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Historical Notes on the North Borneo Dispute

LEIGH R. WRIGHT

THE Philippine claim to the territory of North Borneo, or as it is now called, Sabah, is not of recent origin. Rather it is based on an older claim to the area by the Sultans of Sulu. But the Sulu claim itself is suspect. A look at the background and an analysis of the status of North Borneo is therefore essential to understanding the nature of the dispute.

In January 1878 Sultan Mohammed Jamalul Alam, granted a portion of North Borneo, which he claimed, to an international syndicate headed by Alfred Dent, a London businessman, and the Austrian Baron Gustav von Overbeck.¹ A few weeks before this grant was made, in December 1877, the Sultan of Brunei had ceded North Borneo, including the whole of the area claimed by Sulu, to von Overbeck and Dent. Dent was the son of Thomas Dent of Dent and Company, the great commercial house of Hongkong and had himself been connected with the firm in Hongkong for years before removing to London.² Overbeck had served as Austrian Consul in Hongkong. Dent bought out von Overbeck and organized the British North Borneo Company. Under a charter from the British crown, the company administered North Borneo until 1946 when it became a crown colony.

The nature of the grant of territory to Dent and von Overbeck by the Sultan of Sulu is the basis of the present Philippine claim. International rivalry which led up to the demarcation of territory between Spain and Britain in 1885, with Germany as an interested party, forms an intriguing background. Additionally, Bornean political conditions dating from the early eighteenth century also have a bearing upon the controversy. This background can only lightly be touched upon for it has not been adequately studied with respect to the question of sovereignty in North Borneo.

Although recognized as sovereign over the Sulu Archipelago it is not at all certain that the Sulu Sultans held sovereignty over any part of North Borneo. What is clear is that they never held *de facto* control there. Until 1878 power along the coast of Northeast Borneo was in the hands of rapacious pirates, mainly the Illanun and Balagnini but including some Sulus. Because of their power and because they were feared, the local people had long since removed far inland, up the rivers. When von Overbeck arrived in Sandakan in 1878, the first villages were found sixty miles up the rivers. Those few communities which remained along the coast were primarily

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¹ The most recent study of the origin of the State of North Borneo is in L. R. Wright, "British Policy in the South China Sea Area with Special Reference to Sarawak, Brunei and North Borneo, 1860-1888," unpublished Ph.D. thesis, University of London, 1963.

² *Ibid.*, *passim*. Dent with other old China hands was instrumental in organizing the China Association which had an interesting role in Anglo-Chinese relations after 1889. See N. A. Pelcovits, *Old China Hands and the Foreign Office*, New York, 1948.

supply bases for the pirate fleets.³ The northwest coast from Marudu Bay to Brunei Town was relatively free from pirate raids after the destruction of the Illanun fortified town of Tempasuk in 1869 by British gunboats. Chiefs of this coast looked to Brunei in a vague way as overlord. Several rivers on this coast were under the control of independent local chiefs or Datos who, when convenient, recognized the Sultan of Brunei as spiritual leader.

The story begins with the state of Brunei centered on Brunei Town on the northwest coast of Borneo.⁴ Before 1500 Brunei had a close connection with Majapahit, perhaps that of a tributary state. It is probable that Brunei sent tribute to China, but only irregularly.⁵ By 1500 Islam had spread to the coast of Borneo with the rise and success of Malacca and the country was an independent Malay state. The sixteenth century saw Brunei reach its greatest extent and glory. The Sultan was sovereign over all northern Borneo, the Sulu Archipelago and part of the Philippines, and for a short time Manila paid tribute to Brunei.⁶ Pigafetta, the historian of Magellan's voyage, described the magnificence of the Brunei court in 1521.⁷ A century later Brunei was still powerful enough to consider going to the aid of Pahang in a war with Johore.⁸

In the sixteen thirties Brunei and Sulu people attacked Spanish settlements in the Philippines. The Spaniards, seeking revenge, sacked and burned Brunei in 1645, and from the middle of the seventeenth century Brunei declined steadily. By the nineteenth century the Sultan was not able to rule effectively beyond Brunei Town. His authority was only nominal on the northwest coast, with yet some residual respect for his title and leadership.

