

***JGL Eye Column***

By JOSEPH G. LARIOS

(© 2013 *Fil Am Extra Exchange*)

C HICAGO (*FAXX/jGLi*) – If the 100 armed men holed up in the village in the eastern Malaysian state of Sabah are really members of the “royal army” of the Sultanate of Sulu to claim a promised land, the Philippine government may appeal to them to lay down their arms and leave peacefully.

But the Philippine government should take advantage of the opportunity by assuring them of its help by reviewing its Sabah claim before the International Court of Justice.

## Obiter Dictum in ICJ on Sabah Case May Save the Day for PH - MabuhayRadio

Written by

Saturday, 16 February 2013 20:33 - Last Updated Sunday, 17 February 2013 01:00

---

If the armed men are Filipinos, that is only the second time that a group of Filipinos were trying to forcibly re-take Sabah from Malaysia. In 1968, it was reported that President Marcos was training a team of saboteurs on Corregidor to infiltrate S  
abah  
but the attempt was aborted.

First of all, if the Philippines has the wherewithal to invade Sabah, there is no assurance of success just like the failed Bay of Pigs Invasion of Cuba by the United States

Secondly, when push comes to shove, in the dispute between the Philippines and Malaysia over Sabah, the United States has no option but to side with the Philippines because in 1906 and in 1920, and as late as July 10, 1946, less than a week after the Philippines was granted Independence by the U.S., the U.S. had reminded Great Britain, which had dominion over what would later become Malaysia that Sabah, earlier known as North Borneo, is not owned by Great Britain but by the Philippine Sultanate of Sulu.

And thirdly, when the International Court of Justice rejected the application of the Philippines to claim Sabah in 2001 to intervene in a dispute between Indonesia and Malaysia for possession of Sabah's Pulau Sipadan and Pulau Ligitan, its ruling against the Philippines was a mere obiter dictum. In that dispute, the ICJ ruled in 2002 for Malaysia because of Malaysia's effective occupation of Sa  
bah  
. But  
Indonesia  
does not have a Sultanate of Sulu as its claimant, unlike the  
Philippines

In legal parlance, an obiter dictum is merely a statement made by a judge in the course of his judgment, which may not precisely be a relevant issue before him. It has no binding authority. It is a by-product of the original judgment. It is merely a remark or opinion of the judge.

#### **“RATIO DECIDENDI”**

On the other hand, the same ruling is considered a “ratio decidendi” against Indonesia and for Malaysia as the ICJ applied the “rule of law” based on the facts of the case or applied the “rule, which the court regarded as governing the case.”

In other words, if the Philippines were to revive its case directly against Malaysia before the ICJ, if the ICJ will use “ratio decidendi,” not obiter dictum in its ruling, the Philippines can get a different ruling from Indonesia's claim against Malaysia.

Written by

Saturday, 16 February 2013 20:33 - Last Updated Sunday, 17 February 2013 01:00

---

In "ratio decidendi," the Philippines can invoke its own evidence and merits of its case, and if the court gives the Philippines its day in court, I believe, the heirs of the Sultanate of Sulu and its "royal army" will no longer disturb the ruling and the heirs of the Sultanate of Sulu will just cede peacefully Sabah to Malaysia if the Philippines gets an adverse ruling.

Without giving the Philippines its due process, the ICJ's obiter dictum against the Philippines will not appease the heirs of Sultanate of Sulu and by extension the Philippine government.

That is why I agree with the stand taken by former University of the Philippines Professor Nur Misuari, head of the Moro National Liberation Front, urging the Philippine government to pursue its dormant claim to Sabah

During negotiation before ICJ, it is going to be shown that the perpetual amount of lease now being paid by the Malaysian government to the heirs of the Sultanate of Sulu in the amount of 6,300 Malaysian ringgits (US\$1,500 or 63,000 Philippine pesos) a year is really an insult, if not indolent. It is merely a drop in the bucket to the agreement signed in 2011 by Sabah government's Petronas (Malaysian government oil and gas company) and Shell for a 30-year production sharing contract for enhanced oil recovery projects in offshore Sarawak and Sabah

. According to a Petronas press release, "If (the deal is) realised, around 765 million barrels of oil reserves are expected to be recovered through the improvement to the recovery efficiency of the fields, translating into additional production of 90,000 to 100,000 barrels of oil per day." It

## **Obiter Dictum in ICJ on Sabah Case May Save the Day for PH - MabuhayRadio**

Written by

Saturday, 16 February 2013 20:33 - Last Updated Sunday, 17 February 2013 01:00

---

means a mouth-watering income of US\$10-million to US\$11.2-million a day at current oil price of US\$112 per barrel.

