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THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

CO 097

INCOMING

DATE RECEIVED: APRIL 22, 1988

NAME OF CORRESPONDENT: SIR BRAPAS CABARLOC

SUBJECT: REGARDING ITS DEMAND FOR THE GOVERNMENT OF
MALAYSIA TO WITHDRAW FROM THE STATE OF NORTH
BORNEO OR SABAH ON OR BEFORE APR 30 88

ROUTE TO: OFFICE/AGENCY	(STAFF NAME)	ACTION		DISPOSITION	
		ACT CODE	DATE YY/MM/DD	TYPE RESP	C COMPLETED D YY/MM/DD
DEPARTMENT OF STATE		RAR ORG	88/04/22		A 88/05/02
REFERRAL NOTE:			/ /		/ /
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COMMENTS:

ADDITIONAL CORRESPONDENTS: MEDIA:L INDIVIDUAL CODES: _____
MI MAIL USER CODES: (A) _____ (B) _____ (C) _____

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*ACTION CODES:          *DISPOSITION              *OUTGOING                *
*                       *                                     *CORRESPONDENCE:        *
*A-APPROPRIATE ACTION  *A-ANSWERED                *TYPE RESP=INITIALS    *
*C-COMMENT/RECOM       *B-NON-SPEC-REFERRAL      *           OF SIGNER   *
*D-DRAFT RESPONSE      *C-COMPLETED             *           CODE = A     *
*F-FURNISH FACT SHEET  *S-SUSPENDED              *COMPLETED = DATE OF   *
*I-INFO COPY/NO ACT NEC*                                     *           OUTGOING    *
*R-DIRECT REPLY W/COPY *                                     *                       *
*S-FOR-SIGNATURE       *                                     *                       *
*X-INTERIM REPLY       *                                     *                       *
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REFER QUESTIONS AND ROUTING UPDATES TO CENTRAL REFERENCE
(ROOM 75, OEOb) EXT-2590
KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING
LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS
MANAGEMENT.

UNCLASSIFIED

DEPARTMENT OF STATE
EXECUTIVE SECRETARIAT
TRANSMITTAL FORM

S/S 8813044

Date May 2, 1988

FOR: Mr. Paul Schott Stevens
Executive Secretary
National Security Council
The White House

REFERENCE:

To: The President

From: Sir Brapas Cabarloc

Date: April 11, 1988

Subject: Demand that Malaysia withdraw from Sabah by April 30, 1988.

WH Referral Dated: April 26, 1988

NSC ID# (if any): 567575

The attached item was sent directly to the Department of State.

ACTION TAKEN:

A draft reply is attached.

A draft reply will be forwarded.

A translation is attached.

An information copy of a direct reply is attached.

We believe no response is necessary for the reason cited below.

The Department of State has no objection to the proposed travel.

Other (see remarks).

REMARKS:

Maqueline Carter
Director
Secretariat Staff

UNCLASSIFIED



United States Department of State

Washington, D.C. 20520

May 2, 1988

Sir Brapas Cabarloc
P.O. Box 2813
Manila, Philippines

Dear Sir Brapas:

I am responding to your letter of April 11, 1988, addressed to President Reagan, concerning the conflicting territorial claims to Sabah.

We understand that the Sabah question is currently under review by the governments of Malaysia and the Philippines and believe it would be inappropriate for the U.S. to comment on this bilateral issue between those two governments.

Sincerely,

A handwritten signature in black ink that reads "Richard L. Wilson". The signature is written in a cursive style with a large, sweeping "R" and "W".

Richard L. Wilson
Director, Office of
Indonesia, Malaysia, Brunei,
and Singapore Affairs

8813044

T H E W H I T E H O U S E O F F I C E

REFERRAL

APRIL 26, 1988

TO: DEPARTMENT OF STATE

ACTION REQUESTED:
DIRECT REPLY, FURNISH INFO COPY

DESCRIPTION OF INCOMING:

ID: 567575

MEDIA: LETTER, DATED APRIL 11, 1988

TO: PRESIDENT REAGAN

FROM: SIR BRAPAS CABARLOC
MINISTER OF INTERNAL AND EXTERNAL
AFFAIRS
SULTANATE OF NORTH BORNEO
POST OFFICE BOX 2813
MANILA PHILIPPINES

SUBJECT: REGARDING ITS DEMAND FOR THE GOVERNMENT OF
MALAYSIA TO WITHDRAW FROM THE STATE OF NORTH
BORNEO OR SABAH ON OR BEFORE APR 30 88

PROMPT ACTION IS ESSENTIAL -- IF REQUIRED ACTION HAS NOT BEEN
TAKEN WITHIN 9 WORKING DAYS OF RECEIPT, PLEASE TELEPHONE THE
UNDERSIGNED AT 456-7486.

RETURN CORRESPONDENCE, WORKSHEET AND COPY OF RESPONSE
(OR DRAFT) TO:
AGENCY LIAISON, ROOM 91, THE WHITE HOUSE, 20500

SALLY KELLEY
DIRECTOR OF AGENCY LIAISON
PRESIDENTIAL CORRESPONDENCE

567575
IN REPLY,
Pls. send letters to
c/o P.O. Box 2813
Manila, Philippines



Baginda Sultan Haji Mohammad Julangi
Ibni Almarohom Sultan Haji Mohamad
Jamalul Kiram
Sultanate of North Borneo

APR 11 1988

His Excellency, Ronald Reagan
President, United States of America
The White House, Washington, D. C.
U. S. A. NW 20500

Your Excellency:

Earlier Your Excellency was furnished a copy of the Sultanate's letter of January 30, 1988, which demanded from the government of Malaysia the withdrawal of its armed forces, police force and other functionaries from the State of North Borneo or Sabah on or before April 30, 1988. It is hoped your receipt thereof made the U. S. Government adequately informed of the Sultanate's intention and would, therefore, have given some serious thought on the matter.

This Sultanate cannot presume otherwise regarding the U. S. Government's possible response to the demand that Malaysia should terminate its illegal occupation because it has been the view that Britain could have not "landgrabbed" North Borneo that easy if only the United States Government made good its commitment to extend protection to this Sultanate.

The record shows that on August 22, 1899, U.S. Army General Bates concluded a treaty with Sultan Jamalul Kiram. This treaty was later abrogated by President Theodore Roosevelt on March 21, 1904.

However, on March 11, 1915, Governor Frank Carpenter signed an agreement with Sultan Jamalul Kiram by which the latter, for himself and his heirs, renounced temporal sovereignty over the Sulu Island. In exchange, Sultan Jamalul Kiram was recognized by the Government as the head of the Muslim ecclesiastical courts in the Philippines, his pension of P12,000.00 was continued for life, and he was given a grant of land in Jolo.

That Sultan Jamalul Kiram who was an only son of Sultan Jamalul Alam, is the father of Sultan Hadji Mohammad Julangi Kiram for whom the present representation is being made.

It must be recalled that while Mr. Francis Burton Harrison was the Governor General of the Philippines, the United States pledged assurances of the rule of law for the protection of the Sultan of Sulu's rights to North Borneo. The record state:

Lettd dtd 11 Apr '88
sent to US Pres R Reagan
.... Page 2.



Baginda Sultan Haji Mohammad Julaspi
Ibni Almarohom Sultan Haji Mohammad
Jamalul Kiram
Sultanate of North Borneo

"It is necessary however that there be clearly of official record the fact that the termination of the temporal sovereignty of the Sultanate of Sulu within American territory is understood to be wholly without prejudice or effect as to the temporal sovereignty and ecclesiastical authority of the Sultanate beyond the territorial jurisdiction of the United States Government, especially with reference to that portion of the Island of Borneo which was a dependency of the Sultanate of Sulu is understood to be held under lease by the chartered company which is known as the "British North Borneo Government."

"The assurances given Mohammad Jamalul Kiram, Sultan of Sulu, have been that he as a native resident of the Philippine Islands, in all questions arising between him and any foreign authority, will receive from the United States Government the full measure of protection which may be granted him under international law and usage, and in any event that he will receive justice and not be subject by government to prejudicial discrimination of favor to the British North Borneo Company or other foreign interests whether governmental or private. (Letter of Governor Frank W. Carpenter to the Director of Non-Christian Tribes, dated May 4, 1920.)"

It should be emphasized though that in the 1963 negotiation held in London with the British for purpose of recovering North Borneo, the British negotiators insisted that the DEED of 1878 entered into by and between Sulu Sultan Hadji Mohammed Jamalul Alam and Mr. Gustavus Baron de Overbeck (of Austria) and Alfred Dent, Esquire (of London), was a SALE, and was not a LEASE.

On another occasion, the British representatives asked for the Sultan's Copy of the Deed to be presented during the supposed last stages of an on-going negotiation then being held in Singapore. For which, the Sultan had to go back to Sulu and returned with his Copy of the Deed.

But in the early dawn of that day the Sultan's Copy was to be presented, a thief sneaked into the Sultan's hotel-room, situated adjacent to a room where the Sultan together with his companions were saying their morning prayers in the tradition of Moslems, and stole said Sultan's Copy of the Deed.



Baginda Sultan Haji Mohammad Julaspi
Ibni Almarohom Sultan Haji Mohammad
Jamalul Kiram
Sultanate of North Borneo

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Lettd dtd 11 Apr '88
Sent to US Pres R Reagan
.... Page 3.



Baginda Sultan Haji Mohammad Julaspi
Ibni Almarohom Sultan Haji Mohammad
Jamalul Kiram
Sultanate of North Borneo

The incident was reported to the police. Four suspects were arrested, but were later released. Much, much later, the principal suspect who was accented along the hotel-stairway on that day when the incident happened, was found living a life of ease and extravagance.

After the mentioned incident, who would dare say that the Deed was not a "sale", as what the British would want people to believe? Considering that the British had refused consistently to show "their copy of the Deed."

Fortunately, there would now be any need to avail of, or to look for and hire the services of a learned Arab for purpose of translation of the Deed for the benefit of non-Arabs. Because, as the saying goes that, "a fish is caught by its own mouth", had once again proven to be true when the British acceded to a request of the Americans to be furnished with 'their Copy of the Deed'. And, as is always has been the case, the Truth has to come out. This time, it was for all the World to see.

In corroboration with the claim that the truth had finally been brought out, your attention is invited to that portion of the letter of February 27, 1947 of former American Governor General Francis B. Harrison to Philippine Vice-President and Secretary of Foreign Affairs Elpidio Quirino, which read:

"Meanwhile, further important evidence has come to us from the Philippine Embassy in Washington, where Mr. Eduardo Quintero, searching in the National Archives, found a photostatic copy of the document dated January 22, 1878, upon which the British Government base their claim to all the lands tributary to the Sultanate of Sulu. This was obtained in 1940 by the United States Department of State from the British Government, and is hereto annexed. The second copy of this document had been held by the Sultan of Sulu, and, as is alleged, was stolen from him during a visit he made to Singapore many years ago. This story is to be found in the newspaper article in the Chicago Daily Tribune of October 14, 1945, written by Mr. Aleko Lilius in an authenticated interview with the late Sultan of Sulu.

Lett dtd 11 Apr '88
sent to US Pres R Reagan
.... Page 4.



Baginda Sultan Haji Mohammad Julaspi
Ibni Almarohom Sultan Haji Mohammad
Jamalul Kiram
Sultanate of North Borneo

"The photostatic copy of this document, furnished by the British Government has been translated at my request by Mr. Harold Conklin, assistant to Professor H. Otley Beyer in the University of the Philippines. Mr. Conklin is a qualified scholar in the Malay language and in the Arabic script in which language and writing this document was written. This translation now follows:"

(Please note: Copy of the translation in English of the Deed of 1878 by Mr. H. Conklin, is attached, herewith.)

It is very obvious, the British Government would not have contradicted itself, had she listened to what British Secretary of State for Foreign Affairs, Lord Granville stated in his letter dated January 7, 1882 to Mr. Merrier, British Minister to Spain, pertinent portion of which follows:

"The British Charter therefore differs essentially from the previous Charters granted by the Crown x x x x , in the fact that the Crown in the present case assumes no dominion or sovereignty over the territories occupied by the Company, nor does it purport to grant to the Company any powers of government thereover; it merely confers upon the persons associated the status and incidents of a body corporate, and recognize the grants of territory and the powers of government made and delegated by the Sultans in whom the sovereignty remains vested. It differs also from previous Charters, in that it prohibits instead of grant a general monopoly of trade.

"As regards the general features of the undertaking, it is to be observed that the territories granted to the Company have been for generations under the government of the Sultans of Sulu and Brunei, with whom Great Britain has had Treaties of Peace and Commerce;"

No doubt, Britain's annexation of the State of North Borneo was without moral and legal basis. It is explicitly clear, the "AGREEMENT FOR THE TRANSFER OF THE BORNEO SOVEREIGN RIGHTS AND ASSETS FROM THE BRITISH NORTH BORNEO COMPANY TO THE CROWN 26th JUNE 1946;" as what said title of the contract intends to accomplish, was indeed violative of the Deed of 1878. Specifically with reference to the proviso which state:

Lett dtd 11 Apr '88
sent to US Pres R Reagan
.... Page 5.



Baginda Sultan Haji Mohammad Julaspi
Ibni Almarohom Sultan Haji Mohammad
Jamalul Kiram
Sultanate of North Borneo

"x x x x the rights and powers hereby leased shall not be transferred to another nation, or a company of other nationality, without the consent of Their Majesties Government."

Considering that the transfer of the State of North Borneo from the British North Borneo Company to the British Crown was done unilaterally.

So much so, that "THE NORTH BORNEO CESSION ORDER IN COUNCIL 1946," the document which partly read:

"x x x x have transferred and ceded all the said rights, powers and interests to the Crown with effect from the fifteenth day of July, 1946, to the intent that the Crown should, as from that day have full sovereign rights over, and title to, the territory of the State of North Borneo and that the said territory should thereupon become part of His Majesty's dominions;"

would likewise merely serve as an affirmation of the violation of the Deed, and also serve as an avowal of the continuing adherence by the British to a policy of "might is the right."

Despite what has already been cited in the above, it is still relevant to stress here, that Messrs. Overbeck and Dent fully admitted the sovereign rights of the Sultans of Sulu and Brunei over all the Territories administered by the British North Borneo company is sufficiently clear from Dent's own statement made before the Royal Colonial Institute on May 12, 1885. Quote:

"As to the Charter, some friends of the enterprise seem to believe that the enormous powers we hold were given by Her Majesty the Queen. It is not so at all. All our powers were derived entirely from the Sultans of Brunei and Sulu, and what the British Government did was simply to incorporate us by Royal Charter, thus recognizing our powers, which recognition is to us, of course, of vital importance. (In JSB - RAS, No. 14, 335; Singapore, 1885)"

Need this Sultanate say more?

It may now be said that the United Nations' ascertainment in 1963 of the supposed acceptability of Malaysia to the people of North Borneo, is very highly irregular and can never be justified.

Lett dtd 11 Apr '88
sent to US Pres R Reagan
.... Page 6.



IN REPLY,
Pls. send letters to
c/o P.O. Box 2813
Manila, Philippines

Baginda Sultan Haji Mohammad Julaspi
Ibni Almarohom Sultan Haji Mohammad
Jamalul Kiram
Sultanate of North Borneo

Therefore, it cannot be a ground to deprive Sultan Julaspi Kiram of sovereignty and proprietary rights over North Borneo.

It is evident, Malaysia has no legal or moral basis to continue in its occupation of North Borneo and must therefore return it to the Sultanate, represented in this instant by the only living direct descendant (Sultan Julaspi Kiram, the grandson who is now 82 years old) of the late Sulu Sultan Hadji Mohammed Jamalul Alam, the signatory to the Deed of 1878.

Needless to add that the transfer of both ownership and sovereignty of North Borneo from the British North Borneo Company to the Crown, and from Britain to Malaysia were but a succession of serious crimes committed against this Sultanate.

Mr. President: from the foregoing, it would not be difficult to deduce that the U. S. Government's culpability in the instant case was her having been un-mindful of its assurances of the Rule of Law. Up to now, the U. S. Government has not given any encouragement to a fair and just and peaceful settlement of the matter, with the consequence that Britain and Malaysia defiantly continue to DISREGARD THE RULE OF LAW.

Would you now say Mr. President that this Sultanate has to fight for its own wars? If it were so, and since the U. S. Government had failed miserably in its commitment to protect this Sultanate, how about granting "a package of loans consisting of weapons of war" in favor of the Sultanate? It could be an addition to its present arsenal of war material and might be availed-of, should Malaysia decide to ignore the demand to leave-off North Borneo.

A firm answer would highly be appreciated.

Very respectfully,

Sir BRAS CABARLOC

Minister of Internal and External Affairs

With enclosures.

- I. A list of enclosures to this letter dated Apr. 11/88 sent to President Reagan, is attached, herewith.
- II. A list of the names of officials furnished with copy each of this letter of Apr. 11/88, is also attached, herewith.

VIA AIR MAIL



IN REPLY,
Pls. send letters to
c/o P.O. Box 2813
Manila, Philippines

Baginda Sultan Haji Mohammad Julaspi
Ibni Almarahom Sultan Haji Mohammad
Jumalul Kiram

Sultanate of Sabah

List of ENCLOSURES to letter dated April 11, 1988 sent to U.S.
President Ronald Reagan.

1. Letter dated 30 Jan. '88 sent to His Majesty, King of Malaysia.
2. Deed of 1878 (Lease Agreement). Translation by Professor Conklin.
3. Commission from the Sultan of Sulu appointing Baron de Overbeck Datu Bandahara and Rajah of Sandakan.
4. Agreement for the Transfer of the Borneo Sovereign rights and Assets from the British North Borneo Company to the Crown 26th June, 1946.
5. The North Borneo Cession Order in Council 1946.
6. Letter dated Jan. 7, 1882 of British Secretary of State for Foreign Affairs E. Granville to British Minister to Spain, Mr. Morrier.
7. Lett dtd Feb. 27, 1947 of former U.S. Governor General of the Philippines F.B. Harrison to Vice President and Secretary of Foreign Affairs E. Quirino.
8. Location map (Dec. 13/87, Manila Bulletin issue)
Photo of Sultan Hadji Mohammad Julaspi Kiram (Dec. 5/87, Phil Daily Inquirer)
9. "British blunder, Sabah claim", columnist VA Pacis, Jan. 28/88, Phil. Daily Inquirer, Fast Food for Thought column.

List of the names of officials furnished with copy each of this letter
of April 11/88 sent to U.S. President Reagan.

1. UN Sec'y Gen'l Javier Perez de Cuellar.
2. US Vice-President George Bush.
3. Chief Karim Ebrahim Al-Shakar, UN Arab Group
4. OIC Chairman Tahir El Misri, 17th Foreign Ministerial Meet, Jordan.
5. OIC Sec'y Gen'l Seyd Sharifuddin Pirzada, Jeddah, KSA.
6. US Senators: Alan Cranston; John Melcher; Thomas Harkin; James Exon, Jr.;
Howell Thomas Heflin; Richard G. Lugar; Jack Kemp;
7. US. Members of the Cabinet: Sec'y George P. Schultz; Undersec'y Michael
Armacost; Deputy sec'y Chester Crocker; Ass't Sec'y Gaston
Sigur; Undersec'y Ronald T. Spiers; Ass't Sec'y Karl D.
Jackson; Ass't Sec'y Joan M. Clark.
8. US Representatives: Stephen J. Solarz; Leon E. Panetta; Larry Pressler;
Richard Gephardt.
9. UN Undersec'y Gen'l's Marrack Goulding and Yasushi Akashi.
10. Prime Minister Margaret Thatcher, Great Britain.
11. Sultan Iskandar, King of Malaysia
12. US Ambassador to the Philippines Nicholas Platt.
13. Malaysian Ambassador to the Philippines.
14. and others deemed concerned.