With the decline of Brunei, Sulu achieved an independent status.⁹ The Sulu Archipelago, lying between northeast Borneo and Mindanao, stretches across one of the most frequently used passages to the South China Sea. From 1578 the Spanish rulers of the Philippines periodically attempted to conquer the islands. In 1763 a permanent garrison was established at Zamboanga, on Mindanao opposite the Sulu Islands. By 1847 the actual occupation of the area by the Spaniards was still limited to the presidio of Zamboanga despite military expeditions in 1823 and 1827.

The Sulu claim to North Borneo dates from the early eighteenth century. Sometime late in the previous century rivals for the throne of Brunei, Abdul Mobin and Muaddin, were involved in civil war. They were grandsons of Hasan, the ninth Sultan of Brunei, and reportedly the most autocratic and magnificent of the sovereigns of Brunei, who ruled around 1600. After a dozen years of desultory fighting, the

³ W. B. Pryer, "Notes" on Ada Pryer's manuscript of *Ten Years In Borneo*, London, 1894, in the British North Borneo Company Papers (hereafter BNBCoP).

⁴ The best record of early Brunei is in H. Low, "Selesilah" (Book of the Descent), in *Journal of the Straits Branch of the Royal Asiatic Society* (hereafter *JRASSB*), June 1880; and H. R. Hughes-Hallett, "Sketch of the History of Brunei" in *Journal of the Malay Branch of the Royal Asiatic Society* (hereafter *JRASMB*), August 1940. Low's information is from family records of the Brunei rajahs which he translated. Together these two sketches furnish most of what is known about Brunei before the 19th century.

⁵ Hughes-Hallett, p. 24.

⁶ Low, "Selesilah," p. 8.

⁷ Lord Stanley of Alderley (ed.) *The First Voyage Round the World by Magellon*, The Hakluyt Society, London, 1874, pp. 110-8.

⁸ W. H. Moreland (ed.) *Peter Floris: His Voyage to the East Indies in the Globe 1611 to 1615*, The Hakluyt Society, London 1934, p. 73.

⁹ N. Saleeby, *History of Sulu*, Manila 1908, is perhaps the most complete history of Sulu.

Batara of Sulu arrived on the scene with several *pěrahus* filled with warriors.¹⁰ Sulu tradition holds that both rivals sought the aid of the Sulus. Muaddin, who probably had the more legitimate claim,¹¹ was successful in bargaining with the Batara. He reportedly received help by offering the Sulus some Brunei territory in northern Borneo from Pulau Sebatik on the east coast to Kimanis on the west coast.¹² With the aid of the Sulu warriors Muaddin suppressed his rival and established his rule. H. Low's account says the Brunei people looked on while the Sulu people did the fighting. According to H. R. Hughes-Hallett it is not clear whether Brunei ceded northern Borneo to Sulu or whether the latter claimed it as the reward for military aid.¹³ The Sulu claim has been disputed by successive Sultans of Brunei who have denied that a cession of North Borneo to Sulu ever occurred.¹⁴ Sulu had little success, if indeed an effort was made, in establishing her rule over the area.¹⁵

This was the state of things when Alexander Dalrymple, representing the British East India Company, arrived in Sulu late in 1760. He was charged by the company with the establishment of a factory in the Sulu seas in an attempt to exploit the trade of that area and to attract the traders from northern China who frequented the islands.¹⁶ In 1761 Dalrymple entered into an understanding with the Sultan of Sulu for the grant of a site for a factory, and he negotiated a treaty of friendship and commerce.¹⁷ He selected Balambangan Island, off the north point of Borneo, as the location for a company establishment. The island was ceded to the company in September of the following year. When Britain occupied Manila soon after, Dalrymple was instrumental in reestablishing the legitimate Sultan of Sulu, Alimuddin, in the islands in place of the usurper, Bantilan, with whom Dalrymple had previously treated.¹⁸ By the Sulu-British treaties of 1763 and 1764 not only were the former agreements confirmed but the Sultan awarded to the East India Company his claim in northern Borneo, from Kimanis River on the northwest coast to Trusan on the northeast side. The British were also granted the islands of Balambangan, Palawan, Banggi, Balabac and Manak.¹⁹ This large grant was confirmed and further defined by Sultan Alimuddin in 1769 when Captain Savage Trotter of the East India Company visited Sulu. According to Captain Trotter the Sultan was "extremely solicitous to have a settlement of English absolutely effected in some part of his domain as a balance against the power of the Dutch or Spaniards."²⁰

¹⁰ Batara is a Sanskrit title for a great ruler. This may have been the Sultan of Sulu but more than likely one of his rajas.

