

- This is an interesting account of how the present government of the Philippines happens to claim a part of Borneo.

BACKGROUND OF SABAH

The issue of Sabah was first raised in the post-World War II years in 1962 when the government of President Diosdado Macapagal in the Philippines came to fear that the heavily Chinese populations of Singapore and the British colonies in Borneo were going communist.

But the Philippine claim runs far back into history, and there are so many legal knots involved that hardly anyone except an international lawyer can come to an approximate conclusion on who is right.

Complicating the legal questions, of course, is the problem of what the people of Sabah themselves want to do.

All of what is now Sabah, plus about 2,000 square miles of territory that presently belongs to Indonesia, were claimed by the Sultan of the Sulu archipelago in the late 18th century as a reward for helping the victorious

side in a dispute over the succession to the throne of neighboring Brunei.

The territory had once been claimed by Brunei, still a British colony, but never effectively controlled by it.

There is no legal evidence that Brunei ever recognized Sulu's claim to the territory, but nevertheless, Sulu ruled it for about a century.

In the late 1870's a group of British and Hong Kong businessmen became interested in developing North Borneo. They bought out an American concern that claimed an interest in it, and agreed to pay the Sultan of Brunei 5,000 straits dollars a year to cede it to them.

Then, because of Sulu's controls, they approached the sultan early in 1878, and for the sum of 5,000 straits dollars a year, plus royalties, he agreed to let them have it. The sultan later claimed he had done so at the point of a gun, but there seems

to be no evidence to support this.

In any case, the sultan signed a document that either "leased" or "ceded" — there is an argument about the translation of the Malay word "pajak" in the contract — the territory "forever until the end of time."

On the same day, Jan. 22, 1878, the sultan named Baron Gustavus von de Overbeck, an Austrian who worked in Hong Kong and was associated with Alfred Dent, a London merchant, the "Datu Bandhara" (a nakay title of royalty) and "Sultan of Sankarakan," and conferred on him full powers of sovereignty over Sabah.

Like many other fortune hunters of the time, Dent and Overbeck had a touch of larceny in their hearts. They agreed to pay the sultan royalties on production in Borneo, but this was not included in the lease. Soon afterward, they formed the Sabah company in Hong Kong and thereafter considered themselves absolved of any responsibility for royalties.

Nevertheless, the payment of the royalties continued — and did so right through

the accession to power of the British North Borneo company by royal charter in 1881, conversion of the territory to a British Crown colony in 1946, and its turnover to the government of Malaysia in 1963.

The fact that the rent is being paid even to this day — into an escrow bank account in Manila while the sultan's heirs fight over it — appears to be a strong legal argument in favor of the Philippines.

On the other hand, the Malaysians contend that Spain, as the colonial ruler of the Philippines, agreed with the British and Germans — who had trading interests in the area — in 1885 to recognize British sovereignty over North Borneo in exchange for British recognition of Spain's sovereignty over the Sulus.

The Malaysians also point out that a succeeding sultan on April 22, 1903, in a confirmatory deed relating to some islands off the coast, referred to the original document as a "cession," and to the "Government of British North Borneo."

They also contend that the Philippines, if it really

thought it owned North Borneo, could and should have raised the issue when it became independent in 1946.

The Filipino answer to this is simply that at a time when the government was faced with the difficult tasks of building a self-governing nation, repairing the war-ravaged economy, and then defeating a communist rebellion, it did not have time or energy to put forward this claim.

But whatever the legal issue involved, the over-weening dispute concerns the fate of the half million people who live in Sabah, and the effect of the argument on the internal politics of both Malaysia and the Philippines.

Once raised, the claim took on a life of its own.

Filipino politicians and the violently nationalistic press of Manila hoped on it with fervor. Claims were made that a piece of soil had been sold illegally for a pittance, and demands that the government get it back at any cost were so strong that neither Mr. Macapagal nor his successor, President Ferdinand Marcos, has been able to let the issue drop.

Because Malaysia is a friend and ally, the Philippines has for the most part restrained its demand to a call for some sort of legal action to determine the territory's future.

Until this weekend, four basic solutions had been proposed at one time or another, all of which were rejected by Malaysia. The Filipinos asked:

To take the case to the International Court of Justice (World Court) at The Hague.

To take it to binding arbitration by an agreed third party.

To take it to the United Nations.

To hold a plebiscite in the territory and let the people decide.

The Malaysians object to all four of these proposals.

They say they cannot justify in the context of their internal politics, telling the people of Sabah that their future is up for decision by outsiders over whom they have no control or voice.

Nor could they afford to give in to demands for a plebiscite without risking the ruination of the political

base of Tunku Abdul Rahman's government.

Moreover, they say, to give Sabah in effect the right to vote on cession from Malaysia through a plebiscite would be impossible to justify under the Constitution and could lead to later demands from other wealthy states in the Federation for the same right.

Lastly comes the question of sovereignty. Malaysia is a sovereign nation and cannot be forced, short of war, to let another nation intervene in what it rightly considers its internal affairs.

The only proposal so far that seems to have the necessary elements for solving the problem is that for putting the question to the Sabah people without infringing on Malaysian sovereignty.

By asking Sabah whether it wants the case taken to the World Court, the government would not be permitting a vote on cession, but only a vote on whether to proceed with legal remedies. If the people of Sa-

bah are content in Malaysia — and no one seriously questions that — they will vote no, end of dispute.

If they were to vote "yes," the government would still be able to fight the case through the World Court, and the preponderance of legal evidence does seem to be on Malaysia's side, lease money or no. In addition, Kuala Lumpur would have advance notice that Sabah is unhappy, and could do the necessary to right the situation.

The referendum should also satisfy the Filipinos, for even though they are nationalistic, no responsible person in that country would advocate taking in a territory against the wishes of the people who live there.

And by permitting the Filipino press to observe the referendum and see that it was fair, the Malaysians would be neutralizing the most vocal and troublesome power in the movement to regain Sabah. — *by U.P. International*, June 17, 1968.