IN REPLY,
Pls. send letters to
c/o P.O. Box 2813
Manila, Philippines

Baginda Sultan Haji Mohammad Julaspi
Ibni Almarahom Sultan Haji Mohammad
Jumalul Kiram

Sultanate of Sabah

JAN 30 1988

His Majesty Sultan Iskandar
King of Malaysia
Istana Negara, Jalan Istana
50500 Kuala Lumpur
M a l a y s i a

Your Majesty:

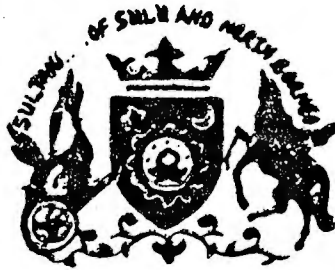
Through this Letter-Notice, the Sultanate of North Borneo/Sabah (and Sulu) hereby formally demand for Your Majesty's government to put an end to its "illegal occupation" of the State of North Borneo (Sabah). This Sultanate specifically ask for complete withdrawal of your military and police forces and other functionaries being assigned in North Borneo, not later than 30 April 1988.

Certain it is that you hold North Borneo only as an aftermath of the British Crown's "extralegal annexation act", and upon which Malaysia was to have fallen heir to. It was a conspiracy cunningly contrived by Britain with the sole purpose of escaping from an official position that is vile, mean, debased, and sordid. This Sultanate is free to admit that North Borneo rightfully belongs to the Sultan of North Borneo (and Sulu).

Could this Sultanate still expect your Government to leave North Borneo without extraneous pressure, simply because the majority of our citizens are both Moslems?

Once more, this Sultanate wants to make it clear that this is a Last and Final Notice for your Government to terminate the 'illegal occupation' of North Borneo, not later than this coming April 30th.

Lett dtd 30 Jan '88
sent to His Majesty
King of Malaysia.
.... Page two.



Baginda Sultan Haji Mohammad Julaspi
Ibni Almarahom Sultan Haji Mohammad
Jumalul Kiram

Sultanate of Sabah

IN REPLY,
Pls. send letters to
c/o P.O. Box 2813
Manila, Philippines

And, at the risk of digression, His Majesty Sultan Hadji Mohammad Julaspi Sultan Kiram wish to express herewith the view that the Malaysians could yet prove to the world's community of Nations that they are strongly allied to virtue because of belief in and worship of Allah.

Kindly be reminded, it's AN ACT OF AGGRESSION which this Sultanate wants to come to an end.

Faithfully yours,

Sir BRADIS CABARLOC

Minister of Internal and External Affairs

Copy furnished:

- 1987 ASEAN Summit Leaders (President Aquino, Sultan Bolkiah, President Suharto, Prime Minister Lee, Prime Minister Mahathir & Prime Minister Prem).
- Prime Minister M Thatcher of Britain.
- President R Reagan of the United States of America.
- Prime Minister F Gonzales of Spain.
- King Fahd of Saudi Arabia (Chairman & Members of the Organization of Islamic Conference).
- Sec'y Gen'l J P de Cuellar of the United Nations.
- Foreign Ambassadors to the Philippines.
- Philippine Foreign Affairs Secretary R Manglapus.

Enclosures:

- Lett dtd 10 Dec '87 sent to Prime Minister Mahathir (2 shts).
- Lett dtd 6 Jan '88 sent to King of Malaysia (3 shts).
- Copy of Deed of 1878 entered into by and between Sultan Jamalul Alam & Overbeck, Dent.
and _____ other sheets.

VIA AIR MAIL

TRANSLATION BY PROFESSOR CONKLIN OF THE DEED OF 1878 IN
ARABIC CHARACTERS FOUND BY MR. QUINTERO IN WASHINGTON*

Signature of Sultan
Mohammed Jamalul Alam

Official seal of the
Sultan of Sulu

GRANT BY THE SULTAN OF SULU OF A PERMANENT
LEASE COVERING HIS LANDS AND TERRITORIES
ON THE ISLAND OF BORNEO

Dated January 22, 1878

We, Sri Paduka Maulana Al Sultan MOHAMMED JAMALUL ALAM, Son of Sari Paduka Marhum Al Sultan MOHAMMED PULALUM, Sultan of Sulu and of all dependencies thereof, on behalf of ourselves and for our heirs and successors, and with the expressed desire of all Datus in common agreement, do hereby desire to lease, of our own free will and satisfaction, to Gustavus Baron de Overbeck of Hong Kong, and to Alfred Dent, Esquire, of London who act as representatives of a British Company, together with their heirs, associates, successors, and assigns forever and until the end of time, all rights and powers which we possess over all territories and lands tributary to us on the mainland of the island of Borneo, commencing from the Pandassan River on the east, and thence along the whole east coast as far as the Sibuku River on the south, and including all territories, on the Pandassan River and in the coastal area, known as Paitan, Sugut, Banggai, Labuk, Sandakan, China-Batangan, Mumiang, and all other territories and coastal lands to the south, bordering on Darvel Bay, and as far as the Sibuku River, together with all the islands which lie within nine miles from the coast.

In consideration of this (territorial?) lease, the honorable Gustavus Baron de Overbeck and Alfred Dent, Esquire, promise to pay His Highness Maulana Sultan Mohammed Jamalul Alam and to his heirs and successors, the sum of five thousand dollars annually to be paid each and every year.

The above-mentioned territories are from today truly leased

*This document shows that on its face, its terms are those of a lease contract, disproving that the Deed of 1878 was a Deed of Cession or Sale.

to Mr. Gustavus Baron de Overbeck and to Alfred Dent, Esquire, as already said, together with their heirs, their associates (company) and to their successors and assigns for as long as they choose or desire to use them; but the rights and powers hereby leased shall not be transferred to another nation, or a company of other nationality, without the consent of Their Majesties' Government.

Should there be any dispute, or reviving of old grievances of any kind, between us, and our heirs and successors, with Mr. Gustavus Baron de Overbeck or his Company, then the matter will be brought for consideration or judgment to Their Majesties' Consul General in Brunei.

Moreover, if His Highness Maulana Al Sultan Mohammed Jamalul Alam, and his heirs and successors, become involved in any trouble or difficulties hereafter, the said honorable Mr. Gustavus Baron de Overbeck and his Company promise to give aid and advice to us within the extent of their ability.

This treaty is written in Sulu, at the Palace of the Sultan Mohammed Jamalul Alam on the 19th day of the month of Muharam, A. H. 1295; that is on the 22nd day of the month of January, year 1878.

Seal of the Sultan
Jamalul Alam

Witness to seal and signature
(Sgd) W. H. TREACHER
H. B. M. Acting Consul General
in Borneo

AGREEMENT FOR THE TRANSFER OF THE BORNEO
SOVEREIGN RIGHTS AND ASSETS FROM THE
BRITISH NORTH BORNEO COMPANY TO
THE CROWN 26th JUNE, 1946.

An agreement, dated the twenty-sixth day of June, 1946, between HIS MAJESTY'S SECRETARY OF STATE FOR THE COLONIES on behalf of His Majesty (hereinafter referred to as "the Crown") of the one part, and the BRITISH NORTH BORNEO COMPANY, incorporated by Royal Charter dated the first day of November, 1881, whose offices are situated at 80/82, High Street, Rickmansworth, in the County of Hertfordshire (hereinafter referred to, as "the Company" which expression shall be deemed to include the Company's successors and assigns), of the other part.

Whereas by the several grants and commissions mentioned in the recitals to the said Charter, the interests, powers and rights therein respectively mentioned over or in respect of the territories and lands therein respectively described which territories and lands together with others hereinafter mentioned are now known as and are hereinafter referred to as "the State of North Borneo") were granted, ceded, assured to or conferred upon the persons therein respectively named, and such persons were thereby nominated and appointed supreme rulers over the State of North Borneo with all the powers and rights usually exercised by and belonging to Sovereign rulers as in the said grants and commissions respectively mentioned:

And whereas by certain instruments, including those set out in the First Schedule hereto, subsequent to the said Charter further interests, powers and rights over or in respect of the territories and lands respectively described in the said instruments were granted, ceded, assured to or conferred upon the Company:

And whereas under and by virtue of the said Charter and subsequent instruments the Company became, and are now entitled to the full benefit of the said grants, commissions and instruments and acquired, and now hold, use, enjoy and exercise, all the said interests, powers and rights therein respectively comprised (all of which are hereinafter referred to as "the Borneo Sovereign Rights"):

And whereas by an Agreement dated the twelfth day of May, 1888, the State of North Borneo was placed under the protection of Her late Majesty Queen Victoria:

And whereas the Company are the owners of certain movable and immovable property and assets which are within the State of North Borneo and are used by the Company for administrative and public purposes, and the expression "the Borneo Assets" wherever used here- in shall mean all the said properties and assets as they exist on the fifteenth day of July, 1946 (hereinafter referred to as "the day of transfer") and shall be construed as including all funds established by the Company in connection with its administration and public services of the State of North Borneo and all debts pay- able to the Company in respect of its administration and public services as aforesaid whether the same shall have accrued, or shall accrue, on, before, or after the day of transfer and whether such funds are held, or such debts are payable, in the State of North Borneo or elsewhere:

And whereas it is considered desirable that the Crown should, in consideration of the payment to the Company of a sum by way of compensation, assume direct responsibility for the Government of the State of North Borneo and for that purpose acquire from the Com- pany the Borneo Sovereign Rights and the Borneo Assets:

And whereas by the terms of the said Charter the Company has no power to transfer wholly or in part the benefits of the grants and commissions aforesaid which the Company was thereby authorized and empowered to acquire or any of them except with the consent of one of His Majesty's principal Secretaries of State:

And whereas the consent aforesaid of one of His Majesty's principal Secretaries of State has been given as is evidenced by these presents:

Now it is hereby agreed by and between the parties hereto as follows:

1. The Company hereby transfers and cedes the Borneo Sovereign Rights to the Crown with effect from the day of transfer, to the intent that the Crown shall, as from the day of transfer, have full sovereign rights over, and title to, the territory of the State of North Borneo and that the said territory shall there- upon become part of His Majesty's dominions.

Transfer of
Borneo
Sovereign
Rights.

Provided that His Majesty shall from the date of execution of this Agreement have full power and authority to make provision for the Government of the said territory, such provision to take effect on or after the day of transfer.

2. As from the day of transfer the Borneo Assets are hereby transferred to and shall vest in the Crown, subject to and with the benefits of all grants, concessions, leases and other rights or

Transfer of
Borneo Assets.

interests in or over the said assets and vested in or possessed by third parties and subsisting on the day of transfer; and the property of the Company described in the Second Schedule hereto is hereby transferred to and shall vest in the Crown.

3. The Crown shall, subject to the provisions of Clause 6 hereof, discharge and indemnify the Company against all obligations and liabilities properly incurred by the Company to any third party in the course of its administration or in respect of the public services of the State of North Borneo prior to the day of transfer, whether the same shall have accrued, or shall accrue, on, before or after the day of transfer including specifically, but without prejudice to the generality of the foregoing:

(1) all obligations and liabilities relating to the matters specified in the Third Schedule hereto;

(2) all obligations and liabilities under or in respect of all grants, concessions, leases and other rights or interests, subject to and with the benefit of which the Borneo Assets are by Clause 2 hereof expressed to have vested in the Crown;

(3) all obligations and liabilities under or in respect of grants and concessions mentioned in the recitals to the said Charter and subsequent instruments mentioned in the recitals hereto.

4. (1) On or after the day of transfer the Company, as and when requested by the Crown so to do, shall execute and do, at the cost and expense in all respects of the Crown, all such deeds, acts and things as may be necessary or convenient for effectually transferring to or vesting in the Crown the Borneo Sovereign Rights and Borneo Assets as and in the condition in which they exist on that date, and the other property described in the Second Schedule hereto, and in particular shall formally assign to the Crown all debts outstanding on that date and comprised in the Borneo Assets.

(2) In so far as these presents are effectual to assign and transfer such debts the Com-

Liabilities.

Provision for
further
assurance

pany hereby assigns and transfers them to the Crown.

(3) If on or after the day of transfer any such debt be paid to the Company, the Company shall account for and pay any amounts so received to the Crown or as the Crown may direct.

5. (1) In consideration of the premises, the Crown shall pay to the Company:-

Payment to
the Company.

(a) in respect of the Borneo Sovereign Rights and the Borneo Assets, the sum awarded in the Arbitration to be held in accordance with Clauses 10 and 11 hereof;

(b) in respect of the shares and debentures set out in the Second Schedule hereto, the sum of £5,000 on the day of transfer;

(c) in respect of the maps, plans, books and records set out in the Second Schedule hereto the sum of £1,000 on the day of transfer.

(2) The Crown shall pay to the Company the sum of £860,600 on the thirtieth day of December, 1946. In consideration of this payment, the Company shall take all steps necessary to redeem on or before the first day of January, 1947, all outstanding debentures issued by the Company and shall redeem such debentures accordingly. The said sum of £860,600 shall be deemed full or part satisfaction of the amount payable under sub-paragraph (a) of paragraph (1) of this clause, but whatever the sum awarded in the said Arbitration, the Company shall not be required to repay any part of the said sum of £860,600.

(3) The Crown shall pay to the Company interest at the rate of £2 10s. per centum per annum on the sum awarded in the said Arbitration as from the day of transfer down to the date of payment. Provided that on payment of the said sum of £860,600 interest shall thereafter be calculated and paid only on the amount by which the sum so awarded exceeds the said sum of £860,600.

6. (1) All persons who immediately before the day of transfer are employed by the Company in the administrative or public services of the State of North Borneo shall, as between the

Employees of
the Company.

Crown and the Company, be deemed to be in the employment of the Crown on and after that day and the Crown shall discharge and indemnify the Company against, and where necessary recoup to the Company, any payments properly made by the Company on or after that day in respect of:-

(a) all obligations and liabilities relating to the salary or emoluments payable to such persons (subject to paragraph (3) of this Clause) on or after that day;

(b) all obligations and liabilities arising out of any act or default of any such person done or omitted on or after that day;

(c) all obligations and liabilities in respect of any pension to which any such person or any dependent of any such person shall on or after that day become entitled.

(2) Subject to paragraph (3) of this clause, the Crown shall discharge and indemnify the Company against all obligations and liabilities in respect of any pensions or installments of pensions falling to be paid on or after the day of transfer to any person who before that day ceased to be employed by the Company in the administrative or public services of the State of North Borneo or to the dependents of any such persons.

(3) The salaries and emoluments mentioned in sub-paragraph (a) of paragraph (1) of this Clause and the pensions mentioned in paragraph (2) of this Clause shall be apportioned in point of time as at the day preceding the day of transfer, and the Company warrants that it has paid or will pay all arrears of such salaries, emoluments and pensions due and the respective apportioned parts thereof accruing due before that day.

(4) For the purpose of this Clause the word "pension" shall mean all annuities, gratuities and other like payments payable under the super-annuation regulations of the Company in force at or before the date of these presents, or otherwise.

(5) The Crown undertakes that all persons employed by the Company at the day of transfer in the administration or public services of the State of North Borneo shall retain all their rights existing at such day; and such rights shall in any case or cases in which the Company so requires be ascertained on the footing that no service contract was abrogated or dissolved by reason of the war of 1939-1945 or any event arising thereout. Any such person shall, at any time within six months of a date to be appointed by the Crown, be entitled at his election to retire from such administration or public service and in such case shall be entitled to receive from the Crown the pension which he would have been entitled to receive from the Company if his retirement had been from the employment of the Company in the administration or public service of the State of North Borneo and had been necessitated through ill health.

(6) Nothing in this Clause shall apply to any person employed by the Company outside the State of North Borneo and the Company shall remain liable to discharge all obligations and liabilities in respect of such persons.

7. Wherever in this Agreement the Crown undertakes to discharge any obligation or liability of the Company to any third party (including any employee of the Company) such undertaking shall be a covenant granted to the Company for its own benefit and for the benefit of each such third party; and the Crown will, at the request of the Company, enter into an agreement with any such third party or employee in such form and manner as the Company may reasonably require that the Crown will discharge such obligation or liability.

Obligations
to third
parties.

8. Nothing in this Agreement shall be taken to affect the principle that persons in the service of the Crown hold office at the pleasure of the Crown.

Crown servants
to hold office
during pleasure.

9. If the Crown are of the opinion that any contract with respect to any matter, being a contract made by the Company after the 20th day of June, 1944, was not reasonably necessary in the course of its business and that liabilities arising thereunder ought not to be transferred to the Crown, the Crown may give notice in writing to the Company to that effect at any time within one year after the day of transfer, or within six months after

Special
provisions
for contracts
made after
20th June,
1944.

the day upon which the provisions of such contract come to the knowledge of the Crown, which ever shall be the later. If the Crown give any such notice as aforesaid any dispute, difference or question arising by reason of the notice is not disposed of by agreement between the Crown and the Company, the matter shall be referred to arbitration in accordance with Clause 12 hereof, and the Arbitrator shall consider whether or not the contract was reasonably necessary in the ordinary course of the business of the Company and determine whether and to what extent as between the Crown and the Company any obligation or liability arising thereunder is to be transferred to the Crown or is to continue as an obligation or liability of the Company.

10. (1) It shall be referred to the Award and final determination of an Arbitrator to decide what would be a fair sum by way of compensation to be paid by the Crown to the Company, having regard to the terms of this Agreement, for the Borneo Sovereign Rights and Borneo Assets transferred to and vested in the Crown hereunder.

Compensation
to be
determined by
arbitration.

(2) The Arbitrator shall ascertain the fair price on the day of transfer on the basis of:-

(a) the net maintainable revenue;

(b) the number of years purchase which, in the opinion of the Arbitrator, should be applied thereto.

The Arbitrator shall take as the net maintainable revenue of the Company the net annual revenue which the Company might reasonably have been expected to earn in the future if this Agreement had not been entered into.

(3) In making an award under this Clause the Arbitrator shall add nothing as compensation to the Company for any effect on the condition of the Borneo Assets of damage or deterioration consequent upon the war of 1939-45.

(4) The Arbitrator for the purpose of this clause shall be The Right Honourable Lord Uthwatt or if he shall be unable or unwilling to act, a person appointed in the manner provided in Clause 12 hereof.

11. (1) The Arbitrator shall have power to obtain, call for, receive and act upon such oral or documentary evidence or information (whether the same be strictly admissible in evidence or not) as he may think fit, and in conducting the arbitration he shall not be bound by the strict rules of procedure or evidence.

Arbitration
procedure.

(2) The Arbitrator shall be entitled to summon to his assistance one or more persons of skill and experience who may be willing to sit with him and act as assessors.

(3) The Arbitrator shall pay the costs of the Arbitration tribunal. Costs of the hearing shall be in the discretion of the Arbitrator.

