the cultivated plants and domestic animals have been got from the same region. . . . By the time Legaspi arrived, Islam had become master of the Sulu Islands and the coast of Mindanao and counted many followers in Luzon.

¹Philippine Claim to North Borneo (Manila: Bureau of Printing, 1964), p. 21.

²Charles Robequain, Malaya, Indonesia, Borneo, and the Philippines, trans. E. D. Laborde (London: Longmans, Green and Co., 1954), pp. 258-259.

Historical Basis

Historical facts of the case. The historical basis of the Philippine claim to North Borneo rests on the following facts:

Since 1704, the territory of North Borneo was under the sovereignty of the Sultan of Sulu. The territory had been ceded to him by the Sultan of Brunei in return for his help in suppressing an insurrection.³ Spain recognized the sovereignty of the Sultan of Sulu over this territory through a treaty of commerce executed in 1836 with the Sultan.⁴ Great Britain also recognized such sovereignty over this area through the execution of a number of treaties with the Sultan of Sulu in the years 1761, 1764, and 1769.⁵

On January 22, 1878, the Sultan of Sulu signed a deed of permanent lease in favor of Baron von Overbeck and Alfred Dent, giving the latter certain rights to his North Borneo territory in consideration of an annual rental of five thousand Malayan dollars payable every year.⁶ The annual rental is still being paid today although the British call it "cession moneys." The British historian, K. G. Tregonning, in his book, North Borneo states:⁷

³Owen Rutter, British North Borneo (London: Constable and Company, Ltd., 1922), p. 93; K. G. Tregonning, Under Chartered Company Rule (Singapore: University of Malaya Press, 1958), p. 11.

⁴Letter of the Earl of Derby to Lord Odo Russell, printed in Philippine Claim to North Borneo, p. 44.

⁵Letter of the Earl Granville to Mr. Morier, printed in ibid., p. 114.

⁶Philippine Claim to North Borneo, pp. 22-23; 31-35.

⁷K. G. Tregonning, North Borneo (London: Her Majesty's Stationery Office, 1960), p. 25.

These cession moneys are still being paid, for after the Sultanate was abolished by the Americano-Filipino democracy early in this century, the recognition of the rightful heirs to the Sultan proved difficult and took some time. It was not until 1939 that North Borneo listed those eligible, and not until some years after the war that most of the heirs felt able to accept payment. Moneys due to the deceased heirs are paid into deposit accounts, and the Estimates each year included \$5,300 to which their successors can lay claim.

On November 1, 1881, the British Crown granted a Royal Charter to the British North Borneo Company.⁸ In explaining the grant of the Charter, the British Foreign Minister, Earl Granville, stated very clearly in answer to Dutch and Spanish protests that the territories "will be administered by the Company under the suzerainty of the Sultans of Brunei and Sulu, to whom they have agreed to pay a yearly tribute," and that "the British Government assumes no sovereign rights whatever in Borneo."⁹ Granville further stated that the charter merely recognized "the grants of territory and the powers of government made and delegated by the Sultans in whom the sovereignty remains vested."¹⁰

On May 12, 1888, a British Protectorate was formally established over North Borneo. This was the political status of North Borneo until July 16, 1946, when it was made a colony of the United Kingdom.¹¹

On March 22, 1915, the Sultan of Sulu signed the Carpenter Agreement whereby he recognized the sovereignty of the United States within American Territory, but he retained his sovereignty over the territory of North

⁸Tregonning, Under Chartered Company Rule, p. 27.

⁹M. F. Lindley, The Acquisition and Government of Backward Territory in International Law (London: Longmans, Green and Co., Ltd., 1926), p. 106.

¹⁰Ibid.

¹¹Osgood Hardy and Glenn S. Dumke, A History of the Pacific Area in Modern Times (Boston: Houghton Mifflin Company, 1949), p. 355.

Borneo.¹² This was pointed out by Governor Frank Carpenter in a communication to the Director of Non-Christian Tribes dated May 4, 1920:

It is necessary however that there be clearly of official record the fact that the termination 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 United States especially with reference to that portion of the Island of Borneo which as a dependency of the Sultanate of Sulu is understood to be held under lease by the chartered company which is known as the "British North Borneo Government."¹³

On December 18, 1939, Chief Justice C. F. Macaskie of the High Court of North Borneo promulgated a judgment affirming the obligation of the British North Borneo Company to pay what the court called "cession moneys" to the heirs of the Sultan of Sulu. In an obiter dictum, however, the Court said: "It is abundantly plain that the successor in sovereignty of the Sultan are the Government of the Philippine Islands."¹⁴

On June 26, 1946, the British North Borneo Company entered into an agreement for the transfer of the Borneo Sovereign Rights and Assets to the British Crown.¹⁵ Accordingly, on July 10, 1946, North Borneo was formally annexed as a colony by the British Crown effective July 15, 1946, by virtue of the North Borneo Cession Order in Council dated July 10, 1946.¹⁶

In a letter dated February 27, 1947, Former Governor General Francis

¹²Philippine Claim to North Borneo, pp. 127-128.

¹³Ibid., p. 126.

¹⁴The Macaskie Judgment, mimeographed copy issued by the Department of Foreign Affairs, Republic of the Philippines, p. 11.

¹⁵Philippine Claim to North Borneo, pp. 129-139.

¹⁶Ibid., pp. 141-144.

Burton Harrison, then serving as special foreign affairs adviser to the Philippine Government, studied this act of annexation and recommended that the "act of political aggression" be promptly repudiated by the Government of the Republic of the Philippines.¹⁷

In 1950, Philippine President Diosdado Macapagal, then a member of the Congress of the Philippines, urged by means of a resolution filed in the House of Representatives the formal institution of a claim to North Borneo.¹⁸

In 1951, when the Philippine Consulate was opened in Singapore, the Congress of the Philippines provided by special statute, ex abundante cautela, that such establishment of consular relations if extended to North Borneo was not to be regarded as a waiver of the Philippine claim to North Borneo.¹⁹

On November 25, 1957, Muhammad Esmail Kiram, the Sultan of Sulu, in the name of the heirs and with the consent of the Ruma Bechera, the Sulu ruling oligarchy, terminated the agreement of permanent lease with Overbeck and Dent effective January 22, 1958.²⁰

On April 24, 1962, the Congress of the Philippines unanimously adopted a Resolution wherein it pronounced the Philippine claim to North Borneo as being valid, and urged the President of the Philippines "to take the necessary

¹⁷Letter of Governor Harrison to Vice President Quirino dated February 27, 1947, mimeographed copy issued by the Department of Foreign Affairs, Republic of the Philippines, p. 9.

¹⁸Philippine Claim to North Borneo, p. 14.

¹⁹Ibid.

²⁰Ibid. This refers to the contract executed by the Sultan of Sulu granting a permanent lease to Overbeck and Dent to his North Borneo territory dated January 22, 1878.

steps consistent with international law and procedure for its recovery."²¹

On May 25, 1962, the British Government, in an effort to quiet title to its territory in North Borneo, transmitted an aide-memoire to the Ambassador of the Philippines in London which says in part:

Her Majesty's Government are convinced that the British Crown is entitled to and enjoys sovereignty over North Borneo and that no valid claim to such sovereignty could lie from any other quarter, whether by inheritance of the rights of the Sultan of Sulu (the only right being to continue to receive their shares of the cession money) or by virtue of former Spanish and American sovereignty over the Sulu Archipelago in the Philippine Islands.²²

On June 22, 1962, the Philippine Department of Foreign Affairs transmitted a note to the British Foreign Office through its Ambassador in Manila which formally requested the holding of conversations to clarify the matter of ownership, sovereignty, and jurisdiction over the North Borneo territory.²³

On September 27, 1962, Philippine Vice President and concurrently Secretary of Foreign Affairs Emmanuel Pelaez brought the Philippine claim to the attention of the General Assembly of the United Nations. Pelaez said the Philippines claimed North Borneo on "valid, legal, and historical grounds."²⁴ In reply, British Foreign Secretary Lord Home told the General Assembly that Britain had no doubt of her sovereignty over North Borneo.²⁵

²¹ Ibid., p. 149.

²² Ibid., pp. 150-151.

²³ Ibid., pp. 151-153.

²⁴ New York Times, September 28, 1962, pp. 1-3.

²⁵ Ibid.

The Philippines Free Press issue of December 8, 1962, reported that "Congressman Godofredo Ramos, chairman of the House foreign affairs committee, presented the Philippine claim formally last week before the U. N. General Assembly, according to UPI."²⁶

On January 28, 1963, Philippine President Diosado Macapagal stated in his State of the Union Message to the Congress of the Philippines that the filing of the Philippine claim to North Borneo "was not a precipitate action," but the result of prolonged study for a number of years. He further stated:

The situation is that the Philippines not only has a valid and historic claim to North Borneo. In addition, the pursuit of the claim itself is vital to our national security.²⁷

Macapagal also pledged that

at an appropriate time, the people of North Borneo should be given an opportunity to determine whether they would wish to be independent or whether they would wish to be part of the Philippines or be placed under another state.²⁸

On January 28, 1963, a ministerial conference was held at London between Philippine and British representatives to discuss the issue of North Borneo.²⁹ While both sides presented their arguments on the dispute, the claim was not resolved.

On July 31, 1963, the Conference of Ministers of Malaya, Indonesia, and the Philippines which was held in Manila adopted the Manila Accord

²⁶"North Borneo Claim Before U. N.," Philippines Free Press, LV (December 8, 1962), p. 8.

²⁷Philippine Claim to North Borneo, pp. 5-7.

²⁸Ibid.

²⁹"Pelaez Statement on North Borneo Claim in London Talks," Philippines Free Press, LVI (February 23, 1963), pp. 24, 62-63.

which, among other things, states:

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. 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.³⁰

On August 5, 1963, to carry out the report and recommendations mentioned in the Manila Accord, the three countries adopted a Joint Statement, where they agreed, among other things, on the following:

In accordance with paragraph 12 of the Manila Accord the three Heads of Government decided to seek a just and expeditious solution to the dispute between the British Government and the Philippine Government concerning Sabah (North Borneo) by means of negotiation, conciliation and arbitration, judicial settlement, or other peaceful means of the parties' own choice in conformity with the Charter of the United Nations. The three Heads of Government take cognizance of the position regarding the Philippine claim to Sabah (North Borneo) after the establishment of the Federation of Malaysia as provided under paragraph 12 of the Manila Accord, that is, that the inclusion of Sabah (North Borneo) in the Federation of Malaysia does not prejudice either the claim or any right thereunder.³¹

On September 16, 1963, North Borneo with its name changed to Sabah, joined the Federation of Malaysia.³²

On September 16, 1963, the Philippines indicated its refusal to recognize the Federation of Malaysia and severed diplomatic ties with that new state.³³

³⁰Manila Accord, July 31, 1963, mimeographed copy issued by the Department of Foreign Affairs, Republic of the Philippines, p. 3.

³¹Joint Statement, August 5, 1963, mimeographed copy issued by the Department of Foreign Affairs, Republic of the Philippines, pp. 2-3.

³²New York Times, September 16, 1963, p. 1.

³³Ibid., p. 3.

On November 21, 1963, the Philippines asked Malaysia to agree to judicial settlement of her claim to North Borneo. The Philippines said that Malaysian failure to reply to this proposal earlier was the reason why Philippine recognition of Malaysia was withheld.³⁴

On January 12, 1965, the New York Times reported that there was little hope that officials of the Federation of Malaysia would accept the Philippine proposal that the dispute over North Borneo be placed under the jurisdiction of the International Court of Justice.³⁵

On January 13, 1965, the Malaysian Government tentatively approved a proposal that the people of North Borneo (Sabah) be given a chance to say whether they would want to join the Philippines or stay in the Malaysian Federation. A high-ranking Malaysian official optimistically said that the people of Sabah would vote overwhelmingly to stay in Malaysia.³⁶

Summary of Historical basis of Philippine claim. In summary, the Philippines contends that the following historical facts represent the historical basis of her claim to North Borneo:

First, there is undisputed evidence that the Sultan of Sulu was the sovereign ruler of North Borneo which was ceded to him by the Sultan of Brunei in 1704. Such sovereignty was recognized by Great Britain, Spain

³⁴New York Times, September 16, 1963, p. 3.

³⁵New York Times, January 12, 1965, p. 6.

³⁶New York Times, January 13, 1965, p. 5.

and the United States in treaties which they entered into with the Sultan of Sulu at various times in the nineteenth century.