¹¹ Low, "Selesilah," p. 26.

¹² Low, "Selesilah," p. 15.

¹³ Hughes-Hallett, "Sketch of the History of Brunei," p. 33; but see Low, "Selesilah," p. 15n.

¹⁴ See W. H. Treacher, "British Borneo" in *JRASB*, No. 20, 1889, p. 19.

¹⁵ Alexander Dalrymple, *A Full and Clear Proof that the Spaniards Can Have No Claim to Balambangan*, London 1774, p. 31. Dalrymple puts the date of the Brunei "grant" to Sulu at 1704.

¹⁶ V. Harlow, *The Founding of the Second British Empire*, London 1952, pp. 70-97, gives a clear account of the East India Company's Borneo venture.

¹⁷ The treaty of 20 November 1761, copy in British *Parliamentary Papers* (hereafter *P.P.*), 1882, LXXXI, pp. 530-1. See also India Board to Granville, 11 February 1852, British Foreign Office (FO) Sulu series 71, Vol. I (hereafter as FO 71/1). Dalrymple, p. 32, gives the date of the treaty as January 1761. It is probable that the agreement was negotiated in January and the documents drawn up and signed in November.

¹⁸ Saleeby, *History of Sulu*, pp. 72-9.

¹⁹ *Ibid.*, grant of 2 July 1764; treaties of 23 February 1763 and 28 September 1764. See also India Board to Granville, 11 February 1852, FO 71/1.

²⁰ Capain Trotter to Court of Directors, 24 December 1769, FO 71/1. The Sultan confirmed the

Most accounts follow Saleeby on this phase of Sulu history. Dalrymple himself was not clear whether Sultan Alimuddin was in Manila “under restraint.” He noted that the Sultan was a professed Christian and thus could not hold the “regal dignity” in Sulu, a Mohammedan state.²¹ He further said that Alimuddin had abdicated, but it is unclear whether this was a willful act or an automatic result of his profession of Christianity. In any event a usurper, albeit of the royal line, Bantilan, known as Mohammed Muizzud Din, had ruled and granted Balambangan to the company. Later, according to Dalrymple, his son as Alimuddin II, granted northern Borneo as well. In 1764 Alimuddin I, as noted, was reinstated and confirmed the grants.

The company failed to establish a permanent factory on Balambangan and the area was abandoned in 1805. Nor did Britain seriously press a claim to North Borneo on the basis of the Dalrymple treaties. The Law Officers of the crown even said in 1879 that the treaties would not support a British claim.²²

Sulu-Spanish relations until the final capitulation of Sulu in 1878 were characterized by periodic expeditions of subjugation by the Spaniards with more or less indecisive results. These were followed by treaties of capitulation which tended to be of dubious validity as far as the extension of Spanish sovereignty was concerned, because Sulu insisted on returning to its former status as soon as the Spaniards withdrew, and the Spaniards were unable to enforce their rule. The treaties themselves were vague.²³ The treaty of 1836 could be interpreted as either an alliance or a treaty of Spanish protection.²⁴ An American authority has noted that there is “nothing in the form or substance of that agreement implying Spanish sovereignty over the archipelago, but rather the contrary.”²⁵ Treaties with the United States in 1842, with France in 1845 and with Raja James Brooke representing Britain in May 1849 at least indicate that Sulu was considered an independent entity.

Britain’s first altercation with the Spanish Philippine Government over Sulu came as a result of the Brooke treaty. In December 1850 the Philippine Government, using steam-powered war vessels recently arrived from Europe, sent a force to subdue and punish Sulu for negotiating with James Brooke.²⁶ The force under the Governor-General, the Marquis de la Solano, was successful in destroying the Sultan’s capital. The Sultan capitulated and sent a deputation to Manila asking for protection and

cession “from Kimanis on the west side, in a direct line to Towson Abai on the east side thereof with all the lands, places and people within those limits and also all the islands to the northward of the said island of Borneo as Balambangan, Palawan. . . .”

²¹ Dalrymple, pp. 29 and 33. See also H. de la Costa, S.J., “*Muhammad Alimuddin I, Sultan of Sulu*”, Paper before the International Conference on Asian History, University of Hong Kong, September 1964.

²² Law Officers to FO, 3 February 1879, FO 71/15. The Law Officers were the government’s legal advisers.