(4) Subject as aforesaid, the provisions of the Arbitration Acts, 1889 to 1934, shall apply and the Arbitrator shall have all the powers conferred on Arbitrators by the said Acts.

12. Subject to Clause 5 hereof if any dispute, difference or question shall at any time hereafter arise between the parties hereto in respect of the construction of these presents or concerning anything herein contained or arising out of this Agreement, or as to the rights, liabilities or duties of the said parties hereunder, the same shall be referred to the arbitration of some person to be agreed upon by the said parties or, failing agreement, to be nominated by the Lord Chief Justice of England for the time being, or failing such nomination as the law provides, in accordance with and subject to the provisions of the Arbitration Acts 1889 to 1934, or any statutory variation, modification or reenactment thereof for the time being in force.

General provi-
sion for Arbi-
tration.

13. The entry by the Company into this Agreement shall not, nor shall any deed, act or thing executed or done in pursuance of this Agreement, operate as a forfeiture or surrender of the said Charter or in any way affect or prejudice the validity thereof.

Validity of
Company's
Charter.

14. The Crown shall on the execution of this Agreement pay to the Company all legal costs and expenses reasonably incurred by the Company in connection with negotiation and preparation of this Agreement.

Costs of this Agreement.

The Common Seal of the British North Borneo Company was affixed hereto in the presence of

SEAL

Neill Malcolm,
Major-General.
M.W. Elphinstone.

}
} Directors.

E.J. Philips, Secretary.

Signed by His Majesty's Secretary of State for the Colonies in the presence of

} G.H. Hall

G. H. Gater,
Permanent Under-Secretary of State.

THE FIRST SCHEDULE

1. An Instrument, dated the 17th day of Mohurram A. H. 1302 (the fifth day of November 1884), whereby the Sultan of Brunei Pangeran Bendhara and Pangeran di Gadong ceded the territory from Si Putong to Kwala Paniow.
2. An Instrument, dated the 6th April, ^{1885,} whereby the Sultan of Brunei confirmed the cession of the Island of Palawan.
3. An Instrument, dated the 2nd March, 1889, whereby Pangeran Shabandar ceded the territory of Padas Damit.
4. An Instrument, dated the 7th September, 1901, whereby the Sultan of Brunei ceded the territory between the Sepitong and Tusan Rivers.
5. An Instrument, dated the 22nd April, 1903, whereby the Sultan of Sulu confirmed the cession of certain islands.

THE SECOND SCHEDULE

1. All maps, plans, books and records of historical or administrative interest owned by the Company relating to the State of North Borneo.

14. The Crown shall on the execution of this Agreement pay to the Company all legal costs and expenses reasonably incurred by the Company in connection with negotiation and preparation of this Agreement.

Costs of this Agreement.

The Common Seal of the British North Borneo Company was affixed hereto in the presence of

SEAL

Neill Malcolm,
Major-General,
M.W. Elphinstone.

}
} Directors.

2. The Company's holding of:

(a) 7469 shares of \$5 each of Jesselton Ice and Power Co., Ltd.

(b) \$2060 Debentures of Sandakan Golf Club.

(c) \$5500 Debentures of Sandakan Club.

THE THIRD SCHEDULE

1. Bills payable by, and deposits and other accounts with, the departments of the Company known as the Treasury and the State Bank.

2. The Treasury note issue and token coins in circulation.

3. Claims (involving liability either legally enforceable or accepted by the Crown) made by persons, firms or corporations residing or carrying on business in the State of North Borneo in respect of loss, injury or damage to person or property which has been occasioned by the war of 1939 to 1945. ✓

And whereas by certain instruments, subsequent to the said

THE NORTH BORNEO CESSION ORDER IN COUNCIL 1946.

AT THE COURT AT BUCKINGHAM PALACE.
THE TENTH DAY OF JULY, 1946

PRESENT:

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL

Whereas the British North Borneo Company (hereinafter referred to as "the Company") was incorporated by Royal Charter dated the first day of November, 1881:

And whereas by the several grants and commissions mentioned in the recitals to the said Charter the interests, powers and right therein respectively mentioned over or in respect of the territories there respectively described (which territories, together with others hereinafter mentioned, are known and are hereinafter referred to as "the State of North Borneo") were granted or conferred upon the persons therein respectively named:

Philippine Claim to North Borneo, Vol. I, p. 141.

the State of North Borneo shall be annexed to and shall form part of His Majesty's dominions and shall be called, together with the Settlement of Labuan and its dependencies, the Colony of North Borneo.

ANNEXATION OF
State of North
Borneo

3. All persons who on the fifteenth day of July, 1946, are citizens of the State of North Borneo by virtue of the provisions of the North Borneo Naturalization Ordinance, 1931, shall, on that day become British subjects.

Nationality
Ord. 1 of
1931.

And whereas by certain instruments, subsequent to the said Charter, particulars whereof are specified in the Schedule hereto, further interests, powers and rights over or in respect of the territories therein respectively described were granted to or conferred upon the Company:

And whereas under and by virtue of the said Charter and subsequent instruments the Company became entitled to the full benefit of the said grants, commissions and instruments and acquired all the said interests, powers and rights therein respectively comprised:

And whereas by an Agreement dated the twelfth day of May, 1888, and made between the Government of Her Late Majesty Queen VICTORIA of the one part and the Company of the other part the State of North Borneo was placed under the protection of Her Late Majesty Queen VICTORIA:

And whereas by an Agreement dated the twenty-sixth day of June, 1946, and made between His Majesty's Secretary of State for the Colonies on behalf of His Majesty (therein and hereinafter referred as to "the Crown") of the one part and the Company of the other part the Company (amongst other things) have transferred and ceded all the said rights, powers and interests to the Crown with effect from the fifteenth day of July, 1946, to the intent that the Crown should, as from that day have full sovereign rights over, and title to, the territory of the State of North Borneo and that the said territory should thereupon become part of His Majesty's dominions:

Now, therefore, HIS MAJESTY is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:-

1. This Order may be cited as the North Borneo Cession Order in Council, 1946, and shall come into operation on the fifteenth day of July, 1946.

Short title and commencement.

2. As from the fifteenth day of July, 1946, the State of North Borneo shall be annexed to and shall form part of His Majesty's dominions and shall be called, together with the Settlement of Labuan and its dependencies, the Colony of North Borneo.

Annexation of State of North Borneo

3. All persons who on the fifteenth day of July, 1946, are citizens of the State of North Borneo by virtue of the provisions of the North Borneo Naturalization Ordinance, 1931, shall, on that day become British subjects.

Nationality Ord. 1 of 1931.

And whereas by certain instruments, subsequent to the said Charter, particulars whereof are specified in the Schedule hereto, further interests, powers and rights over or in respect of the territories therein respectively described were granted to or conferred upon the Company:

And whereas under and by virtue of the said Charter and subsequent instruments the Company became entitled to the full benefit of the said grants, commissions and instruments and acquired all the said interests, powers and rights therein respectively comprised:

And whereas by an Agreement dated the twelfth day of May, 1888, and made between the Government of Her Late Majesty Queen

4. His Majesty hereby reserves to Himself, Power to
His Heirs and Successors power to revoke, alter, revoke.
add to or amend this Order.

E. C. E. Leadbitter.

THE SCHEDULE.

1. An Instrument, dated the 17th day of Mohurram A. H. 1302 (the 5th day of November, 1884), whereby the Sultan of Brunei, Pangeran Bendhara and Pangeran di Gadong ceded the territory from Si Putong to Kwala Panlow.

2. An Instrument, dated the 6th day of April, 1885, whereby the Sultan of Brunei confirmed the cession of the Island of Palawan.

3. An Instrument, dated the 2nd of March, 1889, whereby Pangeran Shabandar ceded the territory of Padas Damit.

4. An Instrument, dated the 7th day of September, 1901, whereby the Sultan of Brunei ceded the territory between Sepitang and Trusan Rivers.

5. An Instrument, dated the 22nd day of April, 1903, whereby the Sultan of Sulu confirmed the cession of certain islands.

that day become British subjects.

Earl Granville to Mr. Morier

Foreign Office, January 7, 1882.

Sir,

With reference to my despatch of the 7th ultimo respecting the protest of the Spanish Government against the grant of a Charter of Incorporation to the British North Borneo Company, I have to inform you that the papers relating to the subject are about to be laid before Parliament, and that a copy of them will be furnished to you without delay.

In the meanwhile it may be convenient that I should briefly recapitulate the circumstances under which Her Majesty's Government acceded to the application of the Company for Incorporation by Royal Charter, and that I should also draw your attention to the special character of that Charter, and explain its legal effect.

The claim of Spain to sovereignty over the territories of Sulu as you are aware, has never been admitted by Great Britain and Germany, and the interference of the Spanish authorities with the freedom of trade in the Sulu Archipelago has formed the subject of discussions and negotiations, and of a correspondence between the three Governments extending over many years.

In consequence of the seizure in 1873 of certain German vessels in the waters of Sulu and of the subsequent detention of a British vessel by a Spanish man-of-war, Her Majesty's Government caused a careful examination to be made of the various Treaties between Great Britain and Sulu, and between Spain and Sulu, and of the correspondence relating to those Treaties.

The conclusion then arrived at by Her Majesty's Government and communicated by Lord Derby to the German Government in January 1876, was that, whatever rights Spain may have had to the sovereignty of Sulu and its dependencies, those rights must be considered to have lapsed owing to the complete failure of Spain to attain a de facto control over the territory claimed; and Her Majesty's Government considered that, in these circumstances, the interruptions of foreign trade caused by the Spanish proceedings in the Sulu Archipelago could no longer be tolerated. Negotiations thereupon ensued between Great Britain and Germany on the one side and Spain on the other, which finally led to a basis of arrangement. Lord Derby accepted this basis as a modus vivendi on certain conditions, the first of which was that the Protocol proposed to be drawn up for carrying it out "should contain no recognition of Spanish sovereignty over any part of the Sulu Archipelago." The Protocol was finally signed at Madrid

by the Representatives of Great Britain and Germany, and by the Spanish Minister at Madrid, on the 11th of March 1877, and its object was declared to be the maintenance of the freedom of commerce and navigation, in the "Sulu Archipelago."

It was understood that the question of sovereignty should remain in status quo, and all reference to that question, therefore, was carefully avoided in the text of the Protocol; but Sir H. Layard, then Her Majesty's Representative at Madrid, in accordance with his instructions, informed the Spanish Minister that "it must be distinctly understood that the claim of Spain to sovereignty over the Sulu Archipelago was not acknowledged."

The Protocol made concessions on each side, and it was believed that all grounds of future dissension were removed. This illusion, however, was speedily dispelled by the announcement that the Spaniards had compelled the Sultan to sign a fresh Treaty with them, which revived the old dispute as to sovereignty.

By this Treaty dated the 2nd of July, 1878, the Sultan was made to constitute himself the vassal of Spain, and to recognize Spanish sovereignty over the whole of the Sulu Archipelago and its dependencies, which, according to the Spanish contention, include the territories tributary to the Sultan on the north-east coast of Borneo.

For the present purpose I propose to confine my remarks to the claim of Spain to the north-east coast of Borneo.

The Protocol of Madrid, which secured foreign trade from further molestation in the Sulu Archipelago, does not extend to the mainland of Borneo. The territorial limits of the sovereignty formerly claimed by Spain in the Sulu Archipelago are clearly defined in the Treaty between Spain and Sulu of 1836, wherein they are declared to extend "from the western point of Mindanao to Borneo and Palawan, with the exception of Sandakan and the other countries tributary to the Sultan and the continent of Borneo."

North Borneo lies in the fair way of an immense British maritime trade between China, Australia, India, and the United Kingdom. Its occupation by a foreign Power would be a source of disquietude to this country, and for that reason clauses were inserted in the British Treaties of 1847 and 1849 with the Sultans of Sulu and Brunei, under which they respectively engaged not to make any cession of territory to any other nation than Great Britain without the consent of Her Majesty's Government.

Thirty years ago, in consequence of a report that Spain laid claim to some portion of the north-east coast of Borneo, under a recent Convention with the Sultan of Sulu, Lord Howden, then Her Majesty's Representative at Madrid, was instructed, in a dispatch the 11th of May, 1852, to remind the Spanish Government that as early as the years 1761, 1764, and 1769, Treaties of Friendship and

Commerce were entered into by Her Majesty's Government with the Sultan of Sulu, and that by one of those Treaties cessions of territory were made to Her Majesty's Government, including the Island of Balambangan and the several dependencies of the Sulu Empire on the eastern coast of Borneo; and that on repeated occasions some of those ceded territories had been militarily occupied by British troops.

No record can be found on the claim of Spain to this territory having since been renewed, but on the contrary, in January 1877, shortly before the signing of the Protocol of Madrid, the Spanish Foreign Minister declared to Her Majesty's Representative that his Ministry had no designs on Borneo, and limited the claim of Spanish sovereignty to Sulu and the adjacent islands. It was therefore with feelings of no little surprise that in the following year Her Majesty's Government received the announcement of the claim of Spain to sovereignty over the north-east coast of Borneo, under the new Treaty of 1878, and reports of attempts on the part of the Spanish authorities at Manila to plant their flag in that territory.

It was at this juncture that Mr. Alfred Dent, the founder of the British North Borneo Company, came forward and asserted his rights to the territories of Northern Borneo under cession made to him by the Sultans of Brunei and Sulu, shortly before the date of the new Spanish Treaty.

On the end of December, 1878, Mr. Dent addressed a letter to the Foreign Office, inclosing a printed Statement and application for a Royal Charter of Incorporation to an Association in the course of formation for the development of North Borneo, under the cessions from the two Sultans, both of whom claimed sovereignty over the east coast.

After communication with the German Government, the Marquis of Salisbury, in a despatch dated the 20th May 1879, instructed Mr. West, then Her Majesty's Minister at Madrid, to protest, on behalf of Her Majesty's Government, against the claim of Spain to sovereignty over any part of Borneo.

A correspondence also took place on the subject of the cessions to Mr. Dent, between Her Majesty's Government and that of the Netherlands. The immense acquisitions of Holland in the Eastern Archipelago since the Treaty of 1824 between Great Britain and that country are shown in a map which you will find attached to the Parliamentary Papers. They are not confined to the islands south of the Straits of Singapore, to which alone the Treaty of 1824 applies, but comprise the southern part of the vast Island of Borneo. The Netherlands Government opposed the grant of the Charter applied for by Mr. Dent as being incompatible with the Treaty of 1824, which, it contended, precluded the formation of any British Settlement in Borneo.

This construction of the Treaty has never been accepted by Her Majesty's Government, and was emphatically repudiated by the

Earl of Aberdeen in 1845, when a controversy arose on the point between the two Governments.

Moreover, the objection did not properly arise in the present case, as there was no question of the annexation of North Borneo by Great Britain, or of the establishment of a British Protectorate there. This was pointed out to the Netherlands Government in Lord Salisbury's despatch to Mr. Stuart of the 24th November 1879, and the character of Mr. Dent's undertaking and of the Charter then under consideration was fully explained.

The principal legal effect of the Charter applied for by Mr. Dent would be to confer the ordinary incidents of incorporation on his Association. It was open to him to obtain incorporation by registration under the Companies Acts, and to carry out his scheme independently of Her Majesty's Government; but the incorporation of the Company by Royal Charter would be the formal recognition of the title of Mr. Dent and his Association to the territories granted to him by the Sultans, and in return for such recognition the Company offered to submit to the control of Her Majesty's Government in the exercise of the powers derived from the Sultans, especially with regard to the treatment of the natives, and in the settlement of any questions arising between the Company and foreign Powers.

On the 12th April, 1880, Mr. Dent again addressed the Foreign Office, pointing out the progress made towards the civilization and development of the country in question since the occupation of it by his Resident and agents in December 1877. He stated that order prevailed, that Englishmen were cordially welcomed, that the authority of his Resident and agents was everywhere acknowledged by the native Chiefs and populations, and he urged an immediate decision on his application for a Charter. These assurances were confirmed by official reports from our Consular and Naval Officers.

In the meanwhile, reports continued to arrive from Her Majesty's Consular Officers as to the action of the Spanish authorities in Sulu, which rendered it important that a decision should no longer be delayed.

After very careful consideration of all the circumstances of the case Her Majesty's Government decided that the Charter should be granted, and you will perceive on examination of its provisions that its effect is to restrict and curtail the powers of the Company and not to create or enlarge them.

The "British North Borneo Company" are in fact established under three Charters.

1. The Charter and territorial Concession from the Sultan of Sulu.
2. The Charter and territorial Concession from the Sultan of Brunei.

3. The British Charter of Incorporation.

The first two Charters, from the Sultans of Sulu and Brunei, are those under which the Company derive their right to the possession of the territories in question, and their authority from the Sultans.

The third Charter is the British Charter under which the Company have obtained incorporation and a recognition by Her Majesty's Government of their title to the territories granted. In return for incorporation by Royal Charter, and for the recognition of the Concessions, the Company have surrendered to Her Majesty's Government various powers of control over their proceedings, which, though of a negative character only, are sufficient for the prevention by Her Majesty's Government of any abuse in the exercise of the authority conferred by the Sultans. It is important to bear in mind that no such control would have been reserved to the Crown had the Company taken incorporation in the usual manner by registration under the Companies Acts, and elected to follow their own course independently of Government support.

The British Charter therefore differs essentially from the previous Charters granted by the Crown to the East India Company, the Hudson's Bay Company, the New Zealand Company, and other Associations of that character, in the fact that the Crown in the present case assumes no dominion or sovereignty over the territories occupied by the Company, nor does it purport to grant to the Company any powers of government thereover; it merely confers upon the persons associated the status and incidents of a body corporate, and recognize the grants of territory and the powers of government made and delegated by the Sultans in whom the sovereignty remains vested. It differs also from previous Charters, in that it prohibits instead of grant a general monopoly of trade.

As regards the general features of the undertaking, it is to be observed that the territories granted to the Company have been for generations under the government of the Sultans of Sulu and Brunei, with whom Great Britain has had Treaties of Peace and Commerce; and far from any disorders arising out of the occupation of those territories by British subjects under the Concessions of the Sultans, the advent of the Company has been welcomed everywhere by the inhabitants. The experience of three years shows that the peaceful and intelligent development of the great natural resources of the country is steadily increasing, and there is every reason to believe that a sound and liberal system of administration will be established by the Company which will spread the benefits of civilization among the native population, and open up new and important fields to British trade and enterprise, and to commerce of all nations.

I am, &c.
(Signed) GRANVILLE.

LETTER OF FRANCIS B. HARRISON TO VICE PRESIDENT
AND SECRETARY OF FOREIGN AFFAIRS

ELPIDIO QUIRINO

OFFICE OF THE PRESIDENT OF THE PHILIPPINES

Manila, February 27, 1947

Honorable Elpidio Quirino
Vice-President and concurrently
Secretary of Foreign Affairs

My dear Mr. Secretary:

I have the honor to submit herewith the portfolio of papers prepared under your direction, concerning the present status of those territories in North Borneo over which, since 1714, the Sultanate of Sulu has held sovereignty.