Second, the Sultan of Sulu entered into an agreement with Baron von Overbeck and Alfred Dent regarding concessions in his North Borneo territory. The legal aspects of this agreement will be discussed in Chapter V of this study and also in the later part of this chapter. This transaction is the crucial historical fact governing the dispute between the Philippines and Great Britain. It is the Philippine contention that the agreement was one of permanent lease while the British contention is that the agreement was one of cession. The historical evidence, however, is that Earl Granville stated that in spite of the grant of the charter to the British North Borneo Company, sovereignty remained vested with the Sultan of Sulu and that the Company merely administered the territory under delegated powers of government granted to them by the Sultan of Sulu.

Third, the Protectorate Agreement of 1888 and the Cession Order of 1946 are without valid basis because of Earl Granville's disclaimer as to the possession of sovereign rights by the British North Borneo Company over North Borneo. Since Earl Granville recognized such sovereignty as being vested in the Sultan of Sulu, the British North Borneo Company could not legally enter into agreements with the British Crown involving the exercise of sovereignty over North Borneo such as the establishment of a British Protectorate in 1888 and the Cession Order of 1946.

Fourth, Spanish occupation of the Philippines never deprived the Sultan of Sulu of his sovereignty over the North Borneo territory since the British themselves asserted that the North Borneo Company was merely administering the territory under delegated powers of sovereignty granted by the Sultan of Sulu.

Fifth, the American Occupation of the Philippines did not deprive the Sultan of Sulu of his sovereignty over North Borneo. The United States Government in fact recognized such sovereignty of the Sultan of Sulu over North Borneo in a communication signed by Governor Frank Carpenter.

Sixth, in an obiter dictum, the High Court of North Borneo in the Macaskie judgment of 1939 recognized the Government of the Philippines as the real successor in sovereignty to the Sultan of Sulu in a case involving the settlement of the rights of the heirs of the Sultan of Sulu to the annual rentals paid by the British North Borneo Company.

Seventh, the continued payment of the annual rentals (as they are even recognized by K. G. Tregonning, the British historian) to the present time lends credibility to the claim of the Philippines that the Deed of 1878 was a contract of lease and not one of cession.

Eighth, since the Cession Order of 1946, the Government of the Philippines has protested the annexation of North Borneo by the British Crown and upon the formation of the Federation of Malaysia took steps to protect her claim to the territory.

Ninth, the Philippines has conscientiously studied the claim in order to establish a valid foundation in international law and has consistently pursued her claim according to the peaceful methods of the peaceful settlement of international disputes, i.e., through diplomatic negotiation, presentation to the General Assembly and at a Conference of Ministers held in 1963 in Manila, Philippines, and by a proposal to Great Britain and later to the Federation of Malaysia to present the case to the International Court of Justice for adjudication.

Legal Basis

The legal basis of the Philippine claim rests on three arguments: (1) that the cession of 1704 by the Sultan of Brunei to the Sultan of Sulu of the territory of North Borneo in gratitude for the latter's help in quelling a rebellion vested sovereign rights to the Sultan of Sulu over the territory; (2) that the lease of 1878 executed by the Sultan of Sulu in January 22, 1878, in favor of Baron von Overbeck and Alfred Dent was a contract of permanent lease and not a contract of cession as alleged by the British; although no copy of the original document has been produced by the Philippine Government, neither has the British Government come forward with such a document to resolve the conflicting translations in English of the treaty, one by an American professor, and another as contained in a work entitled "Treaties and Engagements affecting Malay States" by Maxwell and Gibson; and (3) that interpretations of the rules of international law regarding a territorial lease strongly support the Philippine claim that sovereign rights could not have been acquired by Overbeck and Dent to the territory of North Borneo.

The foregoing arguments are, therefore, considered in more detail as follows:

Cession of 1704. The sovereignty of the Sultan of Sulu over North Borneo is based on the cession of the territory to him by the Sultan of Brunei in 1704 in return for his help in quelling an insurrection. The Sultan of Sulu and the Sultan of Brunei were recognized as sovereign

rulers of Borneo before 1878. Many nations such as Great Britain, the United States, and Spain entered into treaties with these two sovereigns. The cession in this case is not only an historical fact but was made valid by its conformity to the rules of international law that cession can only be made by states.

Deed of Permanent Lease of 1878. The second argument of the Philippines is that the deed of 1878 executed by the Sultan of Sulu in favor of Baron von Overbeck and Alfred Dent was a contract of permanent lease and not of cession. The Philippines sought to prove this on (1) the payment of annual rentals which continues to the present time, (2) a translation of the photostatic copy of the document secured by the Philippine Government from the United States Government archives, and (3) the references to the lease agreement as found in contemporaneous letters and documents.

(1) Annual rentals. The term "annual rentals" appears on page 14 of K. G. Tregonning's book Under Chartered Company Rule although he terms the transaction between the Sultan of Sulu and Overbeck as a "cession." The Macaskie judgment recognizes the obligation of the British North Borneo Company to make annual payments to the heirs of the Sultan of Sulu. These facts should prove that the deed of 1878 was one of permanent lease and not of cession. A cession is described by George Schwarzenberger as "the most unequivocal way in which a state expressed its relinquishment of all territorial claims to a territory." The conditional nature of the agreement is apparent from the continued payment of annual sums of money. Thus, the agreement could not be one of cession but of permanent lease.

(2) Translation of the document. The Philippines admits that there are several versions of the deed of 1878: The original document was in

Arabic and worded in the Malayan language. An alleged translation of the document was cited in the Macaskie judgment. Another translation of the document made by Professor Conklin appears in the letter of Governor Harrison to the Philippine Government previously cited in this study. The document as translated bears the heading: Grant by the Sultan of Sulu of a Permanent Lease Covering His Lands and Territories on the Island of Borneo: Dated January 22nd, 1878. The first three paragraphs of the deed were translated by Professor Conklin as follows:

We, Sri Paduka Maulana Al Sultan MOHAMMED JAMALUL ALAM, Son of Sri Paduka Marhum Al Sultan MOHAMMED PULALUN, Sultan of Sulu and all dependencies thereof, on behalf of ourselves and for our heirs and successors, and with the expressed desire of all Datus in common agreement, do hereby desire to lease, of our own free will and satisfaction, to Gustavus Baron de Overbeck of Hongkong, and to Alfred Dent, Esquire, of London, who act as representatives of a British Company, together with their heirs, associates, successors, and assigns, forever and until the end of time, all rights and powers which we possess over all territories and lands tributary to us on the mainland of the Island of Borneo, commencing from the Pandassan River on the east, and thence along the whole east coast as far as the Sibuku River on the south, and including all territories, on the Pandassan River and in the coastal area, known as Paitan, Sugut, Banggai, Labuk, Sandakan, Chinabatangan, Mumiang, and all other territories and coastal lands to the south, bordering on the Darvel Bay, and as far as the Sibuku River, together with all the islands which lie within nine miles from the coast.

In consideration of this (territorial) lease, the honorable Gustavus Baron de Overbeck and Alfred Dent, Esquire, promise to pay to His Highness Maulana Sultan Mohammed Jamalul Alam, and to his heirs and successors, the sum of five thousand dollars annually, to be paid each and every year.

The above-mentioned territories are from today truly leased to Mr. Gustavus Baron de Overbeck and to Alfred Dent, Esquire, as already said, together with their heirs, their associates (company), and their successors or assigns, for as long as they choose or desire to use them; but the rights and powers hereby leased shall not be transferred to another nation, or company of other nationality, without the consent

of Their Majesties Government.³⁷

The photostatic copy of the document dated January 22, 1878, in the hands of the Philippine Government was found in the National Archives of the United States Government and obtained in 1940 by the United States Department of State from the British Government.³⁸ A copy of this document in the hands of the Sultan of Sulu was stolen from his son and heir during a visit to Singapore before World War II.³⁹

(3) Contemporaneous Correspondence and documents. The following contemporaneous documents and correspondence were cited by the Philippine Government to prove that the document was one of permanent lease and not an agreement of cession.⁴⁰

A report of Mr. Treacher, British Acting Consul General in Borneo in 1878, stated that the Sultan of Sulu considered as rental the 5,000 Malayan dollars that Overbeck and Dent obligated themselves to pay annually.

Another report of Mr. Treacher dated April 25, 1878, referred to the Sultan of Sulu's possessions in North Borneo as "Your Highness' possession."

In a memorandum dated November 5, 1878, submitted by the Spanish Government on the activities of Overbeck and Dent in Sandakan references were made on page 1 to a "contract for the lease of Sandakan;" on page 2 to

³⁷Quoted in the Letter of Harrison, pp. 2-3.

³⁸Ibid., p. 1.

³⁹Ibid. See Aleko Lilius, "The Sultan of Sulu Tells How England Stole North Borneo," Chicago Sunday Tribune, October 14, 1945, pp. 3, 4, 8.

⁴⁰These documents were cited by Mr. Eduardo Quintero of the Philippine Legal Panel in the Conference held in London, January, 1963, to discuss the Philippine claim, Philippine Claim to North Borneo, pp. 31-38.

"lands which belong to the dominion of the Sultan" which have been granted to Baron von Overbeck and Alfred Dent "for their administration;" on page 3 the word "lease;" on page 4, the phrase "lease Sandakan;" on page 5, "contract of lease;" on page 6, the word "lease;" on page 7, the word "rent;" on page 8, the phrase "contract of lease;" and on page 9, the same phrase "contract of lease."

A letter of the Sultan of Sulu to the Captain General of the Philippines dated July 4, 1878, contained a reference made by the Sultan to the Malayan dollars as "rent."

Another letter of the Sultan of Sulu dated July 22, 1878, mentioned his desire "to cancel the contract for lease of Sandakan."

A letter of the Spanish Governor of Sulu to Baron von Overbeck dated July 22, 1878, mentioned a "lease of Sandakan and its dependencies."

Another letter from the Sultan of Sulu addressed to the Captain General of the Philippines dated July 22, 1878, mentioned the Sultan's desire to "cancel the contract for lease of Sandakan."

The Governor of Sulu wrote a second letter to Baron de Overbeck dated July 24, 1878, where he spoke of a "contract of lease."

In a letter dated October 15, 1879, Mr. Treacher informed the British Foreign Office of "Sandakan and other possessions of Sulu in Borneo."

Lease agreement in international law. The third argument of the Philippines is based on the interpretation of rules of international law. The argument is that a lease of territory does not result in the transfer of sovereignty. Such a lease agreement, of course, was one between states. The deed of 1878 took place between a sovereign ruler and two individuals

acting in a private capacity. Thus, Overbeck and Dent never acquired sovereign rights. Not having acquired any sovereign rights they could not transfer such rights to anyone. Therefore, the Philippines claims the British North Borneo Company did not succeed to any such sovereign rights. Thus, the acts proceeding from the Protectorate Agreement of 1888 and the Cession Order of 1946 did not transfer any sovereign rights to the British Crown.

Summary of Philippine View of Legal Basis

The Philippines contends that the following constitute the legal basis of her claim to North Borneo:

First, the Philippines contends that the cession of 1704 by the Sultan of Brunei of North Borneo territory to the Sultan of Sulu was a recognized fact in history. In law, it vested sovereign rights to the Sultan of Sulu, a fact recognized in the treaties made by European nations with the Sultan of Sulu.

Second, the Philippines contends that the deed of 1878 between the Sultan of Sulu, on the one hand, and Overbeck and Dent, on the other, was one of permanent lease. It could not be otherwise since Overbeck and Dent acted as private individuals. This is further supported by the fact that up to the present time there is the continued payment of annual rentals to the heirs of the Sultan of Sulu by the North Borneo Government. In addition, a translation of the document, a photostat of which was secured by the Philippine Government from the United States Government, verified by statements in contemporaneous correspondence and documents, supports the argument that the deed of 1878 is a permanent lease agreement.

Third, in international law a lease agreement between states does not create a transfer of sovereignty; between individuals there cannot be a transfer of sovereignty.

Therefore, the claim of the Philippine Government over North Borneo seems to have a strong basis in recognized rules of international law.