²³ There were treaties between Sulu and Spain in 1646, 1726, 1737, 1805, 1836, 1851 and 1878. The treaties of 1737, 1836 and 1851 were treaties of “capitulation” which Spain interpreted as acknowledging Spanish sovereignty. See N. 66, and Saleeby, *History of Sulu*, *passim*.

²⁴ See *British and Foreign State Papers*, Vol. XXIV, London, 1923, pp. 807–11; and Saleeby, *History of Sulu*, pp. 196–9.

²⁵ H. Miller (ed.), *Treaties and Other International Acts of the United States of America*, Washington 1937, Vol. IV, p. 353.

²⁶ Brooke to Palmerston, 24 January 1851 in British Foreign Office, Borneo Series 12, Vol. 9 (hereafter as FO 12/9); Farren to Palmerston, 4 May 1851, FO 71/1. See also D. P. Barrows, *History of the Philippines*, Chicago, 1924, pp. 243–4.

appealing on the basis of the treaty of 1836 to become subject to Spanish sovereignty.²⁷ Yet after submitting to Spain in a new treaty the Sultan was apparently not sufficiently chastened for he made known to British officials that he was still independent and seeking British protection.²⁸

While local British officials were hoping to proceed with the exchange of ratifications of the Brooke treaty the Foreign Office moved cautiously. A diplomatic exchange between London and Madrid followed. Britain refused to acknowledge Spanish claims of sovereignty over Sulu. But upon the recommendation of the British Minister in Madrid, Lord Howden, that the matter "touched the sensibilities of the Spanish cabinet" the British Foreign Office decided the matter should "sleep."²⁹

While maintaining the policy of non-recognition of the Spanish claim of sovereignty over Sulu up until 1885 Britain challenged Spanish pretensions on several occasions, the most significant occasion being when Spain attempted to close Sulu to foreign commerce by a naval blockade in the eighteen seventies. Germany, whose commerce was also affected, joined Britain in a joint demarche to Spain.³⁰ The resulting protocol of 11 March 1877 settled the immediate issue and recognized a Spanish sphere of influence in the Sulu Archipelago but stopped short of recognizing Spanish sovereignty.³¹

The following year the Sultan of Sulu made the grant of his claim in North Borneo to von Overbeck and Dent. The circumstances surrounding this grant are worth noting. In 1865 the Sultan of Brunei granted to the American Consul, C. L. Moses, the territory from Kimanis Bay to the Paitan River on the northeast coast. Moses sold his interests to a group of Chinese and Americans in Hong Kong led by one Joseph Torrey. This group formed the American Trading Company of Borneo³² and established a settlement on the Kimanis River. The settlement failed but in 1870 von Overbeck became interested in the company's grant. In 1874 von Overbeck won the financial backing of Count Montgelas, Secretary of the Austro-Hungarian Embassy in London, and A. B. Mitford, a London businessman. Back in the East, von Overbeck agreed to buy Torrey's grant for £15,000 if he could procure its renewal.³³ A renewal was obtained, but it was questionable because the elderly Sultan refused a new grant on the advice of the British Consul, Hugh Low, but his heir, and later, regent, the Pengeran Temenggong issued a renewal to Torrey. Alfred Dent now appeared on the scene as chief financial backer in the scheme.

A two part plan was set in motion by the promoters. Von Overbeck obtained a new title to North Borneo and took possession of the territory while Dent set about organizing a company and making preparations to sell the rights upon the best

²⁷ Farren to Palmerston, 4 May 1851, FO 71/1; and Saleeby, pp. 89-112.

²⁸ St. John to Palmerston, 14 October 1851, FO 71/1.

²⁹ Private letter of Lord Howden to Lord Malmesbury, summer of 1852; and memo. thereon by Malmesbury, 26 August 1852, FO 71/1.

³⁰ See Wright, "British Policy" Ch. V, *passim*.

³¹ Copy of the protocol is in E. Hertslet, *British Commercial Treaties*, Vol. XIV, London, 1908, pp. 513-6.

³² K. G. Tregonning, "American Activity in North Borneo 1865-1881", in *Pacific Historical Review*, Nov. 1954, gives an account of this enterprise. Torrey later became U. S. Consul in Bangkok.