In an earlier memorandum dated September 26, 1946, and now in this file, I advised the Philippine Government to protest to the Government of Great Britain against the latter's announcement of July 16, 1916, that the State of North Borneo had become a Crown Colony of the British Monarchy. This Annexation took place just twelve days after the Inauguration of the Republic of the Philippines, and was done in derogation of the rights of the Sultanate of Sulu.

Meanwhile, further important evidence has come to us from the Philippine Embassy in Washington, where Mr. Eduardo Quintero, searching in the National Archives, found a photostatic copy of the document dated January 22, 1878, upon which the British Government base their claim to all the lands tributary to the Sultanate of Sulu. This was obtained in 1940 by the United States Department of State from the British Government, and is hereto annexed.

Borneo Records, Department of Foreign Affairs,
Manila. Mr. Harrison was a former United States Governor-General of the Philippine Islands. He served as Special Adviser on Foreign Affairs to President Manuel A. Roxas.

The second copy of this document had been held by the Sultan of Sulu, and, as is alleged, was stolen from him during a visit he made to Singapore many years ago. This story is to be found in the newspaper article in the Chicago Daily Tribune of October 14, 1945, written by Mr. Aleko Lilius in an authenticated interview with the late Sultan of Sulu.

The photostatic copy of this document, furnished by the British Government has been translated at my request by Mr. Harold Conklin, assistant to Professor H. Otley Beyer in the University of the Philippines. Mr. Conklin is a qualified scholar in the Malay language and in the Arabic script in which language and writing this document was written. This translation now follows:

"Signature of Sultan
Mohammed Jamalul Alam

Official seal of the
Sultan of Sulu

GRANT BY THE SULTAN OF SULU OF A PERMANENT LEASE COVERING
HIS LANDS AND TERRITORIES ON THE ISLAND OF BORNEO:
Dated January 22nd, 1878.

We, Sri Paduka Maulana Al Sultan MOHAMMED JAMALUL ALAM, Son of Sri Paduka Marhum Al Sultan MOHAMMED PULALUN, Sultan of Sulu and all dependencies thereof, on behalf of ourselves and for our heirs and successors, and with the expressed desire of all Datus in common agreement, do hereby desire to lease, of our own free will and satisfaction, to Gustavus Baron de Overbeck of Hongkong, and to Alfred Dent, Esquire, of London, who act as representatives of a British Company, together with their heirs, associates, successors, and assigns, forever and until the end of time, all rights and powers which we possess over all territories and lands tributary to us on the mainland of the Island of Borneo, commencing from the Pandassan River on the west, and thence along the whole east coast as far as the Sibuku River on the south, and including all territories, on the Pandassan River and in the coastal area, known as Paitan, Sugut, Banggai, Labuk, Sandakan, China-batangan, Mumiang, and all other territories and coastal lands to the south, bordering on Darvel Bay, and as far as the Sibuku River, together with all the islands which lie within nine miles from the coast.

In consideration of this (territorial) lease, the honorable Gustavus Baron de Overbeck and Alfred Dent,

Esquire, promise to pay to His Highness Maulana Sultan Mohammed Jamalul Alam, and to his heirs and successors, the five thousand dollars annually, to be paid each and every year.

The above-mentioned territories are from today truly leased to Mr. Gustavus Baron de Overbeck and to Alfred Dent, Esquire, as already said, together with their heirs, their associates (company), and their successors or assigns, for as long as they choose or desire to use them; but the rights and powers hereby leased shall not be transferred to another nation, or a company of other nationality, without the consent of Their Majesties' Government.

Should there be any dispute, or reviving of old grievances of any kind, between us, and our heirs and successors, with Mr. Gustavus Baron de Overbeck or his Company, then the matter will be brought for consideration or judgment to their Majesties' Consul-General in Brunei.

Moreover, if His Highness Maulana Al Sultan Mohammed Jamalul Alam, and his heirs and successors, become involved in any trouble or difficulties hereafter, the said honorable Mr. Gustavus Baron de Overbeck and his Company promise to give aid and advice to us within the extent of their ability.

This treaty is written in Sulu, at the Palace of the Sultan Mohammed Jamalul Alam, on the 19th day of the month of Muharam, A.H. 1295; that is on the 22nd day of the month of January, year 1878.

Seal of the Sultan
Jamalul Alam

Witness to seal and signature:

(Sgd.) W. H. Treacher,

H.B.M. Acting Consul General in
Borneo

A true translation of the attached original document
written in Malay language in Arabic characters.

(Sgd.) Harold C. Conklin"

In my opinion, the most important features of the

above document are:

(1) This is distinctly a lease, and not a cession of sovereignty as is claimed by the latter-day British officials;

(2) It is a permanent lease on annual rental of five thousand (Mexican) dollars, and was not limited in duration as was maintained by many of the present day Joloano Moros. The rental has not been paid since the year 1939. A similar lease of his territories was made by the Sultan of Brunei in 1865 to American Consul Charles Lee Moses, but that was limited to a fixed period, though in terms was renewable. Consul Moses always referred to his title deed as a lease, which, failing support by the Department of State, was later transferred to Baron Overbeck and Mr. Dent. If we could secure a copy of the original document by which the Sultan of Borneo in 1841 established Mr. (later Sir James) Brooke as the Rajah of Sarawak we should probably find this also was a lease and was the prototype of this whole series of transactions;

(3) The Sultan of Sulu, in the above photostat of his lease of 1878 to Baron Overbeck and Alfred Dent professes explicitly that he is acting "on behalf of ourselves and for our heirs and successors and with the expressed desire of all Datus in Common Agreement." But we note that none of the Datus is mentioned by name in this instrument, nor does the signature of any of the Datus or of any members of the Council of State appear on the document. This is a most significant omission, for one of the other of these courses was required by their customary law.

For the full implication of this significant omission, please see the annexed "Brief Memorandum on the Government of the Sultanate of Sulu and Powers of the Sultan, During the 19th Century," dated December 8, 1946, and prepared at my request by Professor H. Otley Beyer of the University of the Philippines.

Professor Beyer there states that: "In Sulu the government is an oligarchy-vested in the Sultan and datus, in the Ruma Bechara assembled."

We have thus no evidence that the members of the Ruma Bechara were present or consented to the signing by the Sultan of the lease of January 22, 1878, to Overbeck and Dent. This fact utterly impugns the validity of this transaction and raises serious doubts as to the whole matter.

My opinion then, upon the document offered us in

photostatic reproduction by the British Government as a basis of a present claim to sovereignty over the territories in questions, is that this title is of an obscure and doubtful origin and is without vigor because it is not in compliance with Moro law.

It should be noted that the translation of the above given document is in quite different language from the copy furnished by Mr. Justice Mackaskie of the High Court of North Borneo on December 18, 1939, and upon which this Judge bases his decision. I quote his language from a photostatic copy of the decision which is attached to these papers: (The underscores given are mine)

"The translation of the main deed of Cession of 1878 as given in "Treaties and Engagement affecting the Malay States and Borneo," by Maxwell and Gibson is as follows:

"Grant by Sultan of Sulu of Territories and Lands on the mainland of the Island of Borneo, Dated 22nd January, 1878.

"We Sri Paduka Maulana Al Sultan Mohammed Jamal Al Alam Bin Sri Paduka Al Marhom Al Sultan Mohamet Fathlon Sultan of Sulu and the dependencies thereof on behalf of ourselves our heirs and successors and with the consent and advice of the Datoos in Council assembled hereby grant and cede of our own free and sovereign will to Gustavus Baron de Overbeck of Hongkong and Alfred Dent, Esquire of London as representative of a British Company x x x."

Upon examination of our own translation of the original document (in photostat) it will be seen that Maxwell and Gibson, the English authors on whose text the decision of Mr. Justice Mackaskie was based, have changed the language so as to make the document a grant cession instead of lease, as it really was, and as the word "padjak" in the original really means. In view of this vital divergence from the original text, I do not find myself able to give full faith and credit to the opinion of Mr. Justice Mackaskie in the famous case in 1939 in Sandakan.

A second agreement was signed by the same Sultan of Sulu on the same date, January 22, 1878, of which we have not the original text but have received from the Department of State in Washington a photostat of a type-written document in English, entitled: "Commission from the Sultan of Sulu appointing Baron de Overbeck Datu Bandahara

and Rajah of Sandakan." The appointment is said to be in almost identical language with the commission of Rajah or Governor of the Brunei lands by the Sultan thereof in 1865 to Consul Charles Lee Moses. The delegation of powers to the Rajah or Governor of Sandakan is very complete, and all persons are called upon "to respect his authority therein as our own." (Underscore mine.)

This second agreement was evidently an appointment as Governor or Rajah under the feudal system which then still prevailed in the Mohammedan Malay sovereignty.

(4) The very special pleading of Mr. Justice Mackaskie in his decision in the High Court of Sandakan on December 18, 1939, has been, no doubt, the basis upon which the British government acted in absorbing these territories as a Crown Colony on July 16, 1946. This decision is discussed at some length in my previous memorandum of September 26, 1946. I shall take up again one point made in that paper, namely the argument of Justice Mackaskie that upon death in 1936 of Sultan Jamalul Kiram II, President Quezon did not "recognize" any new Sultan of Sulu in response to enquiries from the North Borneo Government. I wish to reiterate my previous statement that so far as the Sultanate of Sulu was concerned, President Quezon had no legal power to abolish the Sultanate - that could have been done only by the Moros themselves, either by positive action of their own, or by neglect to elect a new Sultan - but promptly thereafter two Sultans of Sulu were chosen by rival factions. The only other way in which an ancient State like the Sultanate of Sulu could have been abolished would have been by force, as, for example by armed conquest, and that determination of the question was, of course, lacking in the premises.

As to the question as to what should now be done by the Government of the Republic of the Philippines in this matter, I wish to enter here the opinion expressed by Dr. Beyer on page 10 of his memorandum of December 8, 1946 (hereto annexed) as follows:

"The question as to whether the present Government of the Republic of the Philippines should take any definite action in the way of officially recognizing the existing Sultan of Sulu is a matter of public policy on which I have no desire to make specific recommendation. In the interest of the peace and welfare of the numerous Mohammedan citizens of the Sulu Archipelago, however, I believe that it is a matter that should sooner or later receive

serious consideration from the President and his Cabinet with a view to arriving at some just solution of this vexatious question."

Your Government has honored me with a request for an opinion on these matters, and I recommend that the Sultanate of Sulu be advised to eliminate the existing anomaly of having two rival Sultans, and that they elect only one legal Sultan, and that the latter, whoever he may be, should, as promptly as may be, request the Government of the Republic of the Philippines on behalf of the Sultanate to protest the absorption of their sovereign rights in North Borneo territories into a British Crown Colony, and if met with a refusal, on the part of the British Government, to reconsider this action, that the whole matter be laid before the United Nations Organization for adjustment.

In conclusion, I draw attention to the parallel situation in the adjoining States of Sarawak which was taken by the British Government as a Crown Colony a few weeks before similar action on British North Borneo. The negotiations for Sarawak were made by its recent Rajah, the grand nephew of the first Brooke who had been commissioned as Rajah or Governor of Sarawak by the Sultan of Brunei in 1841. In 1888, Sarawak was "recognized" by the British Government as an independent country under the protection of Great Britain, still under a Rajah Brooke. The Third Rajah Brooke, for certain compensation, recently ceded his country to England as a Crown Colony. The nephew of Rajah Brooke, his successor in line, Mr. Anthony Brooke, has made protest against the destruction of the independence of his country; has recently (in December 1946) been refused admission to the new Crown Colony of Sarawak; has aroused support both in Sarawak and in the British Parliament, and he now proposes to lay the whole matter before the United Nations Organization.

In reviewing the subject of the claims of the Sultanate of Sulu to their ancient patrimony in North Borneo, one must come to the conclusion that the action of the British Government in announcing on the sixteenth of July, just twelve days after the inauguration of the Republic of the Philippines, a step taken by the British Government unilaterally, and without any special notice to the Sultanate of Sulu, nor consideration of their legal rights, was an act of political aggression which should promptly be repudiated by the Government of the Republic of the Philippines.

The proposal to lay this case before the United Nations should bring the whole matter before the bar of

serious consideration from the President and his Cabinet with a view to arriving at some just solution of this vexatious question."

Your Government has honored me with a request for an opinion on these matters, and I recommend that the Sultanate of Sulu be advised to eliminate the existing anomaly of having two rival Sultans, and that they elect only one legal Sultan, and that the latter, whoever he may be, should, as promptly as may be, request the Government of the Republic of the Philippines on behalf of the Sultanate to protest the absorption of their sovereign rights in North Borneo territories into a British Crown Colony, and if met with a refusal, on the part of the British Government, to reconsider this action, that the whole matter be laid before the United Nations Organization for adjustment.

In conclusion, I draw attention to the parallel situation in the adjoining States of Sarawak which was

world opinion. Never, in history, has there been given any people such an opportunity as exists today, to secure justice by an appeal to the enlightened conscience of mankind.

(Signed) FRANCIS B. HARRISON
Adviser to the President

NATIONS SHOULD BRING THE WHOLE MATTER BEFORE THE BAR OF

SATURDAY, DECEMBER 5, 1987

PHILIPPINE DAILY INQUIRER



Mohammad Julaspi Kiram
Sultan of Sulu

NETO CABANES, Asst. Business Editor

25

CHECKING ACCOUNTS * SAVINGS ACCOUNTS * TIME DEPOSITS



MANILA BULLETIN,

DECEMBER 13, 1987

1987

COPY OF COMMISSION FROM THE SULTAN OF SULU APPOINTING BARON DE OVERBECK DATU BANDAHARA AND RAJAH OF SANDAKAN*

Commission from the Sultan of Sulu appointing Baron de Overbeck Datu Bandahara and Rajah of Sandakan. Dated 22nd January 1878.

To all nations on the face of the earth whom these matters may concern. We Sri Paduka Maulana Al Sultan Mahomet Al Alam Al Bin Marhom Sri Paduka Maulana Al Sultan Mahomet Fathlan Sultan of Sulu and its dependencies send greetings:

Whereas we have seen fit to grant unto our trusty and well beloved friends Gustavus Baron de Overbeck and Alfred Dent Esquire certain portions of the dominions owned by us comprising all the lands on the north and east coast of the Island of Borneo from the Pandassan River on the north-west to the Sibuco River on the east coast including amongst others the states of Paitan, Sugut, Bangaya, Labuk, Sandakan, Kina Batangan, and Mumiang and all the lands and territories in Darvel Bay as far as the Sibuco River together with all the lands belonging thereto for a certain consideration between us agreed: and

Whereas the said Baron de Overbeck is the chief and only authorized representative of his Company in Borneo;

Now therefore know ye that we the Sultan Sri Paduka Maulana al Sultan Mahomet Al Alam Bin Al Marham Sri Paduka Al Sultan Mahomet Fathlan Sultan of Sulu and its dependencies have nominated and appointed, and do hereby nominate and appoint Baron de Overbeck supreme and independent ruler of the above named territories with the title of Datu Bandahara and Rajah of Sandakan with absolute power over life and death of the inhabitants of the country with all the absolute rights of property over the soil of the country vested in us and the right to dispose of the same as well as the rights over the productions of the country whether mineral, vegetables or animal with the rights of making laws, coining money, creating an army and navy and levying customs dues on home and foreign trade and shipping and other dues and taxes on the inhabitants as to him may seem good or expedient together with all other powers and rights usually exercised by and belonging to sovereign

rules and which we hereby delegate to him of our own free and sovereign will.

And we call upon all foreign nations with whom we have formed friendly treaties or alliances and we command all Datus, Nobles, Governors, Chiefs and people owing allegiance to us in the said territories to receive and acknowledge the said Datu Bandahara as the supreme ruler over the said States and to obey his commands and respect his authority therein as our own. And in the case of the death or the retirement from office of the said Datu Bandahara then his duly appointed successor in the office of supreme ruler and governor-in-chief of the Company's territories in Borneo shall likewise if appointed thereto by the Company succeed to the title of Datu Bandahara and Rajah of Sandakan and all the powers above enumerated be vested in him.

Done at the Palace of the Sultan at Lipuk in the Island of Sulu on the nineteenth of Maharam A.H. 1295 being the 22nd day of January A.D. 1878.

FAST FOOD FOR THOUGHT

VICENTE
ALBANO
PACIS



British blunder, Sabah claim

IN Britain a massive legal blunder has just been discovered and remedial legislation is being rushed to correct the great error. This column believes the British equally blundered in the Sabah case, and when the error is proved to them, they will also make amends with alacrity. After all, Britain has done a lot to spread the rule of law around the world and will be the last to discard it even unknowingly.

There are today 2,000 men and women in Britain who are supposed to have been divorced and many of them have remarried. But according to a news story brought by *United Press International* from London to Manila, last Dec. 20, the county courts which finalized English divorces quietly lost the power to do so and no substitute entity was created or assigned to take over the function. As this situation happened about 20 months ago, the divorces of about 1,000 couples had not been finalized.

In Britain, when one of the parties to a divorce contests the divorce, a high court hearing is needed. When a settlement was reached, they applied to the lower court in the country where they lived for a decree finalizing the divorce. "But during the last 20 months," reported *UPI*, "such courts no longer have the power to issue such decrees — a technicality overlooked by the judges and lawyers until last week.

"An article in the current edition of *New Law Journal* said new rules that took effect in April 1986 made the issuance of such decrees no longer under the county courts' jurisdiction, rendering the divorce of up to 2,000 people invalid," *UPI* added.

The "unfortunate oversight" was only discovered earlier in December "when an attorney in a child custody battle discovered his client's divorce was not legal in the first place...a spokesman for the Lord Chancellor's Department in charge of Britain's legal administration said the blunder was an unfortunate oversight..."

Those who have since remarried, said the *UPI*, thinking their divorces were finalized, are actually bigamists, prompting government moves to pass legislation automatically finalizing the divorces of those affected.

In the Sabah case, the British Colonial Office made one error, evidently in good faith. On June 26, 1946 it drafted what it called "North Borneo Agreement for the Transfer of the Borneo Sovereign Rights and Assets from the British North Borneo Company to the Crown."

In this document, it is stated, "The Company (British North Borneo Company) hereby transfers and cedes the North Borneo Rights to the Crown, with effect from the day of transfer, to the intent that the Crown shall, as from the day of transfer, have full sovereign rights over, and title to the territory of the state of North Borneo, and that the said territory shall there-upon become part of His Majesty's dominions."

But nowhere in the Charter granted to the British North Borneo Company on Nov. 1, 1881, in the forty-fifth year of Queen Victoria's reign, is there granted to the Company any power of sovereignty or dominion. In fact the Charter concludes: "...in case at any time it is made to appear to us in our Council that the Company has failed to comply with any material condition by this our Charter prescribed, it shall be lawful for us, our heirs and successors...to revoke this our Charter."

A grant of the right of sovereignty and dominion would hardly make such a stipulation.

In a statement made on Jan. 7, 1882, Earl Granville, then the head of the British Foreign Office, wrote: "The British (North Borneo) Charter differs essentially from the previous charters granted by the Crown to the East India Company, the Hudson Bay Company, the New Zealand Company and other associations of that character in the fact that the Crown, in the present case, assumes no dominions or sovereignty over the territories occupied by the Company, nor does it purport to grant to the Company any powers of government thereof; it merely confers upon the persons associated the status and incidents of a body corporate, and recognizes the grant of territory and the powers of government made and delegated by the Sultans in whom the sovereignty remains vested." The Charter comprehends the grants by the Sultans of Brunei and Sulu leased to a group of British businessmen who applied to the Crown for the Charter.