CHAPTER IV

COMPETING BRITISH CLAIM AND THE PHILIPPINE REBUTTAL

Competing British Claim

Before the Philippines formally filed its claim to North Borneo, much of the British reaction to the possibility of such a move was designed to brush aside the issue as unworthy of comment. Tregonning states: "Filipino politicians . . . in moments of nationalist fervour, still lay claim to the erstwhile Bornean territories of the now defunct Sultanate."¹ Nationalism was not the only view that the British held of the Philippine claim. The Governor of North Borneo, Sir William Goode, once stated that the claim had "no substance to it."² Another North Borneo political leader, Donald Stephens described the claim as "extremely silly and without legal backing."³

Basis of the competing British claim. Before the London ministerial conference in January, 1963, which discussed the Philippine claim to North Borneo, the British did not make any presentation of the basis of their competing claim to the area. Apparently they did not feel it necessary then--or had found it inexpedient to put forth a detailed presentation of their legal claim.⁴

¹K. G. Tregonning, Under Chartered Company Rule (Singapore: University of Malaya Press, 1958), p. 22.

²Martin Meadows, "Philippine Claim to North Borneo," Political Science Quarterly, LXXVII (September, 1962), p. 331.

³Ibid.

⁴Ibid., p. 334.

During the ministerial conference between representatives of the Republic of the Philippines and the United Kingdom which met in London in January, 1963, to discuss the Philippine claim to North Borneo, the basis of the competing British claim to North Borneo was presented by Mr. Peter Thomas, spokesman for the British panel:⁵

First, Great Britain acquired the North Borneo territory by means of prescription.

Second, the agreement of 1878 between the Sultan of Sulu on the one hand and Baron de Overbeck and Alfred Dent on the other was a cession and not a lease.

Prescription. The competing British claim resting on the rule of prescription in international law was presented by Mr. Peter Thomas as follows:⁶

I would like to start by saying that in our view any realistic approach to the question of sovereignty over North Borneo must take full account of the very important fact which Lord Home mentioned at our opening session--that is, that North Borneo has been ruled for 84 years by British interest: until 1946 by the British North Borneo Company and its predecessors, and since then by the Crown. This rule has been to the complete exclusion of the rule of both the Sultan of Sulu and the Sultan of Brunei, who it must be remembered, also had claims in North Borneo and also made grants in favour of British interests. It appears, moreover, that the fact of exclusion has been accepted by everyone concerned.

Mr. Thomas is said to have devoted more space in his paper to prescription than the argument of cession. Whenever he was at a loss to answer some of the

⁵Bernabe Africa, "The Legal Status of the British Occupation of North Borneo," Philippine International Law Journal, II (1963), p. 388.

⁶Ibid., pp. 388-389.

fine points raised by members of the Philippine panel he frequently resorted to this argument in refuting them.

Deed of 1878 was one of cession. The second basis of the competing British claim is that the deed of 1878 executed by the Sultan of Sulu in favor of Baron de Overbeck and Alfred Dent was one of cession and not a lease agreement.

The British translation of the deed of 1878 was cited by the High Court of North Borneo in the Macaskie judgment of 1939. The first paragraph of the deed stated:

We Sri Paduka Maulan Al Sultan Mohamet Jamal Al Alam Bin Sri Paduka Al Marhom Al Sultan Mohamet Fathlon 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 Gustavus Baron de Overbeck of Hongkong and Alfred Dent Esquire of London as representatives of a British Company co-jointly their heirs, associates, successors and assigns for ever and in perpetuity all the rights and powers belonging to us 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 northwest 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; Sugu, Bangaya, Labuk, Sandakan, Kina Batangan, Muniang, 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 marine leagues of the coast.⁷

The Macaskie judgment further states that

The deed of Cession was a complete and irrevocable grant of territory and the right reserved was only the right to an annual payment, a right which is in the nature of movable property.⁸

⁷The Macaskie Judgment, mimeographed copy issued by the Department of Foreign Affairs, Republic of the Philippines, p. 5.

⁸Ibid., p. 7.

The characterization of the deed of 1878 as one of cession is further supported by Lindley's statement that "the cession of sovereign powers to the Company by the Sultans was in an exceptionally complete form."⁹ That this was the case, Lindley illustrates through the establishment of the British Protectorate in North Borneo in 1888.

When, however, a British Protectorate was formally established over the Company's territories, the Agreement of the 12th May, 1888, between the British Government and the Company recited that 'all rights of sovereignty are vested in the British North Borneo Company,' and that the territories 'are now governed and administered by the Company as an independent State, hereinafter referred to as "the State of North Borneo."' Any sovereign rights which may have been left in the Sultans at the time of the grant of the Company's charter are disregarded-- although it is difficult to see how any such rights could remain after the very full transfer of sovereignty by the Sultans to the founders of the Company-- . . .¹⁰

Lindley also holds the view that according to English Constitutional Law any acquisition of territory by British subjects is made for the benefit of the Crown.¹¹ Since Dent's citizenship was English, his acquisition of North Borneo was for the British Crown.

With reference to the British North Borneo Company, Lindley states:

When, in addition to the foregoing considerations, we remember that the cession of sovereign powers to the Company was in exceptionally complete form; that, according to English Constitutional Law, any acquisition of territory by British subjects is made for the benefit of the Crown; and that the English Crown or Parliament always had the right to withdraw or modify the charter, we are forced to the conclusion that, after the grant of the charter, the

⁹M. F. Lindley, The Acquisition and Government of Backward Territory in International Law (London: Longmans, Green and Co., Ltd., 1926), p. 108.

¹⁰Ibid., p. 107.

¹¹Ibid., p. 108.

British Government represented the Company and its territories to foreign Powers, and that the powers of external sovereignty rested not with the Sultans or the Company, but with the British Government.¹²

Finally, Lindley holds that "so long as a corporation is working under a charter granted by a State, it can acquire sovereignty in the international sense only for the benefit of that State."¹³

Other arguments. Three other reasoned British arguments are presented by Martin Meadows:

One is that Spain surrendered all claim to North Borneo in the 1885 agreement with Britain. Another is that the United States acknowledged the British claim to North Borneo in the terms of the Anglo-American Boundary Convention of 1930. A third is that the Philippine Constitution itself recognized British sovereignty over North Borneo, in that Article 1 of the Constitution accepts the Boundary Convention of 1930, thus in effect excluding North Borneo from its delineation of Philippine territory.¹⁴

Spanish surrender of claim to North Borneo. The British argument that Spain surrendered her claim to North Borneo rests on the provisions of the Protocol of 1885. It is the contention of the British Government that the Sultan of Sulu had previously lost his sovereign rights or dominion to North Borneo by virtue of the Treaty of Capitulation with Spain on July 22, 1878. Thus, when Spain signed the Protocol of March 7, 1885, renouncing all claims of sovereignty over North Borneo territory, Great Britain

¹²Ibid. It should, however, be noted that Lindley also mentions the disclaimers made by Earl Granville and Prime Minister Gladstone that the British North Borneo Company possessed sovereign powers. See pages 104-107 of his book.

¹³Ibid., p. 113.

¹⁴Meadows, op. cit., p. 331.

acquired sovereign rights to North Borneo.

The Anglo-American Boundary Convention of 1930. The British contention that by virtue of the Anglo-American Boundary Convention of 1930 the United States Government recognized British sovereignty over North Borneo is quite obscure and probably refers to negotiations between the United Kingdom and the United States to define the boundaries between the Philippines and North Borneo.¹⁵ On the basis of the Treaty of Paris of 1898, Spain ceded to the United States the Philippine Archipelago. This treaty does not mention North Borneo as part of the Philippine archipelago.

Philippine Constitution does not mention North Borneo. The British contend that Article I of the Philippine Constitution defining the National Territory does not make any mention of North Borneo. Article I, Section 1, provides:

Section 1. The Philippines comprise all the territory ceded to the United States by the Treaty of Paris concluded between the United States and Spain on the tenth day of December, eighteen hundred and ninety-eight, the limits of which are set forth in Article III of said treaty, together with all the islands embraced in the treaty concluded at Washington, between the United States and Spain on the seventh day of November, nineteen hundred, and in the treaty concluded between the United States and Great Britain on the second day of January, nineteen hundred and thirty, and all territory over which the present Government of the Philippine Islands exercise jurisdiction.¹⁶

These then are the British arguments to support their competing claim to North Borneo. The Philippine rebuttal to those points follow.

¹⁵Africa, op. cit., p. 400.

¹⁶Joseph Ralston Hayden, The Philippines: A Study in National Development (New York: The MacMillan Company, 1947), p. 822.

Philippine Rebuttal

Prescription. The Philippine position holds that British possession of North Borneo was not adverse, nor uninterrupted, hence cannot ripen into a title because of (1) the annual rental payments made by the British up to the present time, (2) the continuous protests of the heirs of the Sultan of Sulu culminating in the terminating of the lease agreement in 1957, and (3) the filing of the claim itself in 1962 by the Philippine Government with the British Foreign Office.

The Philippines contends that there is no ground for prescription to support the British competing claim to North Borneo because the first time that Great Britain claimed sovereignty over the territory was on July 10, 1946, when an order in council was issued annexing North Borneo. On November 25, 1957, the lease agreement of 1878 was terminated by the present Sultan of Sulu. Copies of such notice of termination were sent to the British Government, the Philippine Government, and the United Nations. Since the Philippines is the successor in sovereignty to the Sultan of Sulu over North Borneo, it filed a claim in 1962 with Great Britain protesting the latter's wrongful possession of North Borneo.

Furthermore, the Philippines contends that the rule of prescription is a mooted question in international law.¹⁷ Secondly, the concept of prescription is incompatible with cession. Africa states the Philippine

¹⁷Africa, op. cit., p. 407.

position on this matter as follows:

If the said agreement was a cession ownership did pass to the company, and neither the Sultan of Sulu nor the Philippine Government, the successor in sovereignty of the Sultan of Sulu, would have any reason to recover the controverted territory. On the other hand, the concept of prescription fits in if the agreement above mentioned is a lease because that country claiming title under prescription must occupy the territory adversely and for a long time, publicly, peacefully and undisturbed. These requirements have not been fulfilled. The British title to North Borneo is of dubious character. It has no legal foundation.¹⁸

Deed of 1878 was one of cession. The Philippine position on this matter was extensively discussed in Chapter III of this study. The Philippines contends that the deed of 1878 is a lease agreement not a deed of cession. The payment of annual rentals, the numerous statements in contemporaneous correspondence and documents referring to the deed as one of lease, and the translation of the document itself into English from a photostatic copy of the original document found in the National Archives of the United States Government, all refute the competing British claim that the deed was one of cession but conclusively show that it was an agreement of permanent lease. The failure of the British to present the original document itself considerably weakens their argument on this point. The fact that the British also resort to the argument of prescription may mean that they are not sure of their ground of cession.

Protocol of 1885. The Philippines contends that Spain did not surrender sovereign rights over North Borneo to Great Britain. What the

¹⁸Ibid., p. 409.

Spanish Government gave up were merely pretensions to sovereignty over North Borneo. The Philippine position is best explained by Africa as follows:

The Spanish Government and never acquired a de facto control of Sulu and its dependencies. Whatever treaty rights Spain might have had to sovereignty over Sulu and its dependencies, such rights lapsed because of the failure of Spain to obtain control of those territories. Great Britain had not recognized Spanish sovereignty until 1885 when these two powers entered into an agreement by which Great Britain and Germany recognized Spanish sovereignty over Sulu in return for which Spain relinquished her claim to North Borneo. This agreement which appears to be a case of horse trading between Spain and Great Britain for the protection of their mutual interests, did not affect the Sultan's sovereign rights over North Borneo for Spain had never acquired dominion over the territory in question.¹⁹

The truth was that British recognition of the sovereign rights of the Sultan of Sulu over North Borneo did not in effect confer sovereign rights upon the British Crown by virtue of the Protocol of 1885.