³³ Agreement of 11 July 1874 between von Overbeck, Montgelas and Mitford; and agreement of 19 January 1875 between von Overbeck and Torrey, in BNBCoP. The latter agreement was only an option to buy Torrey's title.

possible terms.³⁴ The new title to North Borneo granted by the Sultan of Brunei covered the area from Kimanis Bay to the Sibuco River on the east coast, or most of present day Sabah with the exception of several river enclaves held by independent chiefs on the northwest coast as noted previously. It is this grant by Brunei which forms the chief constitutional basis for the State of North Borneo. Von Overbeck sought a clear title to North Borneo and so went to Sulu for a similar grant because of the Sulu claim to the area.³⁵

Several considerations moved the Sultan of Sulu to comply. For one, he was again resisting a strong Spanish force. At the time the Spanish authorities were encouraging the intrigues against the Sultan of one of his Datos, Haroun al Rasshid, who wanted to become Governor of Sandakan. According to one chronicler the agreement for Spanish backing of the Dato had already been obtained when the Sultan saw an opportunity to thwart the intrigue by responding to von Overbeck's request for a grant of the very area in question.³⁶ Another consideration was the Sultan's desire to obtain British support against the Spanish force. The Sultan had been trying for years to involve Britain and Germany in his dispute with Spain. The presence of the acting British Consul to Brunei, W. H. Treacher, in a British war vessel, H.M.S. *Hart*, which preceded von Overbeck to Sulu, was a significant indication of British interest.³⁷ If further indication were needed it appeared when, at the Consul's insistence, the agreement with the Sultan included a permissive clause. The new owners would not grant any territory without British permission. The thought of having a British settlement nearby under the protection of a consular agent and the British flag was undoubtedly comforting to the Sultan.

A third and minor consideration was the fact that the Sultan received very little benefit from his claim of overlordship over North Borneo. By accepting an annual payment of \$5,000 (Malay) from von Overbeck some monetary gain could be realized.³⁸

The Sultan, then, granted to von Overbeck and Dent the territory from the Pandasan River on the northwest coast to the Sibuco River on the east coast.³⁹ This represented a compromise.⁴⁰ Sulu claimed the area as far as Kimanis Bay but said that its authority extended only along the coast southeastward from Marudu Bay. For good measure the grant named the Pandasan River as the western limit of the grant.

The syndicate immediately took possession of the area by stationing residents at three points along the coasts of North Borneo. William Pryer was stationed at Sandakan, William Pretyman at Tempasuk and H. L. Leicester at Papar on Kimanis Bay.

³⁴ The grant of the Sultan of Brunei, 29 December 1877, is in BNBCoP. See also G. Irwin, *19th Century Borneo*, Singapore 1965, p. 200. For a discussion of Dent's role see Wright, "British Policy," Ch. V, *passim*.

³⁵ See Hughes-Hallett, "Sketch of the History of Brunei," p. 39.

³⁶ W. B. Pryer, *op. cit.* Later in the century the Spaniards installed the same Dato as a puppet Sultan of Sulu.

³⁷ W. H. Treacher was acting Consul and acting Governor of the Colony of Labuan. His part and the support which the Dent-von Overbeck project received from the British Foreign Office under the influence of Julian Pauncefote, Assistant Permanent Undersecretary, is fully discussed in Wright, *op. cit.*

³⁸ See W. B. Pryer, *op. cit.*, and Treacher, *op. cit.*

³⁹ The grant, dated, 22 Jan. 1878, is in BNBCoP.

⁴⁰ Treacher to Derby, 22 Jan. 1878, FO 12/53.

Two weeks after the Sultan's grant to von Overbeck and Dent the Spanish efforts to extend their control over Sulu bore fruit. On February 5 the Sultan was persuaded to sign a treaty of capitulation. Although the agreement was liberal toward Sulu inasmuch as the Sultan was allowed to fly his own flag and receive a pension, it granted to Spain the sovereignty of Sulu.⁴¹

There is no doubt of the Sultan's reluctance to submit to Spain for he considered the Spanish request for a treaty as an ultimatum and he was unable to longer resist Spanish pressure. Indeed, he made an effort before signing to gain British support by offering to cede all of the Sulu Archipelago except two small islands to von Overbeck and Dent if the British government approved.⁴² Before ratification of the treaty the Sultan requested British and German mediation between Sulu and Spain.⁴³ But while Britain and Germany were discussing joint action the Manila authorities prevailed upon the Sultan to sign an unconditional cession of Sulu and all its dependencies to Spain. This he did on July 22, 1878, being no longer able to wait for the long desired British-German intervention.⁴⁴