If there was neither the power of sovereignty or of dominion in the British Charter of 1881, as Earl Granville categorically testified to, it is clear that the Charter could not have passed these powers, which it did not have, to the Crown in 1946 in the so-called North Borneo Agreement. Consequently, the Crown could not have passed the same powers, because it never received them, to the Federation of Malaysia when it was created in 1963.

In conscience and honor, Great Britain must correct this error, which is far more serious than its error affecting 2,000 divorced persons, and restore the ownership of North Borneo (Sabah) to its rightful owners.

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DOS

567575
IN REPLY,
Pls. send letters to
c/o P.O. Box 2813
Manila, Philippines



Baginda Sultan Haji Mohammad Julaspi
Ibni Almarohom Sultan Haji Mohammad
Jamalul Kiram
Sultanate of North Borneo

APR 11 1988

His Excellency, Ronald Reagan
President, United States of America
The White House, Washington, D. C.
U. S. A. NW 20500

Your Excellency:

The record →

Earlier Your Excellency was furnished a copy of the Sultanate's letter of January 30, 1988, which demanded from the government of Malaysia the withdrawal of its armed forces, police force and other functionaries from the State of North Borneo or Sabah on or before April 30, 1988. It is hoped your receipt thereof made the U. S. Government adequately informed of the Sultanate's intention and would, therefore, have given some serious thought on the matter.

This Sultanate cannot presume otherwise regarding the U. S. Government's possible response to the demand that Malaysia should terminate its illegal occupation because it has been the view that Britain could have not "landgrabbed" North Borneo that easy if only the United States Government made good its commitment to extend protection to this Sultanate.

The record shows that on August 22, 1899, U.S. Army General Bates concluded a treaty with Sultan Jamalul Kiram. This treaty was later abrogated by President Theodore Roosevelt on March 21, 1904.

However, on March 11, 1915, Governor Frank Carpenter signed an agreement with Sultan Jamalul Kiram by which the latter, for himself and his heirs, renounced temporal sovereignty over the Sulu Island. In exchange, Sultan Jamalul Kiram was recognized by the Government as the head of the Muslim ecclesiastical courts in the Philippines, his pension of ₱12,000.00 was continued for life, and he was given a grant of land in Jolo.

That Sultan Jamalul Kiram who was an only son of Sultan Jamalul Alam, is the father of Sultan Hadji Mohammad Julaspi Kiram for whom the present representation is being made.

It must be recalled that while Mr. Francis Burton Harrison was the Governor General of the Philippines, the United States pledged assurances of the rule of law for the protection of the Sultan of Sulu's rights to North Borneo. The record state:

Lett dtd 11 Apr '88
sent to US Pres R Reagan
.... Page 2.



Baginda Sultan Haji Mohammad Julaspi
Ibni Almarohom Sultan Haji Mohammad
Jamalul Kiram
Sultanate of North Borneo

"It is necessary however that there be clearly of official record the fact that the termination of the temporal sovereignty of the Sultanate of Sulu within American territory is understood to be wholly without prejudice or effect as to the temporal sovereignty and ecclesiastical authority of the Sultanate beyond the territorial jurisdiction of the United States Government, especially with reference to that portion of the Island of Borneo which was a dependency of the Sultanate of Sulu is understood to be held under lease by the chartered company which is known as the "British North Borneo Government."

"The assurances given Mohammad Jamalul Kiram, Sultan of Sulu, have been that he as a native resident of the Philippine Islands, in all questions arising between him and any foreign authority, will receive from the United States Government the full measure of protection which may be granted him under international law and usage, and in any event that he will receive justice and not be subject by government to prejudicial discrimination of favor to the British North Borneo Company or other foreign interests whether governmental or private. (Letter of Governor Frank W. Carpenter to the Director of Non-Christian Tribes, dated May 4, 1920.)"

It should be emphasized though that in the 1963 negotiation held in London with the British for purpose of recovering North Borneo, the British negotiators insisted that the DEED of 1878 entered into by and between Sulu Sultan Hadji Mohammed Jamalul Alam and Mr. Gustavus Baron de Overbeck (of Austria) and Alfred Dent, Esquire (of London), was a SALE, and was not a LEASE.

On another occasion, the British representatives asked for the Sultan's Copy of the Deed to be presented during the supposed last stages of an on-going negotiation then being held in Singapore. For which, the Sultan had to go back to Sulu and returned with his Copy of the Deed.

But in the early dawn of that day the Sultan's Copy was to be presented, a thief sneaked into the Sultan's hotel-room, situated adjacent to a room where the Sultan together with his companions were saying their morning prayers in the tradition of Moslems, and stole said Sultan's Copy of the Deed.

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Sent to US Pres R Reagan
.... Page 3.



Baginda Sultan Haji Mohammad Julaspi
Ibni Almarohom Sultan Haji Mohammad
Jamalul Kiram
Sultanate of North Borneo

The incident was reported to the police. Four suspects were arrested, but were later released. Much, much later, the principal suspect who was accosted along the hotel-stairway on that day when the incident happened, was found living a life of ease and extravagance.

After the mentioned incident, who would dare say that the Deed was not a "sale", as what the British would want people to believe? Considering that the British had refused consistently to show "their copy of the Deed."

Fortunately, there would now be any need to avail of, or to look for and hire the services of a learned Arab for purpose of translation of the Deed for the benefit of non-Arabs. Because, as the saying goes that, "a fish is caught by its own mouth", had once again proven to be true when the British acceded to a request of the Americans to be furnished with 'their Copy of the Deed'. And, as is always has been the case, the Truth has to come out. This time, it was for all the World to see.

In corroboration with the claim that the truth had finally been brought out, your attention is invited to that portion of the letter of February 27, 1947 of former American Governor General Francis B. Harrisson to Philippine Vice-President and Secretary of Foreign Affairs Elpidio Quirino, which read:

"Meanwhile, further important evidence has come to us from the Philippine Embassy in Washington, where Mr. Eduardo Quintero, searching in the National Archives, found a photostatic copy of the document dated January 22, 1878, upon which the British Government base their claim to all the lands tributary to the Sultanate of Sulu. This was obtained in 1940 by the United States Department of State from the British Government, and is hereto annexed. The second copy of this document had been held by the Sultan of Sulu, and, as is alleged, was stolen from him during a visit he made to Singapore many years ago. This story is to be found in the newspaper article in the Chicago Daily Tribune of October 14, 1945, written by Mr. Aleko Lilius in an authenticated interview with the late Sultan of Sulu.

Lett dtd 11 Apr '88
sent to US Pres R Reagan
.... Page 4.



Baginda Sultan Haji Mohammad Julaspi
Ibni Almarohom Sultan Haji Mohammad
Jamalul Kiram
Sultanate of North Borneo

"The photostatic copy of this document, furnished by the British Government has been translated at my request by Mr. Harold Conklin, assistant to Professor H. Otley Beyer in the University of the Philippines. Mr. Conklin is a qualified scholar in the Malay language and in the Arabic script in which language and writing this document was written. This translation now follows:"

{Please note: Copy of the translation in English of the Deed of 1878 by Mr. H. Conklin, is attached, herewith.}

It is very obvious, the British Government would not have contradicted itself, had she listened to what British Secretary of State for Foreign Affairs, Lord Granville stated in his letter dated January 7, 1882 to Mr. Morrier, British Minister to Spain, pertinent portion of which follows:

"The British Charter therefore differs essentially from the previous Charters granted by the Crown x x x x , in the fact that the Crown in the present case assumes no dominion or sovereignty over the territories occupied by the Company, nor does it purport to grant to the Company any powers of government thereover; it merely confers upon the persons associated the status and incidents of a body corporate, and recognize the grants of territory and the powers of government made and delegated by the Sultans in whom the sovereignty remains vested. It differs also from previous Charters, in that it prohibits instead of grant a general monopoly of trade.

"As regards the general features of the undertaking, it is to be observed that the territories granted to the Company have been for generations under the government of the Sultans of Sulu and Brunei, with whom Great Britain has had Treaties of Peace and Commerce;"

No doubt, Britain's annexation of the State of North Borneo was without moral and legal basis. It is explicitly clear, the "AGREEMENT FOR THE TRANSFER OF THE BORNEO SOVEREIGN RIGHTS AND ASSETS FROM THE BRITISH NORTH BORNEO COMPANY TO THE CROWN 26th JUNE 1946;" as what said title of the contract intends to accomplish, was indeed violative of the Deed of 1878. Specifically with reference to the proviso which state:

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sent to US Pres R Reagan
.... Page 5.



Baginda Sultan Haji Mohammad Julaspi
Ibni Almarohom Sultan Haji Mohammad
Jamalul Kiram
Sultanate of North Borneo

"x x x x the rights and powers hereby leased shall not be transferred to another nation, or a company of other nationality, without the consent of Their Majesties Government."

Considering that the transfer of the State of North Borneo from the British North Borneo Company to the British Crown was done unilaterally.

So much so, that "THE NORTH BORNEO CESSION ORDER IN COUNCIL 1946," the document which partly read:

"x x x x have transferred and ceded all the said rights, powers and interests to the Crown with effect from the fifteenth day of July, 1946, to the intent that the Crown should, as from that day have full sovereign rights over, and title to, the territory of the State of North Borneo and that the said territory should thereupon become part of His Majesty's dominions;"

would likewise merely serve as an affirmation of the violation of the Deed, and also serve as an avowal of the continuing adherence by the British to a policy of "might is the right."

Despite what has already been cited in the above, it is still relevant to stress here, that Messrs. Overbeck and Dent fully admitted the sovereign rights of the Sultans of Sulu and Brunei over all the Territories administered by the British North Borneo company is sufficiently clear from Dent's own statement made before the Royal Colonial Institute on May 12, 1885. Quote:

"As to the Charter, some friends of the enterprise seem to believe that the enormous powers we hold were given by Her Majesty the Queen. It is not so at all. All our powers were derived entirely from the Sultans of Brunei and Sulu, and what the British Government did was simply to incorporate us by Royal Charter, thus recognizing our powers, which recognition is to us, of course, of vital importance. (In JSB - RAS, No. 14, 335; Singapore, 1885)"

Need this Sultanate say more?

It may now be said that the United Nations' ascertainment in 1963 of the supposed acceptability of Malaysia to the people of North Borneo, is very highly irregular and can never be justified.

Lett dtd 11 Apr '88
sent to US Pres R Reagan
.... Page 6.



Baginda Sultan Haji Mohammad Julaspi
Ibni Almarohom Sultan Haji Mohammad
Jamalul Kiram
Sultanate of North Borneo

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Manila, Philippines

Therefore, it cannot be a ground to deprive Sultan Julaspi Kiram of sovereignty and proprietary rights over North Borneo.

It is evident, Malaysia has no legal or moral basis to continue in its occupation of North Borneo and must therefore return it to the Sultanate, represented in this instant by the only living direct descendant (Sultan Julaspi Kiram, the grandson who is now 82 years old) of the late Sulu Sultan Hadji Mohammed Jamalul Alam, the signatory to the Deed of 1878.

Needless to add that the transfer of both ownership and sovereignty of North Borneo from the British North Borneo Company to the Crown, and from Britain to Malaysia were but a succession of serious crimes committed against this Sultanate.

Mr. President: from the foregoing, it would not be difficult to deduce that the U. S. Government's culpability in the instant case was her having been un-mindful of its assurances of the Rule of Law. Up to now, the U. S. Government has not given any encouragement to a fair and just and peaceful settlement of the matter, with the consequence that Britain and Malaysia defiantly continue to DISREGARD THE RULE OF LAW.

Would you now say Mr. President that this Sultanate has to fight for its own wars? If it were so, and since the U. S. Government had failed miserably in its commitment to protect this Sultanate, how about granting "a package of loans consisting of weapons of war" in favor of the Sultanate? It could be an addition to its present arsenal of war materiel and might be availed-of, should Malaysia decides to ignore the demand to leave-off North Borneo.

A firm answer would highly be appreciated.

Very respectfully,


Sir BRACAS CABARLOC

Minister of Internal and External Affairs

With enclosures.

- I. A list of enclosures to this letter dated Apr. 11/88 sent to President Reagan, is attached, herewith.
- II. A list of the names of officials furnished with copy each of this letter of Apr. 11/82, is also attached, herewith.

VIA AIR MAIL



IN REPLY,
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Manila, Philippines

Baginda Sultan Haji Mohammad Julaspi
Ibni Almarahom Sultan Haji Mohammad
Jumalul Kiram

Sultanate of Sabah

List of ENCLOSURES to letter dated April 11, 1988 sent to U.S.
President Ronald Reagan.

1. Letter dated 30 Jan. '88 sent to His Majesty, King of Malaysia.
2. Deed of 1878 (Lease Agreement). Translation by Professor Conklin.
3. Commission from the Sultan of Sulu appointing Baron de Overbeck Datu Bandahara and Rajah of Sandakan.
4. Agreement for the Transfer of the Borneo Sovereign rights and Assets from the British North Borneo Company to the Crown 26th June, 1946.
5. The North Borneo Cession Order in Council 1946.
6. Letter dated Jan. 7, 1882 of British Secretary of State for Foreign Affairs E. Granville to British Minister to Spain, Mr. Morrier.
7. Lett dtd Feb. 27, 1947 of former U.S. Governor General of the Philippines F.B. Harrison to Vice President and Secretary of Foreign Affairs E. Quirino.
8. Location map (Dec. 13/87, Manila Bulletin issue)
Photo of Sultan Hadji Mohammad Julaspi Kiram (Dec. 5/87, Phil Daily Inquirer)
9. "British blunder, Sabah claim", columnist VA Pacis, Jan. 28/88, Phil. Daily Inquirer, Fast Food for Thought column.

List of the names of officials furnished with copy each of this letter
of April 11/88 sent to U.S. President Reagan.

1. UN Sec'y Gen'l Javier Perez de Cuellar.
2. US Vice-President George Bush.
3. Chief Karim Ebrahim Al-Shakar, UN Arab Group
4. OIC Chairman Tahir El Misri, 17th Foreign Ministerial Meet, Jordan.
5. OIC Sec'y Gen'l Seyd Sharifuddin Pirzada, Jeddah, KSA.
6. US Senators: Alan Cranston; John Melcher; Thomas Harkin; James Exon, Jr.;
Howell Thomas Heflin; Richard G. Lugar; Jack Kemp;
7. US. Members of the Cabinet: Sec'y George P. Schultz; Undersec'y Michael
Armacost; Deputy sec'y Chester Crocker; Ass't Sec'y Gaston
Sigur; Undersec'y Ronald T. Spiers; Ass't Sec'y Karl D.
Jackson; Ass't Sec'y Joan M. Clark.
8. US Representatives: Stephen J. Solarz; Leon E. Panetta; Larry Pressler;
Richard Gephardt.
9. UN Undersec'y Gen'ls Marrack Goulding and Yasushi Akashi.
10. Prime Minister Margaret Thatcher, Great Britain.
11. Sultan Iskandar, King of Malaysia
12. US Ambassador to the Philippines Nicholas Platt.
13. Malaysian Ambassador to the Philippines.
14. and others deemed concerned.



IN REPLY,
Pls. send letters to
c/o P.O. Box 2813
Manila, Philippines

Baginda Sultan Haji Mohammad Julaspi
Ibni Almarahom Sultan Haji Mohammad
Jumalul Kiram

Sultanate of Sabah

JAN 30 1988

His Majesty Sultan Iskandar
King of Malaysia
Istana Negara, Jalan Istana
50500 Kuala Lumpur
M a l a y s i a

Your Majesty:

Through this Letter-Notice, the Sultanate of North Borneo/Sabah (and Sulu) hereby formally demand for Your Majesty's government to put an end to its "illegal occupation" of the State of North Borneo (Sabah). This Sultanate specifically ask for complete withdrawal of your military and police forces and other functionaries being assigned in North Borneo, not later than 30 April 1988.

Certain it is that you hold North Borneo only as an aftermath of the British Crown's "extralegal annexation act", and upon which Malaysia was to have fallen heir to. It was a conspiracy cunningly contrived by Britain with the sole purpose of escaping from an official position that is vile, mean, debased, and sordid. This Sultanate is free to admit that North Borneo rightfully belongs to the Sultan of North Borneo (and Sulu).

Could this Sultanate still expect your Government to leave North Borneo without extraneous pressure, simply because the majority of our citizens are both Moslems?

Once more, this Sultanate wants to make it clear that this is a Last and Final Notice for your Government to terminate the 'illegal occupation' of North Borneo, not later than this coming April 30th.

Lett dtd 30 Jan '88
sent to His Majesty
King of Malaysia.
.... Page two.



Baginda Sultan Haji Mohammad Julaspi
Ibni Almarahom Sultan Haji Mohammad
Jumalul Kiram

Sultanate of Sabah

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Manila, Philippines

And, at the risk of digression, His Majesty Sultan Hadji Mohammad Julaspi Sultan Kiram wish to express herewith the view that the Malaysians could yet prove to the world's community of Nations that they are strongly allied to virtue because of belief in and worship of Allah.

Kindly be reminded, it's AN ACT OF AGGRESSION which this Sultanate wants to come to an end.

Faithfully yours

Sir BRAZIL CABARLOC

Minister of Internal and External Affairs

Copy furnished:

- 1987 ASEAN Summit Leaders (President Aquino, Sultan Bolkiah, President Suharto, Prime Minister Lee, Prime Minister Mahathir & Prime Minister Prem).
- Prime Minister M Thatcher of Britain.
- President R Reagan of the United States of America.
- Prime Minister F Gonzales of Spain.
- King Fahd of Saudi Arabia (Chairman & Members of the Organization of Islamic Conference).
- Sec'y Gen'l J P de Cuellar of the United Nations.
- Foreign Ambassadors to the Philippines.
- Philippine Foreign Affairs Secretary R Manglapus.

Enclosures:

- Lett dtd 10 Dec '87 sent to Prime Minister Mahathir (2 shts).
- Lett dtd 6 Jan '88 sent to King of Malaysia (3 shts).
- Copy of Deed of 1878 entered into by and between Sultan Jamalul Alam & Overbeck, Dent.
and _____ other sheets.

VIA AIR MAIL

TRANSLATION BY PROFESSOR CONKLIN OF THE DEED OF 1878 IN
ARABIC CHARACTERS FOUND BY MR. QUINTERO IN WASHINGTON*

Signature of Sultan
Mohammed Jamalul Alam

Official seal of the
Sultan of Sulu

GRANT BY THE SULTAN OF SULU OF A PERMANENT
LEASE COVERING HIS LANDS AND TERRITORIES
ON THE ISLAND OF BORNEO

Dated January 22, 1878

We, Srt Paduka Maulana Al Sultan MOHAMMED JAMALUL ALAM, Son of Sari Paduka Marhum Al Sultan MOHAMMED PULALUM, Sultan of Sulu and of all dependencies thereof, on behalf of ourselves and for our heirs and successors, and with the expressed desire of all Datus in common agreement, do hereby desire to lease, of our own free will and satisfaction, to Gustavus Baron de Overbeck of Hong Kong, and to Alfred Dent, Esquire, of London who act as representatives of a British Company, together with their heirs, associates, successors, and assigns forever and until the end of time, all rights and powers which we possess over all territories and lands tributary to us on the mainland of the island of Borneo, commencing from the Pandassan River on the east, and thence along the whole east coast as far as the Sibuku River on the south, and including all territories, on the Pandassan River and in the coastal area, known as Paitan, Sugut, Banggai, Labuk, Sandakan, China-Batangan, Mumiang, and all other territories and coastal lands to the south, bordering on Darvel Bay, and as far as the Sibuku River, together with all the islands which lie within nine miles from the coast.