Anglo-American Boundary Convention. The Philippine position is that the acts of the American Government during its occupation of the Philippines do not now bind the Philippine Government. Furthermore, the American authorities recognized the sovereign rights of the Sultan of Sulu over North Borneo in a communication sent by Governor Frank Carpenter explaining the terms of the Carpenter Treaty of 1915 by virtue of which the Sultan of Sulu relinquished his sovereignty over his territories under American control. Former Governor General Harrison supports this view:

It is true Governor Carpenter's contract or treaty with the Sultan of Sulu of 1915 deprived the Sultan of his temporal sovereignty in the Philippine archipelago but this did not

¹⁹Ibid., p. 396.

interfere with the Sultan's status of sovereignty over British North Borneo lands.²⁰

Jovito Salonga, Chairman of the Legal Committee of the Philippine panel, in discussions with the British panel during the London Conference of January, 1963, cited the statements of Carpenter and Harrison quoted previously to show that the United States recognized the sovereignty of the Sultan of Sulu over North Borneo. Thus, the Anglo-American Boundary Convention of 1930 cannot in any case mean American recognition of British sovereignty over North Borneo. Salonga adds:

The United States never purported to succeed to North Borneo, it did not claim North Borneo, and could not possibly cede or waive anything in favor of the British Crown.²¹

Silence of Philippine Constitution on North Borneo. The Philippine view of the British contention that the Philippine Constitution itself recognized British sovereignty over North Borneo can be summarized as follows:

As far as the Philippine Constitution is concerned, that document was drawn up at a time when the Philippines did not have full control over its own affairs. Just because the Philippine Government was unable to assert its claim in 1936, when the Constitution was adopted, does not mean that it should not be able to do so at the present time. Furthermore, the constitutional clause which defines the boundaries of the Philippines was aimed at securing the inclusion of Moslem Mindanao within Philippine territory; in other words, the intent of the clause in question was not to delimit Philippine territory but rather to assure its integrity.²²

²⁰Philippine Claim to North Borneo, p. 28.

²¹Ibid.

²²Meadows, Ibid., p. 332.

It is apparent that the British contentions relating to the Anglo-American Boundary Convention of 1930 and the non-inclusion of the North Borneo territory in the Philippine Constitution relate to acts of the American Government during its occupation of the Philippines for the period from 1898 to 1946. These acts of the American Government do not bind the Philippine Government from pursuing what she believes to be a legal claim to sovereign rights over North Borneo. Boundary disputes form a part of the large body of international disputes in the history of international law. There is no reason why the question of boundaries of the Philippines and North Borneo may not be examined insofar as it relates to the present dispute. As far as the Philippine Constitution is concerned, amendment of its provisions is a possibility that cannot be rejected. If the British believe that the Philippine Government is estopped by the Acts of the American Government during its occupation of the Philippines, then she might as well consider the same principle of estoppel considering the statements of Lord Granville recognizing the sovereignty of the Sultan of Sulu over North Borneo and the withholding of the exercise of such sovereign rights from the British North Borneo Company.

CHAPTER V

TITLE TO TERRITORY AND THE PEACEFUL SETTLEMENT OF DISPUTES

One of the obvious functions of law in any society is to serve as a basis for the peaceful settlement of disputes,¹ if not to prevent them altogether.² This is certainly applicable to international law which has been applied to disputes among states:³

Failure to achieve a peaceful solution, together with an unwillingness to use force, may mean that a dispute will continue to disrupt normal relations between the nations concerned, creating rancor and bitterness between them.⁴

Elihu Root emphasized the same point:

There are no international controversies so serious that they cannot be settled peaceably if both parties really desire peaceable settlement, while there are few causes of dispute so trifling that they cannot be made the occasion of war if either party really desires war. The matters in dispute between nations are nothing; the spirit which deals with them is everything.⁵

Once there is a desire to settle a dispute, there are many methods of reaching a peaceable settlement, although it does not follow that any dispute can be settled by any method.⁶

Two questions will be discussed in this chapter:

¹J. L. Brierly, The Outlook for International Law (London: Oxford University Press, 1944), p. 118.

²Gerhard von Glahn, Law Among Nations (New York: The MacMillan Company, 1965), p. 451.

³Ibid.

⁴Ibid., p. 453.

⁵Quoted in Hersch Lauterpacht and C. H. M. Waldock (eds.), The Basis of Obligation in International Law and Other Papers by J. L. Brierly (London: Oxford University Press, 1958), p. 94.

⁶Ibid.

(1) What are the rules and principles of international law governing the acquisition of title to territory which are applicable to the dispute over North Borneo?

(2) What are the means for the settlement of this dispute as provided for in international law?

International Law

Definitions. Gerhard von Glahn defines international law as a "body of principles, customs, and rules which are recognized as effectively binding obligations by sovereign states and other international persons in their mutual relations."⁷ Other publicists define international law as follows:

J. L. Brierly:

The Law of Nations or International Law may be defined as the body of rules and principles of action which are binding upon civilized states in their relations with one another.⁸

W. E. Hall:

International Law consists in certain rules of conduct which modern civilized states regard as being binding on them in their relations with one another with a force comparable in nature and degree to that binding the conscientious person to obey the law of this country, and which they also regard as being enforceable by appropriate means in case of infringement.⁹

⁷Glahn, op. cit., p. 3.

⁸J. L. Brierly, The Law of Nations (London: Oxford University Press, 1963), p. 1.

⁹W. E. Hall, A Treatise on International Law, A. Pearce Higgins, editor (New York: Oxford University Press, 1924), p. 1, quoted in Glahn, op. cit., p. 3.

E. de Vattel:

The Law of Nations is the science of rights which exist between Nations or States, and of the obligations corresponding to these rights.¹⁰

Green H. Hackworth:

International law consists of a body of rules governing the relations between states.¹¹

Philip C. Jessup:

International law, or the law of nations, is a term which has been used for over three hundred years to record certain observations of the conduct of human beings together in what we call states.¹²

Scope. The scope, and hence, the subjects, of international law, are created by states and are determined by those same states.¹³

Sources. Article 38 of the Statute of the International Court of Justice directs the Court to apply in cases before it:

(1) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; (2) international custom, as evidence of a general practice accepted as law; (3) the general principles of law recognized by civilized nations; and (4) subject to the provisions of Article 59, juridical decisions and the teachings of the most highly qualified publicists (writers) of various nations as subsidiary means for the determination of rules of law.¹⁴

¹⁰E. de Vattel, Le Droit Gens, Trans. Charles G. Fenwick (Washington, D. C.: United States Government Printing Office, 1916 1758), quoted in Glahn, op. cit., p. 3.

¹¹Green H. Hackworth, Digest of International Law (Washington, D. C.: United States Government Printing Office, 1940-44), I, p. 1.

¹²Philip C. Jessup, A Modern Law of Nations: An Introduction (New York: The MacMillan Co., 1949), p. 5.

¹³Glahn, op. cit., p. 4.

¹⁴Cited in ibid., pp. 12-13.

Title to Territory

Background. One of the attributes of a state is sovereignty:

At the basis of international law lies the notion that a state occupies a definite part of the surface of the earth, within which it normally exercises, subject to the limitations imposed by international law, jurisdiction over persons and things to the exclusion of the jurisdiction of other states.¹⁵

A state has an unquestioned right to exercise sovereign authority throughout the extent of its territory. Quoting Judge Max Huber, arbitrator in the Palmas Island Arbitration case, Glahn states that territory became in the legal order "the point of departure in settling most questions that concern international relations."¹⁶

There is, however, no general agreement on what constitutes the methods of acquiring title to territory:

No unanimity exists among the writers on the Law of Nations with regard to the modes of acquiring territory on the part of the members of the Family of Nations. The topic owes its controversial character to the fact that the conception of State territory has undergone a great change since the appearance of the science of the Law of Nations. When Grotius created that science, State territory used to be still, as in the Middle Ages, more or less identified with the private property of the monarch of the State. Grotius and his followers applied, therefore, the rules of Roman Law concerning the acquisition of private property to the acquisition of territory by States. Nowadays, however, the acquisition of territory by a State can mean nothing else than the acquisition of sovereignty over such territory. Under these circumstances the rules of Roman Law concerning the acquisition

¹⁵J. L. Brierly, Law of Nations, p. 142, quoted in William W. Bishop, International Law: Cases and Materials (Boston: Little Brown and Company, 1955), p. 343.

¹⁶Glahn, op. cit., p. 253.

of private property can no longer be applied. Yet the fact that they have been applied in the past has left traces which can hardly be obliterated; and they need not be obliterated, since they contain a good deal of truth in agreement with the actual facts. But the different modes of acquiring territory must be taken from the real practices of the States, and not from Roman law, although the latter's terminology and common-sense basis may be made use of.¹⁷

In the earliest stages of Western history, effective control of a territory, together with the ability to defend it, represented the title that counted:

. . . soon however, additional title requirements of a more legal nature entered into the picture, such as treaties of cession, marriage settlements, and occasionally claims based on an asserted hereditary right to succession. In the course of time, then, a rather considerable number of titles to particular areas of territories received express or tacit recognition by the majority of the states.¹⁸

If a dispute arises as to the sovereignty over a portion of territory, it has been customary to examine which of the states claiming sovereignty possesses a title, whether it be of cession, conquest, occupation, etc., superior to that which the other state might possibly bring forward against it.¹⁹

A state may acquire territory through a unilateral act of its own by occupation, by cession consequent upon contract with another state or with a community or single owner, or by gift, by prescription through the operation

¹⁷H. Lauterpacht (ed.), L. Oppenheim, International Law, pp. 428-429. cited in Hackworth, op. cit., I, P. 395.

¹⁸Glahn, op. cit., p. 253.

¹⁹Arbitral Award in the Island of Palmas Case, United States and the Netherlands, Apr. 4, 1928 (per. Ct. Arb.), pp. 26-27, cited in Hackworth op. cit., I, p. 394.

of time, or by accretion through the operation of nature.²⁰

Acquisition of territory by states is made possible through what is called a "derivative" title and an "original" title. Transfer of land from one owner to another results in a "derivative" title while acquisition of land not belonging to another results in an "original" title.²¹

Whiteman lists the following as original or non-derivative modes of acquiring title to territory: discovery, occupation, prescription, accretion, erosion, and avulsion. The derivative modes are: uti posseditis, cession, conquest, annexation, and plebiscites.²²

Glahn lists seven methods: occupation, accretion, prescription, voluntary cession, assimilation, treaties of peace, and conquest.²³

Six methods were investigated for the purposes of this study: occupation, accretion, assimilation, conquest, cession, and prescription. Occupation, cession, and prescription have a direct application and relevance to the competing British and Philippine claims to North Borneo while accretion, assimilation, and conquest have no bearing on the dispute at all.

Occupation. Glahn defines occupation as "the settlement by a state of a territory hitherto not belonging to any other state for the purpose of adding the land in question to the national territory."²⁴

²⁰Bishop, op. cit., p. 345.

²¹Glahn, op. cit., p. 253.

²²Marjorie M. Whiteman, Digest of International Law (Washington, D. C.: United States Government Printing Office, 1963), II, pp. iv-v.

²³Glahn, op. cit., p. 253.

²⁴Ibid., p. 254.

The first condition of occupatio is that the object must be res nullius. This occurs because no one has ever appropriated it, as in the case of newly-found land, or though once appropriated it has subsequently been abandoned. The second condition is effective control.²⁵ Normally, effective control manifests itself by the establishment of proper state machinery for purposes of defense and administration of the occupied territory and the actual display of state jurisdiction.²⁶

Under the definition and conditions required of occupation, Great Britain cannot claim North Borneo through occupation because (1) it has not been without an owner to become res nullius (2) neither has it been abandoned by reason of the continued payment of annual sums of money to the heirs of the Sultan of Sulu to the present time. The second condition of effective control to be valid must rest on the occupation of territory that is res nullius or which must have been abandoned. Since this is not complied with in the case of North Borneo, such control exercised by the British must have been imposed against the will of the original owner. The principle of effectiveness which arises from a weak or illegal title may give rise to title through prescription. This will be discussed in the section dealing with the rule of prescription.

Hershey mentions a kind of occupation which he terms disguised or qualified occupation--the colonial protectorate. This has relevance

²⁵P. E. Corbett, Law and Society in the Relations of States (New York: Harcourt Brace and Company, 1951), p. 95.

²⁶George Schwarzenberger, "Title to Territory: Response to a Challenge," The American Journal of International Law, LI (April, 1957), p. 316.

to this study. It is

a region in which there is no State of International Law to be protected, but which the Power that has assumed it does not yet claim it internationally its territory, although that Power claims to exclude all other States from action within it.²⁷

The colonial protectorate makes it possible to exclude other powers, prepare the way of annexation without incurring the burden of complete sovereignty and international responsibility involved in real and effective occupation.²⁸ Lindley supports this view:

By such arrangement, one State could acquire complete control over another, as far as third nations were concerned, without necessarily assuming the burden of its administration, and it was this feature of the protectorate which favoured its extensive adoption by European Powers in the spread of their dominion. It was possible, by concluding a treaty of protection with the local government or the native chiefs, to exclude other Powers from the region so dealt with, and thus, by a rapid and inexpensive method, to acquire over considerable areas rights, which so far as other Powers were concerned, could be developed into complete sovereignty by degrees.²⁹

Once a protectorate had been established, the protectorate state had to be considered as having lost its full sovereignty and normally ceased to function as a member of the community of states.³⁰ While the form of a protectorate varies from place to place, the existence of a government

²⁷Amos S. Hershey, The Essentials of International Public Law (New York: The MacMillan Company, 1912), p. 185.