The Spanish authorities immediately applied the treaty to North Borneo as constituting a Sulu dependency. They compelled the Sultan to write a letter to von Overbeck cancelling his grant.⁴⁵ But the Sultan had foreseen such a contingency and had told von Overbeck that if he received such a letter in the Sulu language rather than the Malay, or which was improperly sealed, he could consider it as worthless, having been dictated by the Spaniards.⁴⁶ This was confirmed in a later letter to von Overbeck, and when acting Consul Treacher visited the Sultan the following year the Sultan repeated that the Spanish-Sulu treaty did not apply to North Borneo.⁴⁷

There followed a correspondence between von Overbeck and the Spanish Governor of Sulu, Carlos Martinez, in which von Overbeck maintained that he represented British interests and that the Spanish treaty could not possibly supercede the Sultan's grant of North Borneo made six months previously.⁴⁸ The Spaniards followed this up with the visit of a naval vessel to Sandakan where they threatened to oust Pryer from his residency.⁴⁹ Spanish ships also appeared at Marudu and Tempasuk and urged the people of those places to raise the Spanish flag. It is noteworthy that the people refused to comply.⁵⁰ Pryer surrounded himself with the chiefs and people in Sandakan and resisted the Spanish efforts. He was supported by a British commercial

⁴¹ Treacher to FO, 20 April 1878, enclosing a copy of the treaty; and Walsham (in Madrid) to FO, 12 March 1878, FO 71/13.

⁴² See e.g. West (Madrid) to Salisbury, 23 September, 1878 in British FO Confidential Print NO. 4033, "Sulu." The Sultan "hard pressed" decided to give in to Spanish "pecuniary terms." Gov. Robinson of Singapore (telegram) to Colonial Office (hereafter CO), 22 Feb. 1878, FO 71/13.

⁴³ Treacher to FO, 20 April and 31 May 1878, FO 71/13.

⁴⁴ Correspondence between Odo Russell (in Berlin) and FO, Walsham (in Madrid) and FO and between FO and CO, FO 71/13, *passim*.

⁴⁵ Sultan to von Overbeck, 22 July 1878, BNBCoP. Copy also in FO 71/14, and noted in P. A. Ortiz, S.J., "Legal Aspects of the North Borneo Question" in *Philippine Studies*, Jan. 1963, pp. 25-26.

⁴⁶ Treacher to FO, 24 August 1878, FO 71/14.

⁴⁷ Sultan to von Overbeck, July 1878, in BNBCoP; and Treacher to CO, 25 April 1879, FO 71/15. The Sultan reported that the letter of 22 July was written by the Spanish interpreter and he had signed under protest.

⁴⁸ Correspondence between 22 July and 19 August 1878, BNBCoP. See Ortiz, p. 25.

⁴⁹ Treacher to FO, 24 Sept. 1878; Mackenzie (in Manila) to FO, 24 Oct. 1878, FO 71/14; W. B. Pryer's Diary, entry for 3 Sept. 1878; and von Overbeck to Pryer, 8 Nov. 1878, BNBCoP.

⁵⁰ Treacher to FO, 24 Sept. 1878, FO. 71/14.

vessel which was in the harbor.⁵¹ The incident became the subject of diplomatic correspondence between London and Madrid.

The Anglo-Spanish dispute was settled after lengthy negotiations over the next seven years. As early as January 1877 the Spanish Foreign Minister told the British Minister in Madrid, Henry Layard, that Spanish claims of sovereignty were limited to Sulu and that Spain had no designs on Borneo.⁵² When Spain was queried on the Sandakan incident the Spanish Foreign Minister replied that it was all a mistake, Spain was not interested in North Borneo.⁵³ But this was to be an example of policy in Madrid not being implemented in the Philippines, for several more attempts were made during the next three years to establish a footing upon the northeast coast.

It is clear that the British interest was in safeguarding North Borneo as a British sphere; that by refusing to acknowledge Spanish sovereignty in Sulu Britain was keeping Spain as far away from North Borneo as possible. Lord John Wodehouse, Parliamentary Undersecretary at the Foreign Office in 1860, had written,⁵⁴

We have, I should think, very little interest in the independence of Sulu. But if we admit the right of Spain, we ought to know how far those rights extend and on what they are based.