In consideration of this (territorial?) lease, the honorable Gustavus Baron de Overbeck and Alfred Dent, Esquire, promise to pay His Highness Maulana Sultan Mohammed Jamalul Alam and to his heirs and successors, the sum of five thousand dollars annually to be paid each and every year.

The above-mentioned territories are from today truly leased

*This document shows that on its face, its terms are those of a lease contract, disproving that the Deed of 1878 was a Deed of Cession or Sale.

to Mr. Gustavus Baron de Overbeck and to Alfred Dent, Esquire, as already said, together with their heirs, their associates (company) and to their successors and assigns for as long as they choose or desire to use them; but the rights and powers hereby leased shall not be transferred to another nation, or a company of other nationality, without the consent of Their Majesties Government.

Should there be any dispute, or reviving of old grievances of any kind, between us, and our heirs and successors, with Mr. Gustavus Baron de Overbeck or his Company, then the matter will be brought for consideration or judgment to Their Majesties' Consul General in Brunei.

Moreover, if His Highness Maulana Al Sultan Mohammed Jamalul Alam, and his heirs and successors, become involved in any trouble or difficulties hereafter, the said honorable Mr. Gustavus Baron de Overbeck and his Company promise to give aid and advice to us within the extent of their ability.

This treaty is written in Sulu, at the Palace of the Sultan Mohammed Jamalul Alam on the 19th day of the month of Muharam, A. H. 1295; that is on the 22nd day of the month of January, year 1878.

Seal of the Sultan
Jamalul Alam

Witness to seal and signature
(Sgd.) W H TREACHER
H.B.M. Acting Consul General
in Borneo

TRANSLATION BY PROFESSOR CONKLIN OF THE DEED OF 1878 IN
ARABIC CHARACTERS FOUND BY MR. QUINTERO IN WASHINGTON*

Signature of Sultan
Mohammed Jamalul Alam

Official seal of the
Sultan of Sulu

GRANT BY THE SULTAN OF SULU OF A PERMANENT
LEASE COVERING HIS LANDS AND TERRITORIES
ON THE ISLAND OF BORNEO

Dated January 22, 1878

We, Sri Paduka Maulana Al Sultan MOHAMMED JAMALUL ALAM, Son of Sari Paduka Marhum Al Sultan MOHAMMED PULALUM, Sultan of Sulu and of all dependencies thereof, on behalf of ourselves and for our heirs and successors, and with the expressed desire of all Datus in common agreement, do hereby desire to lease, of our own free will and satisfaction, to Gustavus Baron de Overbeck of Hong Kong, and to Alfred Dent, Esquire, of London who act as representatives of a British Company, together with their heirs, associates, successors, and assigns forever and until the end of time, all rights and powers which we possess over all territories and lands tributary to us on the mainland of the island of Borneo, commencing from the Pandassan River on the east, and thence along the whole east coast as far as the Sibuku River on the south, and including all territories, on the Pandassan River and in the coastal area, known as Paitan, Sugut, Banggai, Labuk, Sandakan, China-Batangan, Mumiang, and all other territories and coastal lands to the south, bordering on Darvel Bay, and as far as the Sibuku River, together with all the islands which lie within nine miles from the coast.

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This treaty is written in Sulu, at the Palace of the Sultan Mohammed Jamalul Alam on the 19th day of the month of Muharam, A. H. 1295; that is on the 22nd day of the month of January, year 1878.

Seal of the Sultan
Jamalul Alam

Witness to seal and signature
(Sgd) W H TREACHER
H.B.M. Acting Consul General
in Borneo

AGREEMENT FOR THE TRANSFER OF THE BORNEO
SOVEREIGN RIGHTS AND ASSETS FROM THE
BRITISH NORTH BORNEO COMPANY TO
THE CROWN 26th JUNE, 1946.

An agreement, dated the twenty-sixth day of June, 1946, between HIS MAJESTY'S SECRETARY OF STATE FOR THE COLONIES on behalf of His Majesty (hereinafter referred to as "the Crown") of the one part; and the BRITISH NORTH BORNEO COMPANY, incorporated by Royal Charter dated the first day of November, 1881, whose offices are situated at 80/82, High Street, Rickmansworth, in the County of Hertfordshire (hereinafter referred to, as "the Company" which expression shall be deemed to include the Company's successors and assigns), of the other part.

Whereas by the several grants and commissions mentioned in the recitals to the said Charter, the interests, powers and rights therein respectively mentioned over or in respect of the territories and lands therein respectively described which territories and lands together with others hereinafter mentioned are now known as and are hereinafter referred to as ("the State of North Borneo") were granted, ceded, assured to or conferred upon the persons therein respectively named, and such persons were thereby nominated and appointed supreme rulers over the State of North Borneo with all the powers and rights usually exercised by and belonging to Sovereign rulers as in the said grants and commissions respectively mentioned:

And whereas by certain instruments, including those set out in the First Schedule hereto, subsequent to the said Charter further interests, powers and rights over or in respect of the territories and lands respectively described in the said instruments were granted, ceded, assured to or conferred upon the Company:

And whereas under and by virtue of the said Charter and subsequent instruments the Company became, and are now entitled to the full benefit of the said grants, commissions and instruments and acquired, and now hold, use, enjoy and exercise, all the said interests, powers and rights therein respectively comprised (all of which are hereinafter referred to as "the Borneo Sovereign Rights"):

And whereas by an Agreement dated the twelfth day of May, 1888, the State of North Borneo was placed under the protection of Her late Majesty Queen Victoria:

And whereas the Company are the owners of certain movable and immovable property and assets which are within the State of North Borneo and are used by the Company for administrative and public purposes, and the expression "the Borneo Assets" wherever used herein shall mean all the said properties and assets as they exist on the fifteenth day of July, 1946 (hereinafter referred to as "the day of transfer") and shall be construed as including all funds established by the Company in connection with its administration and public services of the State of North Borneo and all debts payable to the Company in respect of its administration and public services as aforesaid whether the same shall have accrued, or shall accrue, on, before, or after the day of transfer and whether such funds are held, or such debts are payable, in the State of North Borneo or elsewhere:

And whereas it is considered desirable that the Crown should, in consideration of the payment to the Company of a sum by way of compensation, assume direct responsibility for the Government of the State of North Borneo and for that purpose acquire from the Company the Borneo Sovereign Rights and the Borneo Assets:

And whereas by the terms of the said Charter the Company has no power to transfer wholly or in part the benefits of the grants and commissions aforesaid which the Company was thereby authorized and empowered to acquire or any of them except with the consent of one of His Majesty's principal Secretaries of State:

And whereas the consent aforesaid of one of His Majesty's principal Secretaries of State has been given as is evidenced by these presents:

Now it is hereby agreed by and between the parties hereto as follows:

1. The Company hereby transfers and cedes the Borneo Sovereign Rights to the Crown with effect from the day of transfer, to the intent that the Crown shall, as from the day of transfer, have full sovereign rights over, and title to, the territory of the State of North Borneo and that the said territory shall thereupon become part of His Majesty's dominions.

Transfer of
Borneo
Sovereign
Rights.

Provided that His Majesty shall from the date of execution of this Agreement have full power and authority to make provision for the Government of the said territory, such provision to take effect on or after the day of transfer.

2. As from the day of transfer the Borneo Assets are hereby transferred to and shall vest in the Crown, subject to and with the benefits of all grants, concessions, leases and other rights or

Transfer of
Borneo Assets.

interests in or over the said assets and vested in or possessed by third parties and subsisting on the day of transfer; and the property of the Company described in the Second Schedule hereto is hereby transferred to and shall vest in the Crown.

3. The Crown shall, subject to the provisions of Clause 6 hereof, discharge and indemnify the Company against all obligations and liabilities properly incurred by the Company to any third party in the course of its administration or in respect of the public services of the State of North Borneo prior to the day of transfer, whether the same shall have accrued, or shall accrue, on, before or after the day of transfer including specifically, but without prejudice to the generality of the foregoing:

(1) all obligations and liabilities relating to the matters specified in the Third Schedule hereto;

(2) all obligations and liabilities under or in respect of all grants, concessions, leases and other rights or interests, subject to and with the benefit of which the Borneo Assets are by Clause 2 hereof expressed to have vested in the Crown;

(3) all obligations and liabilities under or in respect of grants and concessions mentioned in the recitals to the said Charter and subsequent instruments mentioned in the recitals hereto.

4. (1) On or after the day of transfer the Company, as and when requested by the Crown so to do, shall execute and do, at the cost and expense in all respects of the Crown, all such deeds, acts and things as may be necessary or convenient for effectually transferring to or vesting in the Crown the Borneo Sovereign Rights and Borneo Assets as and in the condition in which they exist on that date, and the other property described in the Second Schedule hereto, and in particular shall formally assign to the Crown all debts outstanding on that date and comprised in the Borneo Assets.

(2) In so far as these presents are effectual to assign and transfer such debts the Com-

Liabilities.

Provision for further assurance

pany hereby assigns and transfers them to the Crown.

(3) If on or after the day of transfer any such debt be paid to the Company, the Company shall account for and pay any amounts so received to the Crown or as the Crown may direct.

5. (1) In consideration of the premises, the Crown shall pay to the Company:-

Payment to
the Company.

(a) in respect of the Borneo Sovereign Rights and the Borneo Assets, the sum awarded in the Arbitration to be held in accordance with Clauses 10 and 11 hereof;

(b) in respect of the shares and debentures set out in the Second Schedule hereto, the sum of £5,000 on the day of transfer;

(c) in respect of the maps, plans, books and records set out in the Second Schedule hereto the sum of £1,000 on the day of transfer.

(2) The Crown shall pay to the Company the sum of £860,600 on the thirtieth day of December, 1946. In consideration of this payment, the Company shall take all steps necessary to redeem on or before the first day of January, 1947, all outstanding debentures issued by the Company and shall redeem such debentures accordingly. The said sum of £860,600 shall be deemed full or part satisfaction of the amount payable under sub-paragraph (a) of paragraph (1) of this clause, but whatever the sum awarded in the said Arbitration, the Company shall not be required to repay any part of the said sum of £860,600.

(3) The Crown shall pay to the Company interest at the rate of £2 10s. per centum per annum on the sum awarded in the said Arbitration as from the day of transfer down to the date of payment. Provided that on payment of the said sum of £860,600 interest shall thereafter be calculated and paid only on the amount by which the sum so awarded exceeds the said sum of £860,600.

6. (1) All persons who immediately before the day of transfer are employed by the Company in the administrative or public services of the State of North Borneo shall, as between the

Employees of
the Company.

Crown and the Company, be deemed to be in the employment of the Crown on and after that day and the Crown shall discharge and indemnify the Company against, and where necessary recoup to the Company, any payments properly made by the Company on or after that day in respect of:-

(a) all obligations and liabilities relating to the salary or emoluments payable to such persons (subject to paragraph (3) of this Clause) on or after that day;

(b) all obligations and liabilities arising out of any act or default of any such person done or omitted on or after that day;

(c) all obligations and liabilities in respect of any pension to which any such person or any dependent of any such person shall on or after that day become entitled.

(2) Subject to paragraph (3) of this clause, the Crown shall discharge and indemnify the Company against all obligations and liabilities in respect of any pensions or installments of pensions falling to be paid on or after the day of transfer to any person who before that day ceased to be employed by the Company in the administrative or public services of the State of North Borneo or to the dependents of any such persons.

(3) The salaries and emoluments mentioned in sub-paragraph (a) of paragraph (1) of this Clause and the pensions mentioned in paragraph (2) of this Clause shall be apportioned in point of time as at the day preceding the day of transfer, and the Company warrants that it has paid or will pay all arrears of such salaries, emoluments and pensions due and the respective apportioned parts thereof accruing due before that day.

(4) For the purpose of this Clause the word "pension" shall mean all annuities, gratuities and other like payments payable under the super-annuation regulations of the Company in force at or before the date of these presents, or otherwise.

(5) The Crown undertakes that all persons employed by the Company at the day of transfer in the administration or public services of the State of North Borneo shall retain all their rights existing at such day; and such rights shall in any case or cases in which the Company so requires be ascertained on the footing that no service contract was abrogated or dissolved by reason of the war of 1939-1945 or any event arising thereout. Any such person shall, at any time within six months of a date to be appointed by the Crown, be entitled at his election to retire from such administration or public service and in such case shall be entitled to receive from the Crown the pension which he would have been entitled to receive from the Company if his retirement had been from the employment of the Company in the administration or public service of the State of North Borneo and had been necessitated through ill health.

(6) Nothing in this Clause shall apply to any person employed by the Company outside the State of North Borneo and the Company shall remain liable to discharge all obligations and liabilities in respect of such persons.

7. Wherever in this Agreement the Crown undertakes to discharge any obligation or liability of the Company to any third party (including any employee of the Company) such undertaking shall be a covenant granted to the Company for its own benefit and for the benefit of each such third party; and the Crown will, at the request of the Company, enter into an agreement with any such third party or employee in such form and manner as the Company may reasonably require that the Crown will discharge such obligation or liability.

Obligations
to third
parties.

8. Nothing in this Agreement shall be taken to affect the principle that persons in the service of the Crown hold office at the pleasure of the Crown.

Crown servants
to hold office
during pleasure.

9. If the Crown are of the opinion that any contract with respect to any matter, being a contract made by the Company after the 20th day of June, 1944, was not reasonably necessary in the course of its business and that liabilities arising thereunder ought not to be transferred to the Crown, the Crown may give notice in writing to the Company to that effect at any time within one year after the day of transfer, or within six months after

Special
provisions
for contracts
made after
20th June,
1944.

the day upon which the provisions of such contract come to the knowledge of the Crown, which ever shall be the later. If the Crown give any such notice as aforesaid any dispute, difference or question arising by reason of the notice is not disposed of by agreement between the Crown and the Company, the matter shall be referred to arbitration in accordance with Clause 12 hereof, and the Arbitrator shall consider whether or not the contract was reasonably necessary in the ordinary course of the business of the Company and determine whether and to what extent as between the Crown and the Company any obligation or liability arising thereunder is to be transferred to the Crown or is to continue as an obligation or liability of the Company.

10. (1) It shall be referred to the Award and final determination of an Arbitrator to decide what would be a fair sum by way of compensation to be paid by the Crown to the Company, having regard to the terms of this Agreement, for the Borneo Sovereign Rights and Borneo Assets transferred to and vested in the Crown hereunder.

Compensation
to be
determined by
arbitration.

(2) The Arbitrator shall ascertain the fair price on the day of transfer on the basis of:-

- (a) the net maintainable revenue;
- (b) the number of years purchase which, in the opinion of the Arbitrator, should be applied thereto.

The Arbitrator shall take as the net maintainable revenue of the Company the net annual revenue which the Company might reasonably have been expected to earn in the future if this Agreement had not been entered into.

(3) In making an award under this Clause the Arbitrator shall add nothing as compensation to the Company for any effect on the condition of the Borneo Assets of damage or deterioration consequent upon the war of 1939-45.

(4) The Arbitrator for the purpose of this clause shall be The Right Honourable Lord Uthwatt or if he shall be unable or unwilling to act, a person appointed in the manner provided in Clause 12 hereof.

11. (1) The Arbitrator shall have power to obtain, call for, receive and act upon such oral or documentary evidence or information (whether the same be strictly admissible in evidence or not) as he may think fit, and in conducting the arbitration he shall not be bound by the strict rules of procedure or evidence.

Arbitration
procedure.

(2) The Arbitrator shall be entitled to summon to his assistance one or more persons of skill and experience who may be willing to sit with him and act as assessors.

(3) The Arbitrator shall pay the costs of the Arbitration tribunal. Costs of the hearing shall be in the discretion of the Arbitrator.

(4) Subject as aforesaid, the provisions of the Arbitration Acts, 1889 to 1934, shall apply and the Arbitrator shall have all the powers conferred on Arbitrators by the said Acts.

12. Subject to Clause 5 hereof if any dispute, difference or question shall at any time hereafter arise between the parties hereto in respect of the construction of these presents or concerning anything herein contained or arising out of this Agreement, or as to the rights, liabilities or duties of the said parties hereunder, the same shall be referred to the arbitration of some person to be agreed upon by the said parties or, failing agreement, to be nominated by the Lord Chief Justice of England for the time being, or failing such nomination as the law provides, in accordance with and subject to the provisions of the Arbitration Acts 1889 to 1934, or any statutory variation, modification or reenactment thereof for the time being in force.

General provi-
sion for Arbi-
tration.

13. The entry by the Company into this Agreement shall not, nor shall any deed, act or thing executed or done in pursuance of this Agreement, operate as a forfeiture or surrender of the said Charter or in any way affect or prejudice the validity thereof.

Validity of
Company's
Charter.

14. The Crown shall on the execution of this Agreement pay to the Company all legal costs and expenses reasonably incurred by the Company in connection with negotiation and preparation of this Agreement.

Costs of this Agreement.

The Common Seal of the British North Borneo Company was affixed hereto in the presence of

SEAL

Neill Malcolm,
Major-General.
M.W. Elphinstone.

} Directors.

E.J. Philips, Secretary.

Signed by His Majesty's Secretary of State for the Colonies in the presence of

} G.H. Hall

G. H. Gater,
Permanent Under-Secretary of State.

THE FIRST SCHEDULE

1. An Instrument, dated the 17th day of Mohurram A. H. 1302 (the fifth day of November 1884), whereby the Sultan of Brunei Pangeran Bendhara and Pangeran di Gadong ceded the territory from Si Putong to Kwalu Paniow.
2. An Instrument, dated the 6th April, ^{1885,} whereby the Sultan of Brunei confirmed the cession of the Island of Palawan.
3. An Instrument, dated the 2nd March, 1889, whereby Pangeran Shabandar ceded the territory of Padas Damit.
4. An Instrument, dated the 7th September, 1901, whereby the Sultan of Brunei ceded the territory between the Sepitong and Tusan Rivers.
5. An Instrument, dated the 22nd April, 1903, whereby the Sultan of Sulu confirmed the cession of certain islands.

THE SECOND SCHEDULE

1. All maps, plans, books and records of historical or administrative interest owned by the Company relating to the State of North Borneo.

14. The Crown shall on the execution of this Agreement pay to the Company all legal costs and expenses reasonably incurred by the Company in connection with negotiation and preparation of this Agreement.

Costs of this Agreement.

The Common Seal of the British North Borneo Company was affixed hereto in the presence of

SEAL

Neill Malcolm,
Major-General.
M.W. Elphinstone.

}
} Directors.

2. The Company's holding of:

(a) 7469 shares of \$5 each of Jesselton Ice and Power Co., Ltd.

(b) \$2060 Debentures of Sandakan Golf Club.

(c) \$5500 Debentures of Sandakan Club.