²⁸Ibid.

²⁹M. F. Lindley, The Acquisition and Government of Backward Territory in International Law (London: Longmans, Green and Co. Ltd., 1926), p. 182.

³⁰Glahn, op. cit., p. 75.

desiring protection is implied.

The establishment of a British Protectorate over North Borneo in 1888 becomes then of doubtful legality because North Borneo was not then a state, neither was the British North Borneo Company possessed of sovereign powers of government--powers which had been denied to it by the terms of the grant of a Royal Charter in 1881. As Lord Granville, British Foreign Minister, explained the nature of the Charter:

. . . the Crown in the present case assumes no dominion of sovereignty over the territories occupied by the Company, nor does it purport to grant to the Company any powers of government thereover; it merely confers upon the person associated the status and incidents of a body corporate, and recognizes the grants of territory and the powers of government made and delegated by the Sultans in whom the sovereignty remains vested. It differs also from the previous Charters, in that it prohibits instead of granting a general monopoly of trade.³¹ (Under-scoring supplied.)

The proper party, in the light of the above statement of Lord Granville, who should have entered into a protectorate agreement with the British Government over North Borneo should have been the Sultans in whom the sovereignty remained vested.

Accretion. Accretion, a minor mode of acquiring title, results through the gradual deposit of soil by a river flowing past a shore or by an ocean along its coasts.³²

The rule governing accretion dates back to Roman days and is quite simple: a thing that is added follows the fate of the principal thing. Soil added to a river bank represents an addition to the territory of the riparian state; islands

³¹Quoted by Bernabe Africa, "The Legal Status of the British Occupation of North Borneo," Philippine International Law Journal, II (1963), p. 398.

³²Glahn, op. cit., p. 256.

built up within a riverbed become a part of the territory of the state within whose boundary lines the flats or islands are formed.³³

Accretion is not applicable to the dispute over North Borneo.

Assimilation. Glahn states that assimilation results when "a strong state exercised sufficient pressure, short of war, on a weak neighbor in order to make the latter agree to a transfer of territory desired by the stronger state."³⁴ There are many historical instances of assimilation or assimilation under pressure:

The Kingdom of Korea, already a protectorate of Japan, agreed to be merged with Japan in 1910 and ceased to exist as a member of the family of nations. Austria, under a pro-Nazi government instituted after the assassination of Chancellor Dollfuss, annexed itself at its own request to the German Reich, the official act taking place after the application of strong pressure on Austria and after the entrance into the country of many units of the German army and air force. In 1939, the three Baltic states of Estonia, Latvia, and Lithuania, having acquired under Russian pressure governments "friendly" to the Soviet Union, concluded nonaggression treaties with the latter and permitted the installation of a Russian garrison in each state; in 1940, all three countries, again under Russian pressure, offered themselves for annexation to the Soviet Union and became constituent republics of their stronger neighbor.³⁵

Like accretion, assimilation is not pertinent to the dispute over North Borneo.

Conquest. Brierly defines conquest as "the acquisition of territory of an enemy by its complete and final subjugation and a declaration of

³³Ibid.

³⁴Ibid., p. 264.

³⁵Ibid.

the conquering state's intention to annex it."³⁶ In practice, a title by conquest was rare, because the annexation of territory after a war was generally carried out by a treaty of cession, although such treaty often only confirmed a title already acquired by conquest.³⁷

Conquest does not apply to the competing Philippine and British claims to North Borneo.

Cession. Cession of territory involves the transfer of sovereignty by means of an agreement between the ceding and the acquiring states.³⁸ Normally, cession is formulated through the provisions of a treaty which specified precisely (if such was possible at the time) the area to be transferred as well as the conditions under which the transfer was to be accomplished.³⁹

Cession may take place through a treaty of sale, exchange of one piece of real estate by another, by means of a gift, or finally, on rare occasions, by conveyance of title by devise, such as the transfer of title to the Congo Free State to Belgium from King Leopold who was sovereign of the Congo in his personal capacity in addition to being the King of the Belgians.⁴⁰

A treaty of cession is the most unequivocal way in which a state expresses its relinquishment of all territorial claims to a territory.

³⁶Brierly, Law of Nations, p. 124, quoted by Bishop, op. cit., p. 365.

³⁷Ibid.

³⁸Hackworth, op. cit., I, pp. 421-422.

³⁹Glahn, op. cit., p. 259.

⁴⁰Ibid., pp. 259-260.

International law requires no specific form for a cession except that the cession took place with the full consent of the governments concerned.⁴¹

Hackworth writes that the consent of the population of ceded territory is not essential to the validity of the cession, although in recent years cessions of territory were frequently conditioned upon the will of the people as expressed in a plebiscite.⁴²

Hershey classifies cessions as voluntary or forcible, i.e., as due to the voluntary action of the ceding state during a time of peace or as a result of armed coercion at the close of a war.⁴³

From the foregoing citation of authorities on international law, it appears that cession takes place by treaty, between states, and, while it may take various forms, is an unequivocal statement of relinquishment of sovereign rights to territory by a state in favor of another. On this basis, the Philippine claim that the Sultan of Sulu derives his sovereign rights from a cession made by the Sultan of Brunei of his possessions in North Borneo in favor of the Sultan of Sulu in 1704 rests on a very strong foundation in international law because the Sultan of Brunei and the Sultan of Sulu were recognized as sovereign rulers in that area up to the end of the nineteenth century. On the other hand, the claim by the British Government that the deed executed in 1878 by the Sultan of Sulu granting rights to his properties in North Borneo to Baron von Overbeck and Alfred Dent was one of cession is of doubtful validity in international law

⁴¹Schwarzenberger, op. cit., p. 318.

⁴²Hackworth, op. cit., I, pp. 421-422.

⁴³Hershey, op. cit., p. 182.

because the transfer, while made by a sovereign ruler, did not involve a state as a transferee of the property.

Lindley believes that cession of backward territory may be made by the native sovereign.⁴⁴ Granted that this is acceptable in international law, the capacity of the transferee to acquire sovereign rights over territory by virtue of an agreement of cession must be considered. Either the transferee is a state or an agent for the acquiring state. If the transferee is an agent, he should be duly authorized for the purpose by the state or his act of acquisition is later ratified by the acquiring state. Unless agents are authorized in advance or their acts subsequently ratified, their acquisition of territory cannot by any means be imputed to the state for whose benefit they are supposed to act. Neither Overbeck nor Dent in this instance received any authorization from the British Crown to acquire North Borneo. Neither were their acts of acquisition subsequently ratified by the British Government. On the other hand, we have the clear statement of Lord Granville that sovereign rights to the North Borneo territory remained vested in the Sultans. This statement in effect denies the issuance of any authorization to Overbeck and Dent nor does it amount to an expression of ratification of their acts of acquisition of North Borneo.

The Philippines contends that the deed of 1878 was one of lease and not a deed of cession.

A lease of territory is identified by Hershey as a form of cession

⁴⁴Lindley, op. cit., p. 166.

which he calls "disguised cession."⁴⁵ As examples he cites the leases of the ports of Kiao-Chau to Germany, Port Arthur and Dalny to Russia, and Wei-hau-wei to Great Britain near the close of the nineteenth century.⁴⁶

Lindley holds that a lease of territory is actually regarded as a method, if gradual, of acquisition of territory. He mentions that leases formed a feature of the process by which Great Britain, Germany, and Italy acquired territory in East Africa from the Sultan of Zanzibar. Lindley further maintains that "for practically all international purposes, third Powers regard the leased or administered territory as under the sovereignty of the lessee or occupant." Finally, Lindley states that the lease arrangement is in keeping with the modern practice of acquiring sovereignty, or so much of the sovereignty as is necessary for complete control by degrees.⁴⁷

Glahn, however maintains that leases of territory do not create changes in sovereignty:

Leases of territory, regardless of the length of time specified in the relevant agreements, do not confer title, do not create changes in sovereignty. Thus Chinese leases of Port Arthur and Dalny to Russia, of Kiao-chao to Germany, of Wei-hai-wei, Tientsin, and of the so-called New Territories on the mainland opposite the island of Hongkong to Great Britain, and of Kwang-chao-wan to France, did not transfer legal title to areas involved from the lessor to the lessee.⁴⁸

⁴⁵Hershey, op. cit., p. 182.

⁴⁶Ibid.

⁴⁷Lindley, op. cit., p. 244.

⁴⁸Glahn, op. cit., p. 269.

Glahn adds that sovereign rights are exercised by the leasing state, but title to the territory remains indisputably with the state granting the lease.⁴⁹

A lease of territory between states either results in the transfer of sovereign rights in the view of Lindley or none at all in the opinion of Glahn. This discussion, however, revolves around lease agreements entered into by states. If the agreement entered into by the Sultan of Sulu in 1878 with Overbeck and Dent is a lease agreement between two sovereign entities, the transfer of sovereign rights to the territory is a matter of dispute considering the conflicting opinions of Lindley and Glahn. On the other hand, if the contract was transacted by private individuals, then it is not difficult to describe the transaction as one not involving the transfer of sovereign or even ownership rights. In civil law a lease contract in no ways results in the transfer of rights of dominion or ownership. Whatever the characterization of the contract, whether a matter of international law or civil law, it appears that, at best the issue of transfer of sovereign rights to Overbeck and Dent is most doubtful.

Prescription. Hall defines prescription as follows:

Title by prescription arises out of a long-continued possession, where no original source of proprietary right can be shown to exist, or where possession in the first instance being wrongful, the legitimate proprietor has neglected to assert his right, or has been unable to do so. . . . The object of prescription as between states is mainly to assist in creating a stability of international order which is of more practical

⁴⁹Ibid.

advantage than the bare possibility of an ultimate victory of right.⁵⁰

Two kinds of prescription have been distinguished: "extinctive prescription" and "acquisitive prescription." Extinctive prescription applies to loss of a claim by failure to prosecute it within a reasonable time, while acquisitive prescription is the term which applies to a title acquired through a lapse of time.⁵¹ What is a reasonable time when title may be acquired by prescription is not sufficiently clear in international law.

However, the length of time required for the establishment of a prescriptive title on the one hand, and the extent of the action required to prevent the establishment of a prescriptive title on the other hand, were invariably matters of fact to be decided by the international tribunal before which the latter may eventually be brought for adjudication.⁵² Lauterpacht states that no general rule can be laid down as regards the length of time and other circumstances which were necessary to create a title by prescription. To Lauterpacht, "the application of the principle should remain flexible and that no attempt should be made to establish time limits."⁵³

⁵⁰Hall, International Law, pp. 143-144, quoted by Bishop, op. cit., p. 362.

⁵¹Whiteman, op. cit., II, p. 1062.

⁵²D. H. N. Johnson, "Acquisitive Prescription in International Law," British Yearbook of International Law, XXVII (1950), p. 332, quoted by Whiteman, op. cit., p. 1062.

⁵³Lauterpacht (ed.), Oppenheim, International Law (8th ed.), I, p. 576.

Not only is it difficult to determine the period of time by which title to prescription may be established, the rule itself is subject to conflicting interpretations by publicists.

Pasquale Fiore, for one, holds the view that acquisitive prescription cannot, in principle, be deemed a legal method of acquiring territorial sovereignty over a country based upon the exercise of sovereign rights for a certain period.⁵⁴

Wolff holds that prescription on account of silence for a very long time is in harmony with the voluntary law of nations, but it is on account of long continued silence that prescription is presumed with difficulty.⁵⁵

Lauterpacht admits that since the existence of the science of the Law of Nations there has always been opposition to prescription as a mode of acquiring territory.⁵⁶

Corbett maintains that the issue of prescription or no prescription has never yet been squarely faced in international adjudication:

No international tribunal has been in a position where it must affirm or deny the existence of this institution in the general law of nations in order to decide the case before it.⁵⁷

⁵⁴Pasquale Fiore, International Law Codified and Its Legal Function or the Legal Organization of the Society of States, trans. Edwin M. Borchard (New York: Baker, Voorhis and Company, 1918), p. 1079.

⁵⁵Christian Wolff, The Law of Nations Treated According to a Scientific Method, trans. Joseph H. Drake (Oxford: Clarendon Press, 1934), pp. 188-189.

⁵⁶Lauterpacht, op. cit., p. 575.