By 1881 the question was changed only in the fact that a British directed project was afoot to bring North Borneo under closer British control. In order to achieve the strongest possible government support for the von Overbeck-Dent project, which was the pressing question, and at the same time to forestall Spain's occupation of North Borneo, the Foreign Office continued the policy of non-recognition of Spanish claims of sovereignty over Sulu as well as over North Borneo. When Spain protested against British support of the North Borneo project and reports began to come in of a resumption of Spanish attempts to occupy North Borneo the Foreign Office decided that the uncertainties of Britain's position in the area must be removed.

Two years previously a plan had been devised by a legal assistant in the Foreign Office, F. S. Reilly, which was to form the basis of the 1885 agreement. Britain should recognize Spanish sovereignty in the Sulu Archipelago in return for Spain's abandonment of any claim on mainland Borneo.⁵⁵ At the time, however, the Foreign Office decided to make a strong protest to Spain over the whole sovereignty issue.⁵⁶ This would give room for negotiation and the Reilly plan could well be the end result. Finally the plan was put forward in 1881 and Spain agreed to it. In due course Germany became a party to the negotiation, her interest being based on the 1877 protocol.⁵⁷ The new protocol was signed in Madrid in March 1885.⁵⁸ By it Spain renounced "as far as regards the British government, all claims of sovereignty over the territory of the continent of Borneo, which belong or have belonged in the past

⁵¹ Pryer's Diary; Ada Pryer, *op. cit.*; see also W. C. Cowie, "North Borneo and How It Became British" in *London and China Express*, 27 Nov. 1908.

⁵² Layard to Derby, 3 Jan. 1877, FO 71/10.

⁵³ West to FO, 9 Oct. 1878, FO 71/14.

⁵⁴ Wodehouse minute on a Spanish Note, 27 July, 1860, FO 71/1.

⁵⁵ Memo. by F. S. Reilly, 20 Feb. 1879, FO 71/15.

⁵⁶ Memo. by Julian Pauncefoot, 24 Feb. 1879, FO 71/15.

⁵⁷ Granville to Spanish Minister, 7 Dec. 1881, FO 12/58; FO to Morier, 25 Jan. 1882, FO 71/16; and and Morier to FO, 7 March 1885, FO 71/17.

⁵⁸ Copy in *P.P.*, 1884-5, Vol. LXXXVII, pp. 606-9.

to the Sultan of Sulu." Britain and Germany recognized Spain as supreme in the Sulu Islands. Thus the British and Spanish spheres was defined.

The State of North Borneo was the fruit of British success in diplomacy which culminated in the protocol of 1885. Britain ended this phase by granting a protectorate over the state three years later.⁵⁹ The line of demarcation between the Philippines and North Borneo was drawn by treaty between Britain and the United States, the successor to Spain in the Philippines, in 1930.⁶⁰ Britain was acting in her role as protecting power of North Borneo. Then North Borneo became a crown colony after World War II. The Sulu Islands and North Borneo have become respectively part of the Republic of the Philippines and the Federation of Malaysia, the successors to Spain and the United States on the part of the Philippines, and of the British North Borneo Company and Britain with respect to Malaysia.

The Philippines claim North Borneo as successors in sovereignty to the Sultanate of Sulu.⁶¹ Whether Sulu ever held sovereignty over North Borneo is open to dispute. A claim to North Borneo did exist on the part of Sulu, however. The issue is further complicated by the grant which the Sultans of Sulu in the eighteenth century made of their claim to the English East India Company. It is necessary, therefore, to analyze and interpret these various claims and grants. First we shall consider the Sulu claim of sovereignty over North Borneo.

The Philippine government has not produced, and it is doubtful if there is extant, a document by which Brunei granted North Borneo to Sulu. It is only the weight of Sulu tradition which sustains the Sulu claim to ownership of the area. Historians dealing with Sulu, of which probably the most reliable is Najeeb Saleeby but including Jose Montero y Vidal and Juan de la Concepcion, and recent articles by Pacifico A. Ortiz, S.J., Horacio de la Costa, S.J. and Cesar Adib Majul⁶² assume that Brunei ceded North Borneo to Sulu. Majul puts the date of transfer as late in the seventeenth century, while Saleeby pinpoints it as 1704. Europeans visiting Sulu in the eighteenth and nineteenth centuries, such as Alexander Dalrymple in the seven sixties, Thomas Forrest in the seven seventies and Raja James Brooke in 1849,⁶³ note that Sulu claimed sovereignty over North Borneo. Others doubt the veracity of the claim. Hughes-Hallet, as cited above, notes that it is not clear whether the Sulu claim arose from a cession of the territory by Brunei or from its seizure by Sulu. Hugh Low, writing in 1880, reported that the then Sultan of Brunei and the "Selesilah" (Tarsila) of Pengerin Kasuma, which he translated, both denied that Sulu had aided Brunei