THE THIRD SCHEDULE

1. Bills payable by, and deposits and other accounts with, the departments of the Company known as the Treasury and the State Bank.

2. The Treasury note issue and token coins in circulation.

3. Claims (involving liability either legally enforceable or accepted by the Crown) made by persons, firms or corporations residing or carrying on business in the State of North Borneo in respect of loss, injury or damage to person or property which has been occasioned by the war of 1939 to 1945. ✓

And whereas by certain instruments, subsequent to the said

THE NORTH BORNEO CESSION ORDER IN COUNCIL 1946.

AT THE COURT AT BUCKINGHAM PALACE.
THE TENTH DAY OF JULY, 1946

PRESENT:

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL

Whereas the British North Borneo Company (hereinafter referred to as "the Company") was incorporated by Royal Charter dated the first day of November, 1881:

And whereas by the several grants and commissions mentioned in the recitals to the said Charter the interests, powers and rights therein respectively mentioned over or in respect of the territories there respectively described (which territories, together with others hereinafter mentioned, are known and are hereinafter referred to as "the State of North Borneo") were granted or conferred upon the persons therein respectively named:

Philippine Claim to North Borneo, Vol. I, p. 141.

the State of North Borneo shall be annexed to and shall form part of His Majesty's dominions and shall be called, together with the Settlement of Labuan and its dependencies, the Colony of North Borneo.

ANNEXATION OF
State of North
Borneo

3. All persons who on the fifteenth day of July, 1946, are citizens of the State of North Borneo by virtue of the provisions of the North Borneo Naturalization Ordinance, 1931, shall, on that day become British subjects.

Nationality
Ord. 1 of
1931.

And whereas by certain instruments, subsequent to the said Charter, particulars whereof are specified in the Schedule hereto, further interests, powers and rights over or in respect of the territories therein respectively described were granted to or conferred upon the Company:

And whereas under and by virtue of the said Charter and subsequent instruments the Company became entitled to the full benefit of the said grants, commissions and instruments and acquired all the said interests, powers and rights therein respectively comprised:

And whereas by an Agreement dated the twelfth day of May, 1888, and made between the Government of Her Late Majesty Queen VICTORIA of the one part and the Company of the other part the State of North Borneo was placed under the protection of Her Late Majesty Queen VICTORIA:

And whereas by an Agreement dated the twenty-sixth day of June, 1946, and made between His Majesty's Secretary of State for the Colonies on behalf of His Majesty (therein and hereinafter referred as to "the Crown") of the one part and the Company of the other part the Company (amongst other things) have transferred and ceded all the said rights, powers and interests to the Crown with effect from the fifteenth day of July, 1946, to the intent that the Crown should, as from that day have full sovereign rights over, and title to, the territory of the State of North Borneo and that the said territory should thereupon become part of His Majesty's dominions:

Now, therefore, HIS MAJESTY is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the North Borneo Cession Order in Council, 1946, and shall come into operation on the fifteenth day of July, 1946.

Short title and commencement.

2. As from the fifteenth day of July, 1946, the State of North Borneo shall be annexed to and shall form part of His Majesty's dominions and shall be called, together with the Settlement of Labuan and its dependencies, the Colony of North Borneo.

Annexation of State of North Borneo

3. All persons who on the fifteenth day of July, 1946, are citizens of the State of North Borneo by virtue of the provisions of the North Borneo Naturalization Ordinance, 1931, shall, on that day become British subjects.

Nationality Ord. 1 of 1931.

And whereas by certain instruments, subsequent to the said Charter, particulars whereof are specified in the Schedule hereto, further interests, powers and rights over or in respect of the territories therein respectively described were granted to or conferred upon the Company:

And whereas under and by virtue of the said Charter and subsequent instruments the Company became entitled to the full benefit of the said grants, commissions and instruments and acquired all the said interests, powers and rights therein respectively comprised:

And whereas by an Agreement dated the twelfth day of May, 1888, and made between the Government of Her Late Majesty Queen

4. His Majesty hereby reserves to Himself, Power to
His Heirs and Successors power to revoke, alter, revoke.
add to or amend this Order.

E. C. E. Leadbitter.

THE SCHEDULE.

1. An Instrument, dated the 17th day of Mohurram A. H. 1302 (the 5th day of November, 1884), whereby the Sultan of Brunei, Pangeran Bendhara and Pangeran di Gadong ceded the territory from Si Putong to Kwala Panlow.
2. An Instrument, dated the 6th day of April, 1885, whereby the Sultan of Brunei confirmed the cession of the Island of Palawan.
3. An Instrument, dated the 2nd of March, 1889, whereby Pangeran Shabandar ceded the territory of Padas Damit.
4. An Instrument, dated the 7th day of September, 1901, whereby the Sultan of Brunei ceded the territory between Sepitang and Trusan Rivers.
5. An Instrument, dated the 22nd day of April, 1903, whereby the Sultan of Sulu confirmed the cession of certain islands.

that day become British subjects.

Earl Granville to Mr. Morier

Foreign Office, January 7, 1882.

Sir,

With reference to my despatch of the 7th ultimo respecting the protest of the Spanish Government against the grant of a Charter of Incorporation to the British North Borneo Company, I have to inform you that the papers relating to the subject are about to be laid before Parliament, and that a copy of them will be furnished to you without delay.

In the meanwhile it may be convenient that I should briefly recapitulate the circumstances under which Her Majesty's Government acceded to the application of the Company for Incorporation by Royal Charter, and that I should also draw your attention to the special character of that Charter, and explain its legal effect.

The claim of Spain to sovereignty over the territories of Sulu as you are aware, has never been admitted by Great Britain and Germany, and the interference of the Spanish authorities with the freedom of trade in the Sulu Archipelago has formed the subject of discussions and negotiations, and of a correspondence between the three Governments extending over many years.

In consequence of the seizure in 1873 of certain German vessels in the waters of Sulu and of the subsequent detention of a British vessel by a Spanish man-of-war, Her Majesty's Government caused a careful examination to be made of the various Treaties between Great Britain and Sulu, and between Spain and Sulu, and of the correspondence relating to those Treaties.

The conclusion then arrived at by Her Majesty's Government and communicated by Lord Derby to the German Government in January 1876, was that, whatever rights Spain may have had to the sovereignty of Sulu and its dependencies, those rights must be considered to have lapsed owing to the complete failure of Spain to attain a de facto control over the territory claimed; and Her Majesty's Government considered that, in these circumstances, the interruptions of foreign trade caused by the Spanish proceedings in the Sulu Archipelago could no longer be tolerated. Negotiations thereupon ensued between Great Britain and Germany on the one side and Spain on the other, which finally led to a basis of arrangement. Lord Derby accepted this basis as a modus vivendi on certain conditions, the first of which was that the Protocol proposed to be drawn up for carrying it out "should contain no recognition of Spanish sovereignty over any part of the Sulu Archipelago." The Protocol was finally signed at Madrid

by the Representatives of Great Britain and Germany, and by the Spanish Minister at Madrid, on the 11th of March 1877, and its object was declared to be the maintenance of the freedom of commerce and navigation, in the "Sulu Archipelago."

It was understood that the question of sovereignty should remain in status quo, and all reference to that question, therefore, was carefully avoided in the text of the Protocol; but Sir H. Layard, then Her Majesty's Representative at Madrid, in accordance with his instructions, informed the Spanish Minister that "it must be distinctly understood that the claim of Spain to sovereignty over the Sulu Archipelago was not acknowledged."

The Protocol made concessions on each side, and it was believed that all grounds of future dissension were removed. This illusion, however, was speedily dispelled by the announcement that the Spaniards had compelled the Sultan to sign a fresh Treaty with them, which revived the old dispute as to sovereignty.

By this Treaty dated the 2nd of July, 1878, the Sultan was made to constitute himself the vassal of Spain, and to recognize Spanish sovereignty over the whole of the Sulu Archipelago and its dependencies, which, according to the Spanish contention, include the territories tributary to the Sultan on the north-east coast of Borneo.

For the present purpose I propose to confine my remarks to the claim of Spain to the north-east coast of Borneo.

The Protocol of Madrid, which secured foreign trade from further molestation in the Sulu Archipelago, does not extend to the mainland of Borneo. The territorial limits of the sovereignty formerly claimed by Spain in the Sulu Archipelago are clearly defined in the Treaty between Spain and Sulu of 1836, wherein they are declared to extend "from the western point of Mindanao to Borneo and Palawan, with the exception of Sandakan and the other countries tributary to the Sultan and the continent of Borneo."

North Borneo lies in the fair way of an immense British maritime trade between China, Australia, India, and the United Kingdom. Its occupation by a foreign Power would be a source of disquietude to this country, and for that reason clauses were inserted in the British Treaties of 1847 and 1849 with the Sultans of Sulu and Brunei, under which they respectively engaged not to make any cession of territory to any other nation than Great Britain without the consent of Her Majesty's Government.

Thirty years ago, in consequence of a report that Spain laid claim to some portion of the north-east coast of Borneo, under a recent Convention with the Sultan of Sulu, Lord Howden, then Her Majesty's Representative at Madrid, was instructed, in a dispatch the 11th of May, 1852, to remind the Spanish Government that as early as the years 1761, 1764, and 1769, Treaties of Friendship and

Commerce were entered into by Her Majesty's Government with the Sultan of Sulu, and that by one of those Treaties cessions of territory were made to Her Majesty's Government, including the Island of Balambangan and the several dependencies of the Sulu Empire on the eastern coast of Borneo; and that on repeated occasions some of those ceded territories had been militarily occupied by British troops.

No record can be found on the claim of Spain to this territory having since been renewed, but on the contrary, in January 1877, shortly before the signing of the Protocol of Madrid, the Spanish Foreign Minister declared to Her Majesty's Representative that his Ministry had no designs on Borneo, and limited the claim of Spanish sovereignty to Sulu and the adjacent islands. It was therefore with feelings of no little surprise that in the following year Her Majesty's Government received the announcement of the claim of Spain to sovereignty over the north-east coast of Borneo, under the new Treaty of 1878, and reports of attempts on the part of the Spanish authorities at Manila to plant their flag in that territory.

It was at this juncture that Mr. Alfred Dent, the founder of the British North Borneo Company, came forward and asserted his rights to the territories of Northern Borneo under cession made to him by the Sultans of Brunei and Sulu, shortly before the date of the new Spanish Treaty.

On the end of December, 1878, Mr. Dent addressed a letter to the Foreign Office, inclosing a printed Statement and application for a Royal Charter of Incorporation to an Association in the course of formation for the development of North Borneo, under the cessions from the two Sultans, both of whom claimed sovereignty over the east coast.

After communication with the German Government, the Marquis of Salisbury, in a despatch dated the 20th May 1879, instructed Mr. West, then Her Majesty's Minister at Madrid, to protest, on behalf of Her Majesty's Government, against the claim of Spain to sovereignty over any part of Borneo.

A correspondence also took place on the subject of the cessions to Mr. Dent, between Her Majesty's Government and that of the Netherlands. The immense acquisitions of Holland in the Eastern Archipelago since the Treaty of 1824 between Great Britain and that country are shown in a map which you will find attached to the Parliamentary Papers. They are not confined to the islands south of the Straits of Singapore, to which alone the Treaty of 1824 applies, but comprise the southern part of the vast Island of Borneo. The Netherlands Government opposed the grant of the Charter applied for by Mr. Dent as being incompatible with the Treaty of 1824, which, it contended, precluded the formation of any British Settlement in Borneo.

This construction of the Treaty has never been accepted by Her Majesty's Government, and was emphatically repudiated by the

Earl of Aberdeen in 1845, when a controversy arose on the point between the two Governments.

Moreover, the objection did not properly arise in the present case, as there was no question of the annexation of North Borneo by Great Britain, or of the establishment of a British Protectorate there. This was pointed out to the Netherlands Government in Lord Salisbury's despatch to Mr. Stuart of the 24th November 1879, and the character of Mr. Dent's undertaking and of the Charter then under consideration was fully explained.

The principal legal effect of the Charter applied for by Mr. Dent would be to confer the ordinary incidents of incorporation on his Association. It was open to him to obtain incorporation by registration under the Companies Acts, and to carry out his scheme independently of Her Majesty's Government; but the incorporation of the Company by Royal Charter would be the formal recognition of the title of Mr. Dent and his Association to the territories granted to him by the Sultans, and in return for such recognition the Company offered to submit to the control of Her Majesty's Government in the exercise of the powers derived from the Sultans, especially with regard to the treatment of the natives, and in the settlement of any questions arising between the Company and foreign Powers.

On the 12th April, 1880, Mr. Dent again addressed the Foreign Office, pointing out the progress made towards the civilization and development of the country in question since the occupation of it by his Resident and agents in December 1877. He stated that order prevailed, that Englishmen were cordially welcomed, that the authority of his Resident and agents was everywhere acknowledged by the native Chiefs and populations, and he urged an immediate decision on his application for a Charter. These assurances were confirmed by official reports from our Consular and Naval Officers.

In the meanwhile, reports continued to arrive from Her Majesty's Consular Officers as to the action of the Spanish authorities in Sulu, which rendered it important that a decision should no longer be delayed.

After very careful consideration of all the circumstances of the case Her Majesty's Government decided that the Charter should be granted, and you will perceive on examination of its provisions that its effect is to restrict and curtail the powers of the Company and not to create or enlarge them.

The "British North Borneo Company" are in fact established under three Charters.

1. The Charter and territorial Concession from the Sultan of Sulu.

2. The Charter and territorial Concession from the Sultan of Brunei.

3. The British Charter of Incorporation.

The first two Charters, from the Sultans of Sulu and Brunei, are those under which the Company derive their right to the possession of the territories in question, and their authority from the Sultans.

The third Charter is the British Charter under which the Company have obtained incorporation and a recognition by Her Majesty's Government of their title to the territories granted. In return for incorporation by Royal Charter, and for the recognition of the Concessions, the Company have surrendered to Her Majesty's Government various powers of control over their proceedings, which, though of a negative character only, are sufficient for the prevention by Her Majesty's Government of any abuse in the exercise of the authority conferred by the Sultans. It is important to bear in mind that no such control would have been reserved to the Crown had the Company taken incorporation in the usual manner by registration under the Companies Acts, and elected to follow their own course independently of Government support.

The British Charter therefore differs essentially from the previous Charters granted by the Crown to the East India Company, the Hudson's Bay Company, the New Zealand Company, and other Associations of that character, in the fact that the Crown in the present case assumes no dominion or sovereignty over the territories occupied by the Company, nor does it purport to grant to the Company any powers of government thereover; it merely confers upon the persons associated the status and incidents of a body corporate, and recognize the grants of territory and the powers of government made and delegated by the Sultans in whom the sovereignty remains vested. It differs also from previous Charters, in that it prohibits instead of grant a general monopoly of trade.

As regards the general features of the undertaking, it is to be observed that the territories granted to the Company have been for generations under the government of the Sultans of Sulu and Brunei, with whom Great Britain has had Treaties of Peace and Commerce; and far from any disorders arising out of the occupation of those territories by British subjects under the Concessions of the Sultans, the advent of the Company has been welcomed everywhere by the inhabitants. The experience of three years shows that the peaceful and intelligent development of the great natural resources of the country is steadily increasing, and there is every reason to believe that a sound and liberal system of administration will be established by the Company which will spread the benefits of civilization among the native population, and open up new and important fields to British trade and enterprise, and to commerce of all nations.

I am, &c.
(Signed) GRANVILLE.

LETTER OF FRANCIS B. HARRISON TO VICE PRESIDENT
AND SECRETARY OF FOREIGN AFFAIRS
ELPIDIO QUIRINO

OFFICE OF THE PRESIDENT OF THE PHILIPPINES

Manila, February 27, 1947

Honorable Elpidio Quirino
Vice-President and concurrently
Secretary of Foreign Affairs

My dear Mr. Secretary:

I have the honor to submit herewith the portfolio of papers prepared under your direction, concerning the present status of those territories in North Borneo over which, since 1714, the Sultanate of Sulu has held sovereignty.

In an earlier memorandum dated September 26, 1946, and now in this file, I advised the Philippine Government to protest to the Government of Great Britain against the latter's announcement of July 16, 1916, that the State of North Borneo had become a Crown Colony of the British Monarchy. This Annexation took place just twelve days after the Inauguration of the Republic of the Philippines, and was done in derogation of the rights of the Sultanate of Sulu.

Meanwhile, further important evidence has come to us from the Philippine Embassy in Washington, where Mr. Eduardo Quintero, searching in the National Archives, found a photostatic copy of the document dated January 22, 1878, upon which the British Government base their claim to all the lands tributary to the Sultanate of Sulu. This was obtained in 1940 by the United States Department of State from the British Government, and is hereto annexed.

Borneo Records, Department of Foreign Affairs,
Manila. Mr. Harrison was a former United States Governor-General of the Philippine Islands. He served as Special Adviser on Foreign Affairs to President Manuel A. Roxas.

The second copy of this document had been held by the Sultan of Sulu, and, as is alleged, was stolen from him during a visit he made to Singapore many years ago. This story is to be found in the newspaper article in the Chicago Daily Tribune of October 14, 1945, written by Mr. Aleko Lilius in an authenticated interview with the late Sultan of Sulu.

The photostatic copy of this document, furnished by the British Government has been translated at my request by Mr. Harold Conklin, assistant to Professor H. Otley Beyer in the University of the Philippines. Mr. Conklin is a qualified scholar in the Malay language and in the Arabic script in which language and writing this document was written. This translation now follows:

"Signature of Sultan
Mohammed Jamalul Alam

Official seal of the
Sultan of Sulu

GRANT BY THE SULTAN OF SULU OF A PERMANENT LEASE COVERING
HIS LANDS AND TERRITORIES ON THE ISLAND OF BORNEO:
Dated January 22nd, 1878.

We, Sri Paduka Maulana Al Sultan MOHAMMED JAMALUL ALAM, Son of Sri Paduka Marhum Al Sultan MOHAMMED PULALUN, Sultan of Sulu and all dependencies thereof, on behalf of ourselves and for our heirs and successors, and with the expressed desire of all Datus in common agreement, do hereby desire to lease, of our own free will and satisfaction, to Gustavus Baron de Overbeck of Hongkong, and to Alfred Dent, Esquire, of London, who act as representatives of a British Company, together with their heirs, associates, successors, and assigns, forever and until the end of time, all rights and powers which we possess over all territories and lands tributary to us on the mainland of the Island of Borneo, commencing from the Pandassan River on the west, and thence along the whole east coast as far as the Sibuku River on the south, and including all territories, on the Pandassan River and in the coastal area, known as Paitan, Sugut, Banggai, Labuk, Sandakan, China-batangan, Mumiang, and all other territories and coastal lands to the south, bordering on Darvel Bay, and as far as the Sibuku River, together with all the islands which lie within nine miles from the coast.

In consideration of this (territorial) lease, the honorable Gustavus Baron de Overbeck and Alfred Dent,

Esquire, promise to pay to His Highness Maulana Sultan Mohammed Jamalul Alam, and to his heirs and successors, the five thousand dollars annually, to be paid each and every year.

The above-mentioned territories are from today truly leased to Mr. Gustavus Baron de Overbeck and to Alfred Dent, Esquire, as already said, together with their heirs, their associates (company), and their successors or assigns, for as long as they choose or desire to use them; but the rights and powers hereby leased shall not be transferred to another nation, or a company of other nationality, without the consent of Their Majesties' Government.

