

JGL Eye Column

By JOSEPH G. LARIOS

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{xtypo_quote} If you are strong on the facts, pound on the facts. If you are strong on the law, pound on the law. But if you are not strong or you are weak both on the facts and the law, pound on the table. – Philippine Sen. Alan Peter Cayetano, quoting his Ateneo law professor during the Corona Impeachment Trial on May 29, 2012 {/xtypo_quote}

C HICAGO (*FAXX/jGLi*) – Two Malaysian letter writers ridiculed me for looking past the issue of self-determination as their best argument for Malaysia

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to keep
North Borneo
or
Sabah
out of reach of the
Philippines
and the Sultan of Sulu.

Quoting the Malaysian government defense against Indonesia's claim to Sabah's Pulau (Malay for "island") Ligitan and Pulau Sipadan, which Malaysia won in 2002 before the International Court of Justice (ICJ), both Hamzah Mohammad and Majid Mohd believe that their ace in the hole – the "expressed wish of the majority of the people of the territory (North Borneo) in the 1963 election" if they were ready to join the Federation of Malaysia in 1963 – should let Malaysia keep its grip on Sabah.

"You can write which ever way you want but Sabah has been and will always be in Malaysia,"
Majid Mohd greeted me.

"Now you will have more headache. There was an earlier agreement by the Sultan of Brunei with Baron Overbeck regarding Sabah appointing him a Maharaja.

“And how in the world could the Philippines gain dominion and sovereignty over Sabah through a transfer by the heirs of the Sultanate in 1962 when the Sultanate was no longer sovereign but a mere province of the Republic?

“I would suggest you put your energies in developing the poor South. Someone likened the Tausug incursion in Sabah to the Lapiang Malaya march to Malacañang.”

Hamzah Mohammad allowed, “The United Nations removed North Borneo from the list of colonial territories under its decolonization jurisdiction, thereby accepting that the process of decolonization had been completed by a valid exercise of self-determination

“Modern international law does not recognize the survival of a right of sovereignty based solely on historic title; not, in any event, after an exercise of self-determination conducted in accordance with the requisites of international law, the bona fides of which has received international

recognition by the political organs of the United Nations.” Impressive arguments.

PH, GB STALEMATE AT UN

Unfortunately for Malaysia, these same arguments promoted by Great Britain when the Philippines claimed Sabah before the UN in 1962 fell on deaf ears when UN did not come up with a ruling.

When a group of representatives from the Secretary General of the UN headed by former Bank of England governor Lord Cobbold conducted a plebiscite among North Borneo inhabitants if they were ready to join the Federation of Malaysia in 1963, there was “no mention of accord about the formal agreement providing for the transfer of sovereignty over North Borneo to the proposed Federation of Greater Malaysia.”

The inhabitants appeared to be unprepared to express their opinion because “in the field of education, for ten-year olds, only 72,000 (or 32%) are literate while 227,000 are illiterate from the total population. From the indigenous population of over 300,000, only two persons have gone thru college.

Even if all the 72,000 literates favored the transfer, they were still woefully short of the 50 percent plus one majority

“In other words, since 1881, when the British North Borneo Company started administering North Borneo for the Sultan of Sulu, and even as late as 1946, when the United Kingdom (UK) Government annexed North Borneo as a crown colony, the inhabitants of the territory have not been given the opportunity to elect even local officials.

“Because of insufficient time,” the inhabitants of the territory could not make “careful study” regarding the implications of the Malaysia proposal for North Borneo
, the Philippine panel pointed out. “There had been no elections. Only recently have plans been made for election to District Councils and Town Boards.”

The Cobbold report said: “In assessing the opinion of the peoples of North Borneo

we have only been able to arrive at an approximation. We do not wish to make any guarantee that it may not change in one direction or the other in the future.”

As a result, both the Philippines and Indonesia of the tri-partite grouping of Maphilindo, including Malaysia, rejected the Cobbold result for not getting a majority when only “about one third of the population strongly favoured realization of Malaysia without conditions, one third favored it with conditions and safeguards and the rest against.”

Hamzah Mohammad boasted that the Cobbold Commission had “received international recognition.” Really? How could Lord Cobbold, an Englishman, be objective in his report when the Principal parties in the case involved his own England or Great Britain? Hadn't the UN heard of *Iutong Macao* (home cooking or hometown decision)?

ALL STACKED UP AGAINST PH

And the other members of the Commission? Wong Pow Nee, Chief Minister of Penang, Mo
ammed Ghazali Shafie
, Permanent Secretary to the Ministry of Foreign Affairs,
Anthony Abell
, former Governor of Sarawak,
David Watherston
, and former Chief Secretary of Malaya were all under the influence of the British Crown!

The validity of the assessment was, of course, totally wrong and could not be supported by facts and cannot be accepted by independent observers, the Philippine panel insisted.

It added, the “UK was aware of the decision of (British Court) North Bornean Chief Justice C. F. C. McCaskie in 1939 but it did not notify the Philippines and heirs of Sultan of annexing North Borneo on July 10, 1946 and five days later assumed sovereignty over the territory, without notifying the Philippine government nor Princess Tarhata and other heirs. Gov. Francis Burton Harrison, a great American advocate of self-determination, called the annexation as ‘act of political aggression.’”

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Seven years earlier Justice McCaskie's opinion reads, "It is abundantly clear that the successors in sovereignty of the Sultan of Sulu are the Government of the Philippines Islands."

The Philippine panel assured Great Britain that the Philippines had neither intention nor desire to ignore the wishes of the people of the territory. It is inhabited by half-million people (now 3.1-million), whose self-determination must be considered and respected.

The Philippines wants the dispute settled amicably and speedily on a bilateral basis.

It also asked, "Why is it that after the Philippine House of Representatives approved a resolution on April 24, 1962, urging the President (Macapagal) to claim sovereignty over North Borneo, the UK informed the Philippines, it would oppose and resist any claim in an effort to forestall the presentation of the claim before its merits had been examined?" Where is due process?

On June 22, 1962, the Philippines urged UK to hold discussion of Philippine claim of sovereignty in Manila
or
London
but the
UK
ignored the request.

If Malaysia has really aces up in its sleeves sewn up on North Borneo, why doesn't it accept the challenge of the Sultan of Sulu and the Philippine government to settle the dispute in a peaceful means?

Is Malaysia alarmed to get a similar ruling from the ICJ when ICJ issued a stinging decision against Malaysia in the Ligitan-Sipadan case on Dec. 17, 2002, which said, "Malaysia's argument that it was successor to the Sultan of Sulu, original title-holder to the disputed 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, the United Kingdom, and Malaysia CANNOT BE UPHOLD (underscoring ours)."

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Or is Senator Cayetano referring to Malaysia as the one, who pounds on the hapless and helpless Royal Army of the Sultan of Sulu, and who violates their human rights, and who refuses to come to a negotiating table because Malaysia is “not strong or is weak on both of the facts and the law”?

Has Malaysia forgotten the words of its former Prime Minister Mahathir Mohamad? “People tend to respond more positively to the friendly approach than to confrontations. Pushed into a corner, even the weakest will fight.”
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