⁵⁷Corbett, op. cit., p. 98.

In at least two cases often cited as precedents on prescription, Corbett states that the tribunals' findings were inconclusive. In the Chamizal arbitration case decided in 1911, Corbett quotes an excerpt of the award made by the joint commissioner arbitrating the case:

Without thinking it necessary to discuss the very controversial question as to whether the right of prescription invoked by the United States is an accepted principle of the law of nations, in the absence of any convention establishing a term of prescription, the commissioners are unanimous in coming to the conclusion that the possession of the United States in the present case was not of such character as to found a prescriptive title.⁵⁸

In the Palmas Island case of 1928, Corbett notes that "the award... oscillates too uncertainly between occupatio and prescription to be cited as persuasive authority for either institution."⁵⁹ For Corbett, the question of prescription as stated in the arbitral award of the Chamizal case remains "very controversial."⁶⁰

Prescription also takes place even when the acquiring state acts in violation of international law.

A state may not only retain but acquire territory by conduct which constitutes a violation of international law. This is admitted by many writers in the case of so-called prescription, that is, in case a state is in undisturbed possession of territory during a certain period of time. Such territory is considered to be legally the territory of the possessing state even if the effective possession has taken place by an illegal action. This, too, is an application of the principle of effectiveness.⁶¹

⁵⁸Ibid., pp. 99-100.

⁵⁹Ibid.

⁶⁰Ibid.

⁶¹Hans Kelsen, Principles of International Law (New York: Rinehart And co., 1952), p. 214.

The British argument of prescription as a basis for their claim to North Borneo rests on long continued possession of the territory: a period, according to them, lasting for more than eighty years. This argument, however, appears to be beset with difficulties considering the meaning and the status of the rule of prescription in international law.

First, the rule of prescription is controversial in international law since no definite ruling on the subject has yet been made by an international tribunal on its application to territorial disputes.

Second, the rule of prescription is not very clear as to the length of time when rights to territory are acquired or lost. In this case, the question of whether the British have a valid claim resting on long continued possession of over eighty years or whether the Philippines has lost its right to contest the legality of British acquisition of North Borneo are actually matters of fact to be determined by an international tribunal adjudicating the case, should this procedure ever come to pass.

Third, it appears inconsistent for the British to base their claim to North Borneo on the incompatible rules of cession and prescription. Cession is unequivocal and prescription is controversial.

Fourth, if the actual basis of prescription turns out to be a violation of international law as described by Hans Kelsen, the more reason there should be for the settlement of this dispute according to the rules of international law if there must be more respect for the rule of law in the community of nations.

Fifth, the only strong ground for prescription is to preserve and maintain the stability of order even against the assertion of a better legal right.

Acquisition by agents. In international law, title to territory is acquired through the various methods previously discussed. In the acquisition of title to territory, the state may act through agents. Lindley enumerates the different kinds of agents: (1) an individual or a number of individuals, (2) a corporation, or (3) a colony or subordinate parts of the state itself.⁶² The conditions under which these agents may act for the state are as follows:

If the agent has received a previous authorization to take possession of a specified area, the assumption of sovereignty on the part of the authorizing state is complete when the agent has properly carried out the annexation on the spot.

If the agent acts without authorization to acquire territory, or without an authorization to acquire the specific territory annexed, all that is necessary, whether the agent is a commissioned officer or official of his State or not, is that he shall have taken possession in the name of the State on behalf of which he acts in such a way as to make clear to a subsequent would-be appropriator that this has been done, and the assumption of sovereignty can then, within a reasonable time, be consummated by the ratification of the agent's act by his State.⁶³

Whether Baron von Overbeck and Alfred Dent acted as authorized agents for the British Crown in the acquisition of the territory of North Borneo has never been precisely stated by the British Government. Neither

⁶²Lindley, op. cit., p. 284.

⁶³Ibid., p. 292.

has there been an official ratification of their act of acquisition of the territory. Instead, the oftquoted statement of Lord Granville expressly recognizing the lodgment of sovereign powers in the Sultans of Brunei and Sulu negates the implication that either Overbeck and Dent were duly authorized agents of the British Crown or that their act of acquisition of North Borneo was subsequently ratified by the British Government. The mere fact that Overbeck had speculative schemes in mind in relation to the territory of North Borneo dispels any doubt as to his lack of authorization as an agent of the British Government.

Settlement of Disputes

Two basic types of law. The theory of jurisprudence has made a distinction between substantive and adjective, or procedural law. The substantive law outlines positively the various rights which the law will aid and protect by means of a variety of legal procedures. Once the possession of a right is established, the possessor then can turn to procedural law to discover by what methods that right can actually be made effective.⁶⁴ The rules on title to territory may then be termed the substantive law for the purposes of this study and the rules for the settlement of international disputes may be termed the procedural law.

Peaceful settlement of disputes. Glahn enumerates several means available to parties seeking to make their rights effective: diplomatic negotiations, good offices, mediation, commissions of inquiry and concilia-

⁶⁴Glahn, op. cit., p. 452.

tion, arbitration, judicial settlement (adjudication, as well as settlement in pursuance of the United Nations Charter or of regional agreements.⁶⁵

Diplomatic negotiations. The simplest of these procedures is direct negotiation between the states concerned. Most treaties, in fact, provide for the peaceful settlement of disputes usually via diplomatic channels and agreement is reached in a mutual process of give and take. The Permanent Court of International Justice recognized this procedure by requiring that "before a dispute can be made the subject of an action in law, its subject matter should have been clearly defined by means of diplomatic negotiations.⁶⁶

Good offices. Glahn states that the normal meaning of "good offices" is more adequately represented by "intercession," i.e., the act of interceding--by a third state, a group of states, or even an individual of such standing such as the Secretary-General of the United Nations--in an effort to bring the parties together so as to make it possible for them to reach an adequate solution between themselves.⁶⁷

No state is obliged to offer its services, nor were any of the parties to a dispute obliged to accept proffered good offices. The good offices normally terminate as soon as the disputing parties have been persuaded or assisted to resume negotiations.⁶⁸

⁶⁵Ibid., p. 453.

⁶⁶Ibid.

⁶⁷Ibid.

⁶⁸Ibid.

Mediation. Glahn defines mediation as a procedure where the mediator actively participates in the settlement himself. This procedure is usually undertaken by a third state, or by a group of states, by an individual, or by an agency of an international organization.⁶⁹

Regardless of the nature of the mediator, he is expected to offer concrete proposals for the settlement of the substantive questions instead of contenting himself with making negotiation possible. He therefore assists the parties directly. The mediator may meet with the parties either jointly or separately. His functions come to an end when the dispute is settled or when one of the parties (or the mediator) decides that the proposals made by him are not acceptable. It should be noted that the proposals submitted by a mediator represent nothing more than advice; under no condition can they be taken to possess any binding force on either party to the dispute.⁷⁰

Commissions of inquiry. Since a number of international disputes involve an inability or unwillingness of the parties concerned to agree on points of fact, fact-finding commissions are appointed to report to the parties in question on the disputed facts.⁷¹

Commissions on conciliation. Glahn defines this procedure as the submission of a given dispute to an already established commission or a single conciliator for the purpose of examining all facets of the dispute and suggesting a solution to the parties concerned. A feature of this procedure is that either or both parties are free to accept or reject proposals of the conciliators. The conciliators like in mediation may meet with the parties jointly or separately.⁷²

⁶⁹Ibid.

⁷⁰Ibid.

⁷¹Ibid.

⁷²Ibid., pp. 459-460.

Arbitration. The International Law Commission in 1958 defined arbitration as "the procedure for the settlement of disputes between states by a binding award on the basis of law and as the result of an undertaking voluntarily accepted."⁷³

Article 37 of the Hague Convention of 1907 states:

International arbitration has for its object the settlement of disputes between States by Judges of their own choice and on the basis of respect for law. Recourse to an arbitration implied an engagement to submit in good faith to the award.⁷⁴

Adjudication. The Permanent Court of International Justice established by the Statute of the Court in 1921 as an agency of the League of Nations was replaced by the International Court of Justice as part of the general organization established by the Charter of the United Nations. The judges are appointed to the Court by a complicated procedure.⁷⁵

Under Article 34 (1) of the Statute of the International Court of Justice "only States may be parties before the Court." This includes, first, all United Nations Members, and second, all non-United Nations Members who desire a permanent association with the Court.⁷⁶

The jurisdiction of the Court rests on the consent of the parties. Jurisdiction may be accepted under Article 36 (2) of the Statute, the

⁷³Report of the I.L.C. concerning the work of its Tenth Session, 1958, G.A.O.R., Thirteenth Session, Suppl. No. 9 (a/3859), cited in D. W. Bowett, The Law of International Institutions (London: Stevens & Sons, 1963), p. 212.

⁷⁴Bishop, op. cit., p. 60.

⁷⁵Morton A. Kaplan and Nicholas DeB. Katzenbach, The Political Foundations of International Law (New York: John Wiley & Sons, Inc., 1961), p. 276.

⁷⁶Bowett, op. cit., p. 222.

"Optional Clause" whereby the:

States parties to the present Statute may at any time declare they they recognize as compulsory ipso facto and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

- (a) the interpretation of a treaty;
- (b) any question of international law;
- (c) the existence of any fact which, if established, would constitute a breach of an international obligation;
- (d) the nature of extent of the reparation to be made for that breach of an international obligation.⁷⁷

Peaceful settlement of the Philippine claim. The Philippines has tried diplomatic negotiation and has urged judicial settlement as methods of the settlement of her claim to North Borneo. Great Britain and the Federation of Malaysia have thus far failed to come to agree to the proposal of the Philippines for the judicial settlement of this dispute by the International Court of Justice.

The Manila Accord of July 31, 1963, recognized the right of the Philippines to resort to the methods of negotiation, conciliation, arbitration, judicial settlement or other peaceful means of the parties' own choice in the settlement of its claim to North Borneo.

The Philippines has also resorted to the forum of the United Nations General Assembly to achieve a measure of recognition of her claim to North Borneo.

Limitations of procedural law. To conclude this discussion of the methods of peaceful settlement of international disputes, it should be pointed out in the words of Bishop "that in the absence of specific treaty

⁷⁷Ibid., p. 223.

provisions there is no legal duty to use any particular means of settlement."⁷⁸ Bishop adds that "the real difficulty is that a state is under no legal compulsion to submit international disputes to any tribunal, except as it may consent to do so." Bishop also pointed out that "even the International Court of Justice has jurisdiction only when both parties to the dispute agree that it shall have jurisdiction."⁷⁹

This difficulty, however, should not prevent the Philippines from pursuing its claim to North Borneo. There is a sound basis for the claim in international law and there are means available for the peaceful settlement of the dispute.

The fact that there is very little chance at all for the settlement of the claim should not deter the Philippines from pursuing all the available methods recognized in international law for the final settlement of her claim. International law recognizes the existence of unsettled claims but this is not evidence of the inadequacy or the weakness of the body of the law itself.

⁷⁸Bishop, op. cit., pp. 62-63.

⁷⁹Ibid.

CHAPTER VI

SUMMARY AND CONCLUSION

The purpose of this study was to present the basis of the Philippine claim to North Borneo, to test the validity of that claim according to applicable rules and principles of international law in relation to the competing British claim, and to examine the means by which international law provides for the peaceful settlement of such a dispute.

Basis of Philippine claim. The Philippines rest their claim to North Borneo on historical and legal grounds.

Historically, the Sultan of Sulu, ruler of a chain of islands in the southern part of the Philippines which extend to as close as eighteen miles to the island of Borneo, exercised sovereign rights to North Borneo. His sovereign rights were derived from a cession of the territory in 1704 to him by the Sultan of Brunei in return for his help in quelling an insurrection in Brunei's domain.

From 1704 to 1878, the Sultan of Sulu was the recognized sovereign ruler of North Borneo as attested to by the fact that he entered into numerous commercial treaties and treaties of friendship with Great Britain, Spain, and the United States.

The Philippines contends that in 1878 the Sultan of Sulu executed a contract leasing his territory in North Borneo to Baron von Overbeck and Alfred Dent. The document, dated January 22, 1878, provided for the payment of an annual rental of \$5,000 which is still being paid up to the

present time to the heirs of the Sultan of Sulu by the North Borneo Government.

Overbeck and Dent sold their rights to the British North Borneo Company. In 1881 the Company was granted a Royal Charter. In 1888, the territory of North Borneo became a British Protectorate. In 1946, it was formally annexed as a colony of the British Crown. North Borneo had the political status of a British colony up to September 16, 1963, when it became a member state of the Federation of Malaysia.

The Philippines took notice of the British annexation of North Borneo as a Crown Colony in 1946. A study was made by former Governor General Francis Burton Harrison and in a memorandum he transmitted to the Vice-President of the Philippines then concurrently serving as Secretary of Foreign Affairs, Harrison recommended that the annexation be protested by the Philippine Government. Prolonged studies were made of the Philippine claim until it was formally filed in June 22, 1962, through a diplomatic note transmitted to the British Foreign Office.

Talks were held in January, 1963, between the United Kingdom and the Philippines in London over the Philippine claim but no settlement of the dispute took place. Since then the Federation of Malaysia has succeeded to the British claim and has refused a Philippine proposal to bring the case to the International Court of Justice for settlement.

Recognition of the claim has been made through the efforts of the Philippines in bringing the matter to the attention of the General Assembly of the United Nations in the fall of 1962 and the foreign ministers of Malaya and Indonesia during a Conference of Ministers in Manila, Philippines,

in June, 1963.

Validity of Philippine claim. The examination of the rules and principles of international law relating to the acquisition of title to territory suggests that the Philippines has a strong legal foundation for its claim to North Borneo.

The Philippine claim rests on the sovereign rights acquired by the Sultan of Sulu to North Borneo in 1704 through a cession made to him by the Sultan of Brunei. Sulu's sovereignty was recognized by Great Britain, Spain, and the United States in treaties entered with the Sultan of Sulu in the nineteenth century.

In January 22, 1878, the Sultan of Sulu entered into a written agreement with Baron von Overbeck and Alfred Dent relating to a grant covering his territorial possession in North Borneo. The Philippines contends that this was a lease agreement. The basis for this contention is a translation of the document, a photostat copy of which was secured from the National Archives of the United States Government; the payment of annual rentals to the heirs of the Sultan of Sulu up to the present time; and numerous references to the agreement as one of lease in contemporaneous documents and correspondence. It is especially pointed out by the Philippines that the British Government has disclaimed the possession of sovereign powers over North Borneo either by Overbeck and Dent or the British North Borneo Company.

The Philippines contends that since the British North Borneo Company did not possess sovereign rights to North Borneo, it could not validly

enter into a protectorate agreement with the British Government in 1888 nor cede such sovereign rights to the British Government in 1946.

Furthermore, the Philippines disputes the British claim that Spain relinquished sovereign rights to North Borneo by virtue of the Protocol of 1885. The Philippines contends that Spain never had sovereign rights but only sovereign claims or pretensions to North Borneo.

The Philippines also disputes the British claim that the United States Government recognized British sovereign rights to North Borneo by virtue of the Anglo-American Boundary Convention of 1930. The Philippines contends that the American Government expressly recognized the sovereignty of the Sultan of Sulu over North Borneo in spite of the provisions of the Carpenter Treaty of 1915 whereby the Sultan of Sulu relinquished his sovereign rights to his territory under American jurisdiction.

The Philippines also disputes the British claim resting on cession and prescription. The Philippines contends that the deed of 1878 is a lease agreement by virtue of the arguments already mentioned. As for prescription, the Philippines contends that British control over North Borneo took place only in 1946, which is not so long ago as to create a right under the rule of prescription as recognized in international law. The Philippines contends furthermore that prescription is a mooted question in international law and that cession and prescription are incompatible rules as understood in international law as methods of acquiring title to territory.

There is one way by which the British may resolve this dispute and that is to show the original contract of 1878. The fact that this has not

been done by the British Government considerably weakens their position.

The examination of the rules and principles of international law relating to the acquisition of title to territory suggests that the British claim to North Borneo has a weak legal foundation.

Means of settlement. The means of pacific settlement of international dispute are: negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means at the choice of the parties to a dispute.

The Philippines has resorted to diplomatic negotiation and has urged judicial settlement of this dispute. The Manila Accord of July 31, 1963, entered into by the Philippines, Indonesia, and Malaya recognized the right of the Philippines to pursue her claim according to the methods of peaceful settlement of disputes as established in international law.

These methods of settlement of international dispute can be utilized only when the parties voluntarily consent to resort to these means. It is, therefore, difficult to settle an international dispute unless the parties voluntarily give their consent to submit their case for settlement through any of these means for the pacific settlement of disputes. So far neither the British nor Malaysia has shown willingness to agree to the Philippine proposal.

The foregoing considerations lead the author to the following conclusions:

First, there is some merit to the Philippine claim because of (a) the historical and legal basis of the claim and applicable rules and principles

of international law; (b) the recognition given to the dispute at the London Conference in January, 1963, between the United Kingdom and the Philippines, and at the Conference of Ministers of the Federation of Malaysia, the Republic of Indonesia and the Republic of the Philippines which met in Manila, Philippines from June 7 to 11, 1963, and by the presentation of the Philippine claim to the General Assembly of the United Nations in September and December, 1962; and (c) an independent assessment of the dispute by Martin Meadows, an American political scientist, in a scholarly article published in the Political Science Quarterly of September, 1962.

Second, since international law provides various means for the settlement of the dispute, it should be settled peacefully by the states involved because it continues to disrupt normal relations between them and creates mounting rancor and bitterness.

Third, the Philippines has adopted an extremely commendable attitude by making a careful study of the claim before formally filing it and since then by pursuing its claim peacefully according to the methods provided for in international law.

APPENDIX "A"¹

Signature of Sultan
Mohammed Jamalul Alam

Official seal of
the Sultan of
Sulu

GRANT BY THE SULTAN OF SULU OF A PERMANENT LEASE COVERING HIS LANDS AND
TERRITORIES ON THE ISLAND OF BORNEO:

DATED JANUARY 22nd, 1878.

- - - - -

We, Sri Paduka Maulana Al Sultan MOHAMMED JAMALUL ALAM, Son of Sri Paduka Marhum Al Sultan MOHAMMED Pulalun, Sultan of Sulu and all dependencies thereof, on behalf of ourselves and for our heirs and successors, and with the expressed desire of all Datus in common agreement, do hereby desire to lease, of our own free will and satisfaction, to Gustavus Baron de Overbeck of Hongkong, and to Alfred Dent, Esquire, of London, who act as representative of a British Company, together with their heirs, associates, successors, and assigns, forever and until the end of time, all rights and powers which we possess over all territories and lands tributary to us on the mainland of the Island of Borneo, commencing from the Pandassan River on the west, and thence along the whole east coast as far as the Sibuku River on the south, and including all territories, on the Pandassan River and in the coastal area, known as Paitan, Sugut, Banggai, Labuk, Sandakan, Chinabatangan, Mumiang, and all other territories

¹This is the translation into English by Professor Harold Conklin of a photostatic copy of the lease contract of 1878 found in the National Archives of the United States and quoted in the letter of former Governor Harrison to Vice President Quirino dated February 27, 1947.

and coastal lands to the south, bordering on the Darvel Bay, and as far as the Sibuku River, together with all the islands which lie within nine miles from the coast.

In consideration of this (territorial) lease, the honorable Gustavus Baron de Overbeck and Alfred Dent, Esquire, promise to pay His Highness Maulana Sultan Mohammed Jamalul Alam, and to his heirs and successors, the sum of five thousand dollars annually, to be paid each and every year.

The above-mentioned territories are from today truly leased to Mr. Gustavus Baron de Overbeck and to Alfred Dent, Esquire, as already said, together with their heirs, their associates (company), and their successors or assigns, for as long as they choose or desire to use them; but the rights and powers hereby leased shall not be transferred to another nation, or a company of other nationality, without the consent of Their Majesties Government.

Should there be any dispute, or reviving of old grievances of any kind, between us, and our heirs and successors, with Mr. Gustavus Baron de Overbeck or his Company, then the matter will be brought for consideration or judgment to their Majesties Consul-General in Brunei.

Moreover, if His Highness Maulan Al Sultan Mohammed Jamalul Alam, and his heirs and successors, become involved in any trouble or difficulties hereafter, the said honorable Mr. Gustavus Baron de Overbeck and his Company promise to give aid and advice to us within the extent of their ability.

This treaty is written in Sulu, at the Palace of the Sultan Mohammed Jamalul Alam, on the 19th day of the month of Muharam, A.H. 1295; that is on the 22nd day of the month of January, year 1878.

 Seal of the Sultan
 Jamalul Alam

Witness to seal and signature:

(SGD.) W. H. TREACHER

H. B. M. Acting Consul General in Borneo

APPENDIX "B"¹

Grant by Sultan de Sulu of Territories and Lands on the Mainland of the Island of Borneo. Dated 22nd January, 1878.

We Sri Paduka Maulana Al Sultan Mohamet Jamal Al Alam Bin Sri Paduka al Marhom Al Sultan Mohamet Fathlon 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 Gustavus Baron de Overbeck of Hongkong and Alfred Dent Esquire of London as representatives of a British Company co-jointly their heirs, associates, successors and assigns for ever and in perpetuity all the rights and powers belonging to us 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 northwest 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, Muniang, 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 marine leagues off the coast.

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

¹Translation of the deed of 1878 found in "Treaties and Engagements affecting the Malay States and Borneo" by Maxwell and Gibson and cited in the Macaskie Judgment of the High Court of Borneo in 1939.

The said territories are hereby declared vested in the said Baron de Overbeck and Alfred Dent Esquire 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 Britanic Majesty's Government first being obtained.

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

The said Gustavus 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 advise whenever His Highness may stand in need of the same.

Written in Likup in Sulu at the Palace of His Highness Mohamet Jamal Alam on the 19th Moharam A.J. 1295, answering to the 22nd, January A.D. 1878.

Appendix "C" on page 87 is a copy of a portion of a map facing page 20 in Philippine Claim to North Borneo (Manila: Bureau of Printing, 1964). Map shows North Borneo, Sulu Sea, the Republic of the Philippines, and the countries of Southeast Asia.



BIBLIOGRAPHY

Books

- Bishop, William W., Jr. International Law: Cases and Materials. Boston: Little, Brown and Company, 1962. 964 pp.
- Bowett, D. W. The Law of International Institutions. London: Stevens & Sons, 1963. 347 pp.
- Brierly, James Leslie. The Law of Nations. London: Oxford University Press, 1955. 331 pp.
- _____. The Outlook for International Law. London: Oxford University Press, 1944. 142 pp.
- Calvocoressi, Peter. World Order and New States: Problems of Keeping the Peace. New York: Frederick A. Praeger, 1962. 113 pp.
- Carlston, Kenneth Smith. Law and Organization in World Society. Urbana: University of Illinois Press, 1962. 356 pp.
- Clyde, Paul Hibbert. The Far East: A History of the Impact of the West on Eastern Asia. New York: Prentice-Hall, Inc., 1948. 862 pp.
- Cole, Fay Cooper. The Peoples of Malaysia. New York: D. Van Nostrand Co., Inc., 1945. 354 pp.
- Corbett, P. E. Law and Society in the Relations of States. New York: Harcourt, Brace and Company, 1951. 337 pp.
- _____. Post-war Worlds. New York: Farrar and Rinehart, 1942. 233 pp.
- Engel, Salo, (ed). Law, State, and International Legal Order: Essays in Honor of Hans Kelsen. Knoxville: The University of Tennessee Press, 1964. 365 pp.
- Fiore, Pasquale. International Law Codified and Its Legal Function or The Legal Organization of the Society of States. Trans. Edwin M. Borchard. New York: Baker, Voorhis and Company, 1918. 750 pp.
- Francis, Arthur Bruce Charles. Twenty Years in Borneo. London: Cassell & Co., Ltd., 1924. 265 pp.
- Ginsburg, Norton S. and Chester F. Roberts. Malaya. Seattle: University of Washington Press, 1958. 533 pp.

