

JGL Eye Column

By JOSEPH G. LARIOS

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C HICAGO (*FAXX/jGLi*) – F.B. Harrison is one of the major streets in Metro Manila but I wondered why. I only learned lately from a fellow Filipino cyberfriend, Jose Sison Luzadas, that when the Philippines’ seventh civilian American Gov. Francis Burton Harrison died in Flemington, New Jersey in 1957, he left a will that his remains be repatriated to the Philippines and be buried at the Manila North Cemetery in La Loma.

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When he was no longer the U.S. Governor General, Mr. Harrison became an advisor to Philippine Vice President and Foreign Affairs Secretary Elpidio Quirino. He presented to Mr. Quirino on Feb. 27, 1947, a copy of the Sabah Lease Treaty document in Malay language written on Arabic script translated by American anthropologist H. Otley Beyer of the University of the Philippines. Austrian Baron von Overbeck and British lawyer Alfred Dent told the Royal Colonial Institute on May 12, 1885, that the agreement they obtained from the Sultan of Sulu on Jan. 22, 1878, was for the lease of North Borneo and did not forfeit the Sultan’s sovereign rights.

On June 26, 1946, the British North Borneo Company entered into an agreement with the British Government, transferring its interests, powers and rights over to the British Crown to become State of North Borneo. It became a British colony.

Harrison

called this arrogant and baseless move as British “political aggression.” He advised the soon to become young Philippine Republic to take the matter up before the United Nations.

It caught the U.S. off-guard to protest the British violation of the 1907 Exchange of Notes between the U.S. and Great Britain and the subsequent Jan. 2, 1930, Convention. According to the International Court of Justice in a 2002 ruling in the dispute between Malaysia and Indonesia over the islands of Ligitan and Sipadan, the 1907 Exchange of Notes was “a temporary arrangement between Great Britain and the U.S. that did not involve a transfer of territorial sovereignty (but) merely provided for a continuation of the administration by the British North Borneo Company of the islands situated more than three marine leagues from the coast of North Borneo.”

NO NEED FOR COBBOLD COMMISSION

In rejecting a conditional surrender of the Sultan of Sulu’s Royal Army, who want Malaysia to settle the Sabah dispute,

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Malaysian Prime Minister Najib Razak ruled out any negotiation on the dispute “that has been determined legally as far back as 1878 and subsequently by the referendum conducted by the Cobbold Commission ahead of the formation of Malaysia.”

The Prime Minister might not have been told by his advisers that referendum for self-determination as far as Philippines’ claim to Sabah is concerned is out of the question.

Based on the Indonesia-Malaysia dispute, the ICJ ruled that “effectivities” and sentiments of the people in the area for self-determination will only be at play if parties in the dispute do not have “treaty-based title” to support their claim. Both Indonesia and Malaysia did not have any documentary evidence to show in their claims. So the court turned to “effectivities” in coming up with the decision in favor of Malaysia

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If the Philippines comes to ICJ, it will only be armed with the copies of the Lease Agreement of the Sultan of Sulu with Overbeck and the 1907 Exchange of Notes and the Jan. 2, 1930 Convention that ICJ had already ruled did not cause the transfer of sovereign rights from Spain to Great Britain. Malaysia would have the burden of overturning these evidence.

In its case before the ICJ, Malaysia said “it was successor to the Sultan of Sulu, the original title-holder to the disputed (Sabah) islands, further to a series of alleged transfers of that title to Spain , the United States , Great Britain on behalf of the State of North Borneo

.” But the ICJ said this argument cannot stand.

After obtaining a lease treaty from the Sultan of Sulu, Overbeck relinquished his rights and interest over to Dent’s British North Borneo Company (BNBC). Dent applied for a Royal Charter with United Kingdom on Dec. 2, 1878 based on the lease treaty signed away by the Sultan of Sulu on Jan. 22, 1878

But in an official letter of Jan. 7, 1882, Earl Granville, then, head of the United Kingdom Foreign Office, stated, “The British crown assumed no dominion or sovereignty over the territories occupied by British North Borneo Company, did not grant the company any powers of government and (it) recognized the delegation of powers by the Sultan of Sulu in whom sovereignty remained vested.”

PROTOCOL OF MARCH 7, 1885, QUESTIONABLE

So, when BNBC transferred its rights over to the UK on June 26, 1946

, the

UK

merely acquired powers delegated by the Sultan of Sulu, who retained sovereignty over the Territory.

In the Capitulation of July 22, 1878, Art. I of the Protocol, it declared as “beyond discussion the sovereignty of Spain over all the Archipelago of Sulu and the dependence thereof,”

following Sulu’s conquest by

Spain

in June 1878.

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The Sultan of Sulu revoked the lease of Jan. 22, 1878 and in September 1878, a Spanish warship attempted but failed to take control of

North Borneo

. This caused

Great Britain

to protest and a treaty among

Great Britain

,

Germany

and

Spain

was forged.

In the Protocol of March 7, 1885, under Art. III, the Spanish government “renounces as far as regards the British government, all claims of sovereignty over the territory of the continent of Borneo, which belong, or which have belonged in the past to the Sultan of Sulu (Jolo) and which comprise the neighboring islands ... from the coast, and which form part of the territories administered by the company styled the British North Borneo Company.”

There was no logic on this protocol for Spain to renounce the property and sovereignty of the Sultan of Sulu in favor of the British. Spain did not get any incentive or tradeoff to give up the property and sovereignty of Sultan of Sulu’s Archipelago and Dependencies. When Spain signed the 1898 Peace Treaty with the U.S., the Filipino Katipuneros aided by the U.S. beat Spain and Spain got \$20-Million dollar to give up the Philippine and Sulu Archipelago, including North Borneo

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When the Sultan of Sulu gave up its property to Spain, it was by conquest. But in the Protocol of March 7, 1885, there was no reason for Spain to give up the Sultan of Sulu’s property to Great Britain because Britain did not beat Spain in any battle by

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conquest nor gave Spain money or anything of value in exchange of Sultan of Sulu’s property, including North Borneo.

That’s why when Spain signed the 1898 Treaty, the U.S. was able to keep the Sultan of Sulu’s Archipelago, including North Borneo
, intact.

When the U.S. pressed for the Sultan’s property under the 1898 Treaty with Spain, Great Britain did not object but rather sought an arrangement with the U.S. that would ensure continuity of BNBC’s administration of the Sultan of Sulu’s North Borneo that resulted in the Exchange of Notes of July 3 and 10, 1907 and the Jan. 2, 1930 Convention. The convention did not involve any transfer of sovereignty, according to ICJ. # # #

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