Perhaps, the heirs of the Sultanate of Sulu could argue before the ICJ that they may not be able to effectively occupy the whole state of Sabah but they are entitled to royalty to any oil and gas exploration as a form of rental payment.

I spoke to one of the heirs of the Sultanate of Sulu, who just retired from her job from University of Wisconsin in Milwaukee, who told me her relatives want to have a piece of the pie of the income from Sabah's oil and natural resources before they come into an agreement. She also introduced to me to two of her brothers, who are also employed in the Midwest, when I met them in Chicago,

Illinois  
, last year.

## **NORTH BORNEO HIGH COURT RULED FOR HEIRS OF SULTAN OF SULU**

All the historical data point to the heirs of the Sultanate of Sulu as the owners of Sabah. Nobody disputes this.

Written by

Saturday, 16 February 2013 20:33 - Last Updated Sunday, 17 February 2013 01:00

---

Even the Chief Justice C.F.C. Macaskie of the High Court of North Borneo issued a ruling in 1939, saying the heirs of Sultan of Sulu are entitled to the “cession money,” following the death of Sultan of Sulu Jamalul Kiram II in June 1936, who was childless. The propriety claimants (Dayang Dayang Hadji Piandao and eight other heirs) were awarded the “cession money” as proof of Sultan of Sulu’s ownership of the said property. The ruling was the basis of the payment of annual rental of Sabah amounting to 6,300 Malaysian ringgits per year (U.S.\$1,500 or 63,000 Philippine pesos).

But what I dispute was the dismissive demeanor of Malaysia towards the Philippine claim that the dispute is a “non-issue” as there is no desire from the actual people of Sabah to be part of the Philippines or of the Sutanate of Sulu.

Really?

Did the Malaysian government ever allow the heirs of the Sultanate of Sulu to talk to their tenants in Sabah to find out their sentiments if they were really against the Sultanate by way of a referendum for the purpose? Did the Malaysian government allow the Sultanate air time in mass media in Sabah to explain to their tenants that because they are residing on a piece of land owned by a Filipino Sultanate of Sulu, they are supposed to pay rental directly to their landlord – the heirs to the Sultanate of Sulu – not to a third party or middleman such as the Malaysian government?

Written by

Saturday, 16 February 2013 20:33 - Last Updated Sunday, 17 February 2013 01:00

---

If I were the heirs to the Sultanate of Sulu while they are waiting for the ruling of the ICJ, I am not going to encash the 6,300 Malaysian ringgits to protest and humiliate the Malaysian government just as Fidel Castro refused and refuses to encash the US\$2,000 annual rental payment of the U.S. to use the Guantanamo U.S. Base in order to humiliate the U.S. into giving up the perpetual rental under the Platt Amendment. By the way, even after the U.S. increased the rental to the Guantanamo Naval Base to peg it to current inflation to US\$14,000 annually, Cuba will still not encash the rental payment check.

Come to think of it, when the Philippines leased the Clark Air Base and Subic Base to the U.S., which account for 245 square miles land area, the U.S. was paying \$200-M annual rental to the Philippine government. While Sabah, which has 28,430 square miles, or 116 times bigger than the U.S. Bases, the Malaysian government is only renting Sabah for a song!  
# # #

Watch out for the upcoming media-outlet oriented, subscription-based website of *Journal Group Link International* that guarantees originally sourced stories, features, photos, audios and videos and multi-media contents.)

## Obiter Dictum in ICJ on Sabah Case May Save the Day for PH - MabuhayRadio

Written by

Saturday, 16 February 2013 20:33 - Last Updated Sunday, 17 February 2013 01:00

---

**Editor's Note:** To contact the author, please e-mail him at: ( [lariosa\\_jos@sbcglobal.net](mailto:lariosa_jos@sbcglobal.net) )

[Joomla SEO powered by JoomSEF](#)