- Gungwu, Wang, (ed.). Malaysia: A Survey. New York: Frederick A. Praeger, 1964. 466 pp.
- Glahn, Gerhard von. Law Among Nations. New York: The MacMillan Company, 1965. 768 pp.
- Hackworth, Green H. Digest of International Law. Washington, D. C.: United States Government Printing Office, 1949044. 8 volumes.
- Hanna, Willard A. The Formation of Malaysia. New York: American Universities Field Staff, Inc., 1964. 247 pp.
- Hardy, Osgood and Glenn S. Dumke. A History of the Pacific Area in Modern Times. Boston: Houghton Mifflin Company, 1949. 752 pp.
- Harris, George L. and others. North Borneo, Brunei, Sarawak (British Borneo). New Haven: Human Relations Area Files, 1956. 287 pp.
- Hayden, Joseph Ralston. The Philippines: A Study in National Development. New York: The MacMillan Co., 1942. 984 pp.
- Hellman, Florence S. British Malaya and British North Borneo: A Bibliographical List. Washington, D. C.: United States Library of Congress, 1943. 103 pp.
- Hershey, Amos S. The Essentials of International Public Law. New York: The MacMillan Company, 1912. 558 pp.
- Jacobini, Horace B. International Law: A Text. Homewood, Illinois: Dorsey Press, 1962. 324 pp.
- Jessup, Philip. A Modern Law of Nations. New York: The MacMillan Company, 1948. 236 pp.
- _____. Transnational Law. New Haven: Yale University Press, 1956. 113 pp.
- Kahin, George McTurnan, (ed.). Government and Politics of Southeast Asia. Ithaca: Cornell University Press, 1959. 531 pp.
- Kaplan, Morton A. and Nicholas DeB. Katzenbach. The Political Foundations of International Law. New York: John Wiley & Sons, Inc., 1961. 372 pp.
- Kelsen, Hans. General Theory of Law and State. Trans. Anders Wedberg. Cambridge, Mass.: Harvard University Press, 1945. 516 pp.
- _____. Principles of International Law. New York: Rinehart and Co., 1952. 461 pp.

- Lauterpacht, H. (ed.). L. Oppenheim's International Law. London: Longmans, Green and Co., 1955. 2 volumes.
- _____. and C. H. Waldock. The Basis of Obligation in International Law and Other Papers by James Leslie Brierly. London: Oxford University Press, 1958. 387 pp.
- Lindley, M. F. The Acquisition and Government of Backward Territory in International Law. London: Longmans, Green and Co., Ltd., 1926. 391 pp.
- Miller, Charles Constant. Black Borneo. New York: Modern Age Book, 1942. 278 pp.
- Oppenheim, Lassa Francis Lawrence. The Future of International Law. Oxford: The Clarendon Press, 1921. 68 pp.
- Philippine Claim to North Borneo. Manila: Bureau of Printing, 1964. 159 pp.
- Robequain, Charles. Malaya, Indonesia, Borneo, and the Philippines. Trans. E. D. Laborde. London: Longmans, Green and Co., 1954. 456 pp.
- Stamp, L. Dudley. Asia: A Regional and Economic Geography. London: Methuen & Co., Ltd., 1950. 704 pp.
- Rutter, Owen. British North Borneo. London: Constable and Company, Ltd., 1922. 404 pp.
- The Federation of Malaysia. London: British Information Service, 1963. 74 pp.
- Tregonning, K. G. North Borneo. London: Her Majesty's Stationery Office 1962, 272 pp.
- _____. Under Chartered Company Rule. Singapore: University of Malaya Press, 1958. 250 pp.
- Vattel, Emmerich de. The Law of Nations or the Principles of Natural Law. Trans. Charles G. Fenwick. Washington, D. C.: The Carnegie Institution of Washington, 1916. 3 volumes.
- Whiteman, Marjorie M. Digest of International Law. Washington, D. C.: United States Government Printing Office, 1963. 3 volumes.
- Wolff, Christian. The Law of Nations Treated According to a Scientific Method. Trans. Joseph H. Drake. Oxford: Clarendon Press, 1934. 2 volumes.

Articles and Periodicals

- Africa, Bernabe. "The Legal Status of the British Occupation of North Borneo," Philippine International Law Journal, II (1963), 388-409.
- Ajala, Alabishi. "Inside North Borneo," Philippines Free Press, LV (March 17, 1962), 7, 48, 74-75.
- Anand, R. P. "Role of the New Asian-African Countries in the Present International Legal Order," The American Journal of International Law, LVI (April, 1962), 383-406.
- Barranco, Vic. "Disputed Land Below the Wind," Philippine Examiner, VI (July 3, 1962), 8-9.
- Famador, D. R. "Does North Borneo Belong to the Philippines?" Philippines Free Press, XLVIII (October 26, 1957), 18,62-63.
- Fernandez, A. M. "Student Rally on North Borneo Claim," Philippines Free Press, LV (September 29, 1962), 74-76.
- _____. "What to Know About North Borneo," Philippines Free Press, LV (March 3, 1962), 7, 66-67.
- "Fight to Annex North Borneo Starts," Philippines Free Press, LV (March 29, 1958), 14-15, 68.
- Geraldo, F. A. "Tale of Chicanery," Philippines Free Press, LV (February 10, 1962), 49, 65.
- "House Resolution on Philippine Claim to North Borneo," Philippines Free Press, LV (March 17, 1962), 6.
- "Indonesia: Waiting for a Letter," Newsweek, LXV (January 18, 1965), 27.
- Jennings, R. Y. "The Progress of International Law," The British Yearbook of International Law (London: Oxford University Press, 1959, 334-355.
- Jabat, J. V. "North Borneo Muslims Want Philippine Sovereignty," Philippines Free Press, LV (January 2, 1962), 28.
- Kahin, G. MacTurnan. "The State of North Borneo, 1881-1946," Far Eastern Quarterly, VII (November, 1947), 43-65.
- King, Francis H. H. "As Sukarno Huffs and Puffs Democracy's Flame Flickers Hopefully in Malaysia," Kansas City Times, October 22, 1964.
- Kiram, Tarhata. "We are the Sovereigns and Landlords of North Borneo," Philippines Free Press, XLVIII (November 16, 1957), 29-30.

- Lepasana, S. F. "The Basis of Our North Borneo Claim," Philippines Free Press, LII (August 22, 1959), 20-21.
- Lilius, Aleko. "The Sultan of Sulu Tells How England "Stole North Borneo," Chicago Sunday Tribune, October 14, 1945. 3, 4, 8.
- Locsin, T. M. "The North Borneo Case and Journalism," Philippines Free Press. LV (July 21, 1962), 3.
- _____. "The North Borneo Case Without Hysteria," Philippines Free Press, LV (September 22, 1962), 10-11, 79.
- _____. "The President Acts," Philippines Free Press, LV (June 30, 1962), 82-83.
- Meadows, Martin. "The Philippine Claim to North Borneo," Political Science Quarterly, LXXVII (September, 1962), 321-335.
- "On North Borneo Question," Manila Chronicle, XXVIII (January 24, 1963), 6-8.
- "North Borneo Claim Before United Nations," Philippines Free Press, LV (December 8, 1962), pp. 8-9.
- Ortiz, Pacifico A. "Legal Aspects of the North Borneo Question," Philippine Studies, II (January, 1963), 18-64.
- "Pelaez Statement on North Borneo Claim in London Talks," Philippines Free Press, LVI (February 23, 1963), 4-5, 58, 64.
- Rama, N. G. "Conclusive Evidence," Philippines Free Press, LV (February 12, 1962), 6, 82.
- _____. "Congressman Diosdado Macapagal on North Borneo," Philippines Free Press, LV (April 21, 1962), 6, 90-91.
- _____. "Mayor Lacson on North Borneo," Philippines Free Press, LV (April 28, 1962), 7, 75, 78-79.
- _____. "North Borneo Belongs to Us," Philippines Free Press, LV (December 20, 1961), 4-5, 58, 64.
- _____. "North Borneo--It's Ours!" Philippines Free Press, LV (January 20, 1962), 66067.
- _____. "The North Borneo Case--Now or Never," Philippines Free Press, LV (March 10, 1962), 74-75.
- Regala, H. "Philippine Claim to North Borneo," Manila Sunday Times Magazine, March 19, 1963. 26-27.
- Ronquillo, Bernardino. "The Borneo Claim," Far East Economic Review (Hongkong), XL (May 23, 1963), 418-420.

- Schwarzenberger, George. "Title to Territory: Response to a Challenge," The American Journal of International Law, LI (April, 1947), 308-324.
- Singh, Vishal. "The Struggle for Malaysia," International Studies, V (January, 1964), 221-239.
- Tilman, Robert O. "Malaysia: The Problems of Federation," The Western Political Quarterly, XVI (December, 1963), 897-911.
- Tregonning, K. G. "American Activity in North Borneo, 1865-81," Pacific Historical Review, XXIII (November, 1954), 357-372.
- Villadolid, A. "Dispute Over North Borneo," Manila Sunday Times Magazine, XIII (February 16, 1958), 4-8, 10-11.

Proceedings

- Tregonning, K. G. "An Outline of the Historical Factors Believed Behind the British Occupation of North Borneo and Some Consideration of the Claim by the Government of the Republic of the Philippines in that Territory," Proceedings of the Second International Conference of Historians of Asia (Taipei, 1962), 527-535.

Public Documents

- Philippines. Congressional Record. Volume II. Proceedings and Debates of the Fifth Congress. Second Regular Session.
- Philippines. Department of Foreign Affairs. Joint Statement of the Conference of Ministers of the Federation of Malaya, the Republic of Indonesia, and the Republic of the Philippines, held in Manila from June 7 to 11, 1963, dated August 5, 1963.
- Philippines. Department of Foreign Affairs. Manila Accord, adopted at the Conference of Ministers of the Federation of Malaya, the Republic of Indonesia, and the Republic of the Philippines, held in Manila, from June 7 to 11, 1963, dated July 31, 1963.
- Philippines. Department of Foreign Affairs. Letter of Governor Harrison to Vice President Quirino dated February 27, 1947.
- Philippines. Department of Foreign Affairs. The Macaskie Judgment, 1939.

Newspapers

- New York Times. June 23, 1962, p. 4.
_____. June 24, 1962, p. 17.
_____. August 8, 1962, p. 8.
_____. October 1, 1962, p. 5.
_____. January 3, 1963, p. 6.
_____. February 2, 1963, p. 3.
_____. June 12, 1963, pp. 1-2.
_____. November 22, 1963, p. 5.
_____. December 12, 1963, p. 11.
_____. February 9, 1964, IV, p. 4.
_____. February 13, 1964, p. 5.
_____. March 10, 1964, p. 4.
_____. January 12, 1965, p. 6
_____. January 13, 1965, p. 3.

THE PHILIPPINE CLAIM TO NORTH BORNEO

by

ORLANDO M. HERNANDO

A. B., University of the Philippines, 1951
Ll. B., Central Philippine University, 1955

AN ABSTRACT OF A THESIS

submitted in partial fulfillment of the
requirements for the degree

MASTER OF ARTS

Department of Political Science

KANSAS STATE UNIVERSITY
Manhattan, Kansas

1966

This study has a threefold aim: first, to present the basis of the Philippine claim to North Borneo; second, to test the validity of the claim according to applicable rules and principles of international law in relation to the competing British claim; and third, to discover the means by which international law provides for the settlement of such a dispute.

This study is important because of the legal and political significance of the dispute. The methods used are legal and historical. Historical research was utilized to discover the basis of the competing Philippine and British claims. Legal research was resorted to as a means of laying the legal foundation for the competing Philippine and British claims in international law and to seek the ways by which the dispute may be settled.

Chapter I is the introduction. Chapter II deals with the geography and history of North Borneo with particular reference to the interests of Great Britain and the Republic of the Philippines.

Chapter III deals with the historical and legal basis of the Philippine claim.

Chapter IV discusses the competing claim of Great Britain (now succeeded to by the Federation of Malaysia) and the rebuttal of the Philippine Government.

Chapter V discusses the rules and principles of international law applicable to the dispute and the means for the settlement of such a dispute as provided for in international law.

Chapter VI contains summary and the following conclusions:

First, there is some merit to the Philippine claim because of (a) the historical and legal facts of the dispute and applicable rules and principles of international law; (b) the recognition given to the dispute at the London Conference in January, 1963 between the United Kingdom and the Philippines and at the Conference of Ministers of the Federation of Malaysia, the Republic of Indonesia and the Republic of the Philippines which met in Manila, Philippines from June 7 to 11, 1963, and by the presentation of the Philippine claim to the General Assembly of the United Nations in September and December, 1962, and (c) an independent assessment of the dispute made by Martin Meadows, an American political scientist, in a scholarly article published in the Political Science Quarterly of September, 1962.

Second, since international law provides various means for the settlement of the dispute, it should be settled peacefully by the states involved because it continues to disrupt normal relations between them and creates mounting rancor and bitterness.

Third, the Philippines has adopted an extremely commendable attitude by making a careful study of the claim before formally filing it and since then by pursuing its claim peacefully according to the methods provided for in international law.