



CDiSS COMMENTARY

National Defence University Malaysia (NDUM)
Centre for Defence and International Security Studies (CDiSS)

cdisscommentary.upnm.edu.my

No. 86 - 12 October 2020

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A FALSE AND DANGEROUS CLAIM

By
Bunn Nagara

The Philippines continues to fantasise about discredited claims to Sabah territory, which endangers its own position, its legitimacy as a republic, and its healthy relations with Malaysia.

It does not take much to trigger the Philippines' dormant claim on the Malaysian state of Sabah, ludicrous as it may be.

The latest fuse for the ruse: an innocent Twitter note from the US Embassy in Manila mentioning aid to Filipino returnees "from Sabah, Malaysia."

How does anyone mention Sabah in an international context without also mentioning Malaysia? Besides, should anyone even feel obliged to avoid mentioning Sabah together with Malaysia?

The Philippine claim to Sabah or any other part of Borneo is rejected by history on which it solely depends, as well as by law, reality and good sense.

North Borneo (Sabah) had been part of Brunei for centuries. Long before the Republic of the Philippines was born, the Sulu Sultanate began to claim North Borneo (Sabah) as part of its realm.

The story is that during the 1660-73 Brunei Civil War, one side had pledged the territory of North Borneo to Sulu in return for military assistance.

That assistance arrived only after the war had ended, the deal was off, but Sulu's claim to the territory persisted. Brunei never recognised the claim,

and naturally Sulu never had any official document, seal, or formal acknowledgement legitimating its sovereignty.

That part of history is so shrouded in obscurity that doubts exist about which side in Brunei's civil war had made Sulu the offer - or even if an offer was made. Most accounts even date the "deal" as 1658, two years before the civil war began.

Singapore sources have argued that descendants of the Sulu Sultan have no basis for a claim because they never utilised or governed North Borneo since 1878, when the then sultanate signed away the territory. The historical record actually shows they never even occupied or administered, much less ruled, the area that was then largely undeveloped, inhospitable and sparsely populated.

The Suluks of Sulu are not indigenous to Borneo. Neither can they claim any Bornean territory on the basis of native customary land rights or adverse possession under any law.

Nonetheless, the whole issue of the Sulu claim that later came to be "inherited" by the Philippine Republic is merely a sideshow to the main events of history.

In December 1877, German businessman Baron Gustav von Overbeck obtained North Borneo from the Sultan of Brunei with a string of royal titles that came with the title deed.

Mindful of Sulu's claim to the territory even then, Overbeck proceeded to "obtain" the territory again the following month, this time from the Sulu Sultan, to avoid any trouble.

Yet very shortly after North Borneo had been ceded to Overbeck, Sulu wanted it back. Reneging on agreements was reportedly a recurring experience for Brunei and the British authorities when dealing with Sulu.

Following the cession of the territory, Sulu was not satisfied and appeared to have regretted the action. But the attempts to retract the agreement had been ad hoc and haphazard.

Spanish authorities would then commit an error of translation that was to become definitive. In the agreement that Sultan Jamal ul-Azam of Sulu signed in the Malay language, Spanish officials mistranslated the word "pajakan" (to cede or pawn) to mean "lease".

Since then, Sulu and the Philippines have persisted on claiming Sabah on the pretext that the original agreement had been only a lease to Overbeck, who in time would pass the territory to the Dent brothers, their chartered British North Borneo Company (BNBC), then to Britain until the formation of Malaysia.

Both Britain and Malaysia can be secure in their position that North Borneo had been obtained duly, lawfully and legitimately from Brunei through Overbeck and the Dents.

The Sulu and Philippine claim is a distraction that, even as a sideshow, has no historical, legal or other basis.

Even so, the 1878 agreement that Jamal ul-Azam signed for Overbeck contains the undisputed translation that the transfer of title was in “perpetuity and until the end of time.”

Since then, however, the Suluks have unilaterally interpreted that phrase to mean a fixed period of only 100 years from the signing. That ridiculous spin now forms the basis of the Philippine claim.

Following Sulu’s earlier attempts to retract the agreement, efforts were made to have Sultan

Jamalul-Kiram II of Sulu clarify the situation. This he did in 1903, confirming that the 1878 transfer of North Borneo with some outlying islands was indeed a cession and not a lease.

After Spain had taken over Philippine and Sulu territories, it was keen to have Britain recognise its sovereignty over the islands. The 1885 Madrid Protocol assured Spain of this, and in return it affirmed that any and all Bornean territories that might have been Sulu’s belonged to Britain.

The Sulu Sultanate had repeatedly been rendered defunct by Spanish and US authorities, and ultimately by the independent Republic of the Philippines.

Even by 1884, the teenage Sultan Badaruddin had died without a male heir. The royal lineage was broken, claims to the Sulu throne grew messy, until today when there are no less than eight claimants to the defunct sultanate.

Still, the anachronism lingered when a claimant to the throne grew frustrated and gave President Diosdado Macapagal the “power of attorney” to claim Sabah in the 1960s.

When nothing was done by Manila to realise the claim, “Sultan” Jamalul Kiram III later retracted the power of attorney from then President Ferdinand Marcos.

No pretender to the Sulu throne has the locus standi to grant or retract any party the power of attorney to actualise an illegitimate claim. By extension, no party in the Philippines has the locus standi to file such a claim.

To continue with the charade of claiming Sabah is embarrassing and perilous for the Philippines itself.

It legitimates other claims based solely on history, including China’s extensive claims to the South China Sea which covers Philippine territory.

It also emboldens Suluks in the southern Philippines, who may disrupt the delicate arrangements for Bangsamoro rule in Mindanao, pose future challenges

to Manila's legitimate authority in the region, and risk serious damage to relations with Malaysia.

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This article was published in *The Star* dated 11 October 2020. **Republished with permission from *The Star, Malaysia*.**

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