⁵⁹ See Protectorate Agreement of 1888, in *P.P.*, 1888, Vol. LXXIII, pp. 179-82.

⁶⁰ *Papers Relating to the Foreign Relations of the U.S., 1930*, Washington 1945, Vol. III, pp. 147-55. The grant in 1903 of the Turtle Islands and their subsequent return to the Philippines have no bearing upon the Philippine claim. They had been administered by the North Borneo Company but subsequently found to lie on the Philippine side of the demarcation line of 1930.

⁶¹ *Philippine Claim to North Borneo*, Bureau of Printing, Manila 1964, Vol. 1, p. 13.

⁶² J. Montero y Vidal, *Historia de la pirateria malaya-mahometania en Mindanao, Jolo, y Borneo*, Madrid, 1888; de la Concepcion, *Historia general de Philipinas*, v. XII, Manila 1788-1792; Ortiz, *op. cit.*; and H. de la Costa, *op. cit.*, and Cesar Adib Majul, "Political and Historical Notes on the Old Sulu Sultanate," paper before the International Conference on Asian History, University of Hong Kong, September 1964.

⁶³ Dalrymple, *op. cit.*; Henry Keppel, *Voyage to the Indies Archipelago in 1850 in H.M.S. Macander*, London, 1853; and T. Forrest, *A Voyage to New Guinea and the Moluccas from Balambangan including an account of Magindanao, Sooloo and the other Islands*, London, 1779.

in an eighteenth century civil war and was granted North Borneo in return. Low is more explicit in his notes on Brunei's sovereignty over the north of Borneo in a report to the British Foreign Office in 1875. Brunei, said Low, strongly asserted her sovereignty over the area. In 1889, W. H. Treacher reported substantially the same thing.⁶⁴

There is, then, at least equal weight to the Brunei tradition that sovereignty over North Borneo rested with the Sultans of Brunei until the area was ceded by Brunei in December 1877 to von Overbeck and Dent. That Brunei transferred the sovereignty to von Overbeck and Dent has not been denied by Brunei. As in the case of the several cessions of Brunei territory to Sarawak the new owners paid a yearly subsidy to the Sultan. Raja Charles Brooke of Sarawak, who had little reason to desire the transfer of North Borneo to a company, for he had ambitions of absorbing all Brunei territory, and who even opposed the transfer, admitted that the transfer was "not just a lease but the sale of land, rights and people of the area." He noted "the criminal recklessness displayed by the Brunei government in thus signing away sovereign rights."⁶⁵ It is important here only to note that Brooke, who probably knew more of Borneo affairs than any other European of the period, had no doubts as to the nominal sovereignty of Brunei in North Borneo.

Sources of the traditions in both Sulu and Brunei rest upon the various tarsilas—those of Sulu supporting the thesis of Sulu overlordship in North Borneo, and those of Brunei supporting Brunei tradition. Tarsilas must be assessed as not strictly reliable for historical purposes. Being genealogies of dynasties their writing was subject to all the obvious abuses of fact in order to present the royal record in a favorable light.⁶⁶ This being the case, Sulu's claim remains unsubstantiated.

Brunei held nominal sovereignty over North Borneo up to 1878 although much research remains to be done in order to document it in precise legal terms. It is certain, however, that neither Brunei nor Sulu held *de facto* control over the area. Like most of the Malay states of the East, Sulu and Brunei had long since become weak and corrupt. The effective rule of these states was not felt far beyond the Sultan's seat of residence. While some respect for the Sultan of Sulu's title and spiritual leadership as the leading chief of the area may have existed on the Borneo coast closest to Sulu, it is clear that the Sultans enjoyed no great authority on the Borneo mainland. This was because the Sulu people aided and abetted the fierce Illanun and Balagnini pirates who constantly