Should there be any dispute, or reviving of old grievances of any kind, between us, and our heirs and successors, with Mr. Gustavus Baron de Overbeck or his Company, then the matter will be brought for consideration or judgment to their Majesties' Consul-General in Brunei.

Moreover, if His Highness Maulana Al Sultan Mohammed Jamalul Alam, and his heirs and successors, become involved in any trouble or difficulties hereafter, the said honorable Mr. Gustavus Baron de Overbeck and his Company promise to give aid and advice to us within the extent of their ability.

This treaty is written in Sulu, at the Palace of the Sultan Mohammed Jamalul Alam, on the 19th day of the month of Muharam, A.H. 1295; that is on the 22nd day of the month of January, year 1878.

Seal of the Sultan
Jamalul Alam

Witness to seal and signature:

(Sgd.) W. H. Treacher,

H.B.M. Acting Consul General in
Borneo

A true translation of the attached original document
written in Malay language in Arabic characters.

(Sgd.) Harold C. Conklin"

In my opinion, the most important features of the

above document are:

(1) This is distinctly a lease, and not a cession of sovereignty as is claimed by the latter-day British officials;

(2) It is a permanent lease on annual rental of five thousand (Mexican) dollars, and was not limited in duration as was maintained by many of the present day Joloano Moros. The rental has not been paid since the year 1939. A similar lease of his territories was made by the Sultan of Brunei in 1865 to American Consul Charles Lee Moses, but that was limited to a fixed period, though in terms was renewable. Consul Moses always referred to his title deed as a lease, which, falling support by the Department of State, was later transferred to Baron Overbeck and Mr. Dent. If we could secure a copy of the original document by which the Sultan of Borneo in 1841 established Mr. (later Sir James) Brooke as the Rajah of Sarawak we should probably find this also was a lease and was the prototype of this whole series of transactions;

(3) The Sultan of Sulu, in the above photostat of his lease of 1878 to Baron Overbeck and Alfred Dent professes explicitly that he is acting "on behalf of ourselves and for our heirs and successors and with the expressed desire of all Datus in Common Agreement." But we note that none of the Datus is mentioned by name in this instrument, nor does the signature of any of the Datus or of any members of the Council of State appear on the document. This is a most significant omission, for one of the other of these courses was required by their customary law.

For the full implication of this significant omission, please see the annexed "Brief Memorandum on the Government of the Sultanate of Sulu and Powers of the Sultan, During the 19th Century," dated December 8, 1946, and prepared at my request by Professor H. Otley Beyer of the University of the Philippines.

Professor Beyer there states that: "In Sulu the government is an oligarchy-vested in the Sultan and datus, in the Ruma Bechara assembled."

We have thus no evidence that the members of the Ruma Bechara were present or consented to the signing by the Sultan of the lease of January 22, 1878, to Overbeck and Dent. This fact utterly impugns the validity of this transaction and raises serious doubts as to the whole matter.

My opinion then, upon the document offered us in

photostatic reproduction by the British Government as a basis of a present claim to sovereignty over the territories in questions, is that this title is of an obscure and doubtful origin and is without vigor because it is not in compliance with Moro law.

It should be noted that the translation of the above given document is in quite different language from the copy furnished by Mr. Justice Mackaskie of the High Court of North Borneo on December 18, 1939, and upon which this Judge bases his decision. I quote his language from a photostatic copy of the decision which is attached to these papers: (The underscores given are mine)

"The translation of the main deed of Cession of 1878 as given in "Treaties and Engagement affecting the Malay States and Borneo," by Maxwell and Gibson is as follows:

"Grant by Sultan of Sulu of Territories and Lands on the mainland of the Island of Borneo, Dated 22nd January, 1878.

"We Sri Paduka Maulana Al Sultan Mohammed Jamal Al Alam Bin Sri Paduka Al Marhom Al Sultan Mohamet Fathlon Sultan of Sulu and the dependencies thereof on behalf of ourselves our heirs and successors and with the consent and advice of the Datoos in Council assembled hereby grant and cede of our own free and sovereign will to Gustavus Baron de Overbeck of Hongkong and Alfred Dent, Esquire of London as representative of a British Company x x x x."

Upon examination of our own translation of the original document (in photostat) it will be seen that Maxwell and Gibson, the English authors on whose text the decision of Mr. Justice Mackaskie was based, have changed the language so as to make the document a grant cession instead of lease, as it really was, and as the word "padjak" in the original really means. In view of this vital divergence from the original text, I do not find myself able to give full faith and credit to the opinion of Mr. Justice Mackaskie in the famous case in 1939 in Sandakan.

A second agreement was signed by the same Sultan of Sulu on the same date, January 22, 1878, of which we have not the original text but have received from the Department of State in Washington a photostat of a type-written document in English, entitled: "Commission from the Sultan of Sulu appointing Baron de Overbeck Datu Bandahara

and Rajah of Sandakan." The appointment is said to be in almost identical language with the commission of Rajah or Governor of the Brunei lands by the Sultan thereof in 1865 to Consul Charles Lee Moses. The delegation of powers to the Rajah or Governor of Sandakan is very complete, and all persons are called upon "to respect his authority therein as our own." (Underscore mine.)

This second agreement was evidently an appointment as Governor or Rajah under the feudal system which then still prevailed in the Mohammedan Malay sovereignty.

(4) The very special pleading of Mr. Justice Mackaskie in his decision in the High Court of Sandakan on December 18, 1939, has been, no doubt, the basis upon which the British government acted in absorbing these territories as a Crown Colony on July 16, 1946. This decision is discussed at some length in my previous memorandum of September 26, 1946. I shall take up again one point made in that paper, namely the argument of Justice Mackaskie that upon death in 1936 of Sultan Jamalul Kiram II, President Quezon did not "recognize" any new Sultan of Sulu in response to enquiries from the North Borneo Government. I wish to reiterate my previous statement that so far as the Sultanate of Sulu was concerned, President Quezon had no legal power to abolish the Sultanate - that could have been done only by the Moros themselves, either by positive action of their own, or by neglect to elect a new Sultan - but promptly thereafter two Sultans of Sulu were chosen by rival factions. The only other way in which an ancient State like the Sultanate of Sulu could have been abolished would have been by force, as, for example by armed conquest, and that determination of the question was, of course, lacking in the premises.

As to the question as to what should now be done by the Government of the Republic of the Philippines in this matter, I wish to enter here the opinion expressed by Dr. Beyer on page 10 of his memorandum of December 8, 1946 (hereto annexed) as follows:

"The question as to whether the present Government of the Republic of the Philippines should take any definite action in the way of officially recognizing the existing Sultan of Sulu is a matter of public policy on which I have no desire to make specific recommendation. In the interest of the peace and welfare of the numerous Mohammedan citizens of the Sulu Archipelago, however, I believe that it is a matter that should sooner or later receive

serious consideration from the President and his Cabinet with a view to arriving at some just solution of this vexatious question."

Your Government has honored me with a request for an opinion on these matters, and I recommend that the Sultanate of Sulu be advised to eliminate the existing anomaly of having two rival Sultans, and that they elect only one legal Sultan, and that the latter, whoever he may be, should, as promptly as may be, request the Government of the Republic of the Philippines on behalf of the Sultanate to protest the absorption of their sovereign rights in North Borneo territories into a British Crown Colony, and if met with a refusal, on the part of the British Government, to reconsider this action, that the whole matter be laid before the United Nations Organization for adjustment.

In conclusion, I draw attention to the parallel situation in the adjoining States of Sarawak which was taken by the British Government as a Crown Colony a few weeks before similar action on British North Borneo. The negotiations for Sarawak were made by its recent Rajah, the grand nephew of the first Brooke who had been commissioned as Rajah or Governor of Sarawak by the Sultan of Brunei in 1841. In 1888, Sarawak was "recognized" by the British Government as an independent country under the protection of Great Britain, still under a Rajah Brooke. The Third Rajah Brooke, for certain compensation, recently ceded his country to England as a Crown Colony. The nephew of Rajah Brooke, his successor in line, Mr. Anthony Brooke, has made protest against the destruction of the independence of his country; has recently (in December 1946) been refused admission to the new Crown Colony of Sarawak; has aroused support both in Sarawak and in the British Parliament, and he now proposes to lay the whole matter before the United Nations Organization.

In reviewing the subject of the claims of the Sultanate of Sulu to their ancient patrimony in North Borneo, one must come to the conclusion that the action of the British Government in announcing on the sixteenth of July, just twelve days after the inauguration of the Republic of the Philippines, a step taken by the British Government unilaterally, and without any special notice to the Sultanate of Sulu, nor consideration of their legal rights, was an act of political aggression which should promptly be repudiated by the Government of the Republic of the Philippines.

The proposal to lay this case before the United Nations should bring the whole matter before the bar of

serious consideration from the President and his Cabinet with a view to arriving at some just solution of this vexatious question."

Your Government has honored me with a request for an opinion on these matters, and I recommend that the Sultanate of Sulu be advised to eliminate the existing anomaly of having two rival Sultans, and that they elect only one legal Sultan, and that the latter, whoever he may be, should, as promptly as may be, request the Government of the Republic of the Philippines on behalf of the Sultanate to protest the absorption of their sovereign rights in North Borneo territories into a British Crown Colony, and if met with a refusal, on the part of the British Government, to reconsider this action, that the whole matter be laid before the United Nations Organization for adjustment.

In conclusion, I draw attention to the parallel situation in the adjoining States of Sarawak which was

world opinion. Never, in history, has there been given any people such an opportunity as exists today, to secure justice by an appeal to the enlightened conscience of mankind.

(Signed) FRANCIS B. HARRISON
Adviser to the President

NATIONS SHOULD BRING THE WHOLE MATTER BEFORE THE BAR OF

SATURDAY, DECEMBER 5, 1987

PHILIPPINE DAILY
INQUIRER

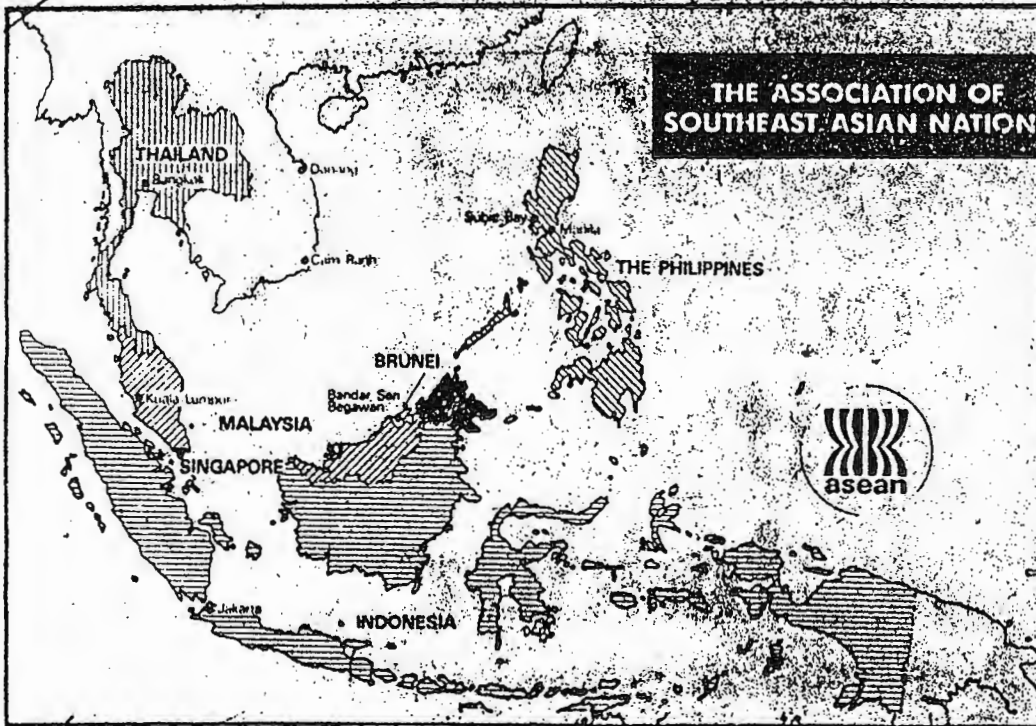


Mohammad Julaspi Kiram
Sultan of Sulu

NETO CABANES, Asst. Business Editor

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CHECKING ACCOUNTS * SAVINGS ACCOUNTS * TIME DEPOSITS



MANILA BULLETIN

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1987

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COPY OF COMMISSION FROM THE SULTAN OF SULU APPOINTING
BARON DE OVERBECK DATU BANDAHARA AND
RAJAH OF SANDAKAN

Commission from the Sultan of Sulu appointing Baron de Overbeck
Datu Bandahara and Rajah of Sandakan. Dated 22nd January 1878.

To all nations on the face of the earth whom these matters
may concern. We Sri Paduka Maulana Al Sultan Mahomet Al Alam
Al Bin Marhom Sri Paduka Maulana Al Sultan Mahomet Fathlan
Sultan of Sulu and its dependencies send greetings:

Whereas we have seen fit to grant unto our trusty and well
beloved friends Gustavus Baron de Overbeck and Alfred Dent
Esquire certain portions of the dominions owned by us comprising
all the lands on the north and east coast of the Island of Borneo
from the Pandassan River on the north-west to the Sibuco River
on the east coast including amongst others the states of Paitan,
Sugut, Bangaya, Labuk, Sandakan, Kina Batangan, and Mumiang
and all the lands and territories in Darvel Bay as far as the Sibuco
River together with all the lands belonging thereto for a certain
consideration between us agreed: and

Whereas the said Baron de Overbeck is the chief and only
authorized representative of his Company in Borneo;

Now therefore know ye that we the Sultan Sri Paduka Maulana
al Sultan Mahomet Al Alam Bin Al Marham Sri Paduka Al Sultan
Mahomet Fathlan Sultan of Sulu and its dependencies have nomi-
nated and appointed, and do hereby nominate and appoint Baron de
Overbeck supreme and independent ruler of the above named terri-
tories with the title of Datu Bandahara and Rajah of Sandakan
with absolute power over life and death of the inhabitants of the
country with all the absolute rights of property over the soil of the
country vested in us and the right to dispose of the same as well
as the rights over the productions of the country whether mineral,
vegetables or animal with the rights of making laws, coining money,
creating an army and navy and levying customs dues on home and
foreign trade and shipping and other dues and taxes on the inhabi-
tants as to him may seem good or expedient together with all other
powers and rights usually exercised by and belonging to sovereign

rules and which we hereby delegate to him of our own free and
sovereign will.

And we call upon all foreign nations with whom we have
formed friendly treaties or alliances and we command all Datus,
Nobles, Governors, Chiefs and people owing allegiance to us in the
said territories to receive and acknowledge the said Datu Banda-
hara as the supreme ruler over the said States and to obey his
commands and respect his authority therein as our own. And in the
case of the death or the retirement from office of the said Datu
Bandahara then his duly appointed successor in the office of
supreme ruler and governor-in-chief of the Company's territories
in Borneo shall likewise if appointed thereto by the Company
succeed to the title of Datu Bandahara and Rajah of Sandakan and
all the powers above enumerated be vested in him.

Done at the Palace of the Sultan at Lipuk in the Island of
Sulu on the nineteenth of Maharam A.H. 1295 being the 22nd day
of January A.D. 1878.

FAST FOOD FOR THOUGHT

VICENTE
ALBANO
PACIS



British blunder, Sabah claim

IN Britain a massive legal blunder has just been discovered and remedial legislation is being rushed to correct the great error. This column believes the British equally blundered in the Sabah case, and when the error is proved to them, they will also make amends with alacrity. After all, Britain has done a lot to spread the rule of law around the world and will be the last to discard it even unknowingly.

There are today 2,000 men and women in Britain who are supposed to have been divorced and many of them have remarried. But according to a news story brought by *United Press International* from London to Manila, last Dec. 20, the county courts which finalized English divorces quietly lost the power to do so and no substitute entity was created or assigned to take over the function. As this situation happened about 20 months ago, the divorces of about 1,000 couples had not been finalized.

In Britain, when one of the parties to a divorce contests the divorce, a high court hearing is needed. When a settlement was reached, they applied to the lower court in the country where they lived for a decree finalizing the divorce. "But during the last 20 months," reported *UPI*, "such courts no longer have the power to issue such decrees — a technicality overlooked by the judges and lawyers until last week.

"An article in the current edition of *New Law Journal* said new rules that took effect in April 1986 made the issuance of such decrees no longer under the county courts' jurisdiction, rendering the divorces of up to 2,000 people invalid," *UPI* added.

The "unfortunate oversight" was only discovered earlier in December "when an attorney in a child custody battle discovered his client's divorce was not legal in the first place...a spokesman for the Lord Chancellor's Department in charge of Britain's legal administration said the blunder was an unfortunate oversight..."

Those who have since remarried, said the *UPI*, thinking their divorces were finalized, are actually bigamists, prompting government moves to pass legislation automatically finalizing the divorces of those affected.

In the Sabah case, the British Colonial Office made one error, evidently in good faith. On June 26, 1946 it drafted what it called "North Borneo Agreement for the Transfer of the Borneo Sovereign Rights and Assets from the British North Borneo Company to the Crown."

In this document, it is stated, "The Company (British North Borneo Company) hereby transfers and cedes the North Borneo Rights to the Crown, with effect from the day of transfer, to the intent that the Crown shall, as from the day of transfer, have full sovereign rights over, and title to the territory of the state of North Borneo, and that the said territory shall there-upon become part of His Majesty's dominions."

But nowhere in the Charter granted to the British North Borneo Company on Nov. 1, 1881, in the forty-fifth year of Queen Victoria's reign, is there granted to the Company any power of sovereignty or dominion. In fact the Charter concludes: "...in case at any time it is made to appear to us in our Council that the Company has failed to comply with any material condition by this our Charter prescribed, it shall be lawful for us, our heirs and successors...to revoke this our Charter."

A grant of the right of sovereignty and dominion would hardly make such a stipulation.

In a statement made on Jan. 7, 1882, Earl Granville, then the head of the British Foreign Office, wrote: "The British (North Borneo) Charter differs essentially from the previous charters granted by the Crown to the East India Company, the Hudson Bay Company, the New Zealand Company and other associations of that character in the fact that the Crown, in the present case, assumes no dominions or sovereignty over the territories occupied by the Company, nor does it purport to grant to the Company any powers of government thereof; it merely confers upon the persons associated the status and incidents of a body corporate, and recognizes the grant of territory and the powers of government made and delegated by the Sultans in whom the sovereignty remains vested." The Charter comprehends the grants by the Sultans of Brunei and Sulu leased to a group of British businessmen who applied to the Crown for the Charter.

If there was neither the power of sovereignty or of dominion in the British Charter of 1881, as Earl Granville categorically testified to, it is clear that the Charter could not have passed these powers, which it did not have, to the Crown in 1946 in the so-called North Borneo Agreement. Consequently, the Crown could not have passed the same powers, because it never received them, to the Federation of Malaysia when it was created in 1963.

In conscience and honor, Great Britain must correct this error, which is far more serious than its error affecting 2,000 divorced persons, and restore the ownership of North Borneo (Sabah) to its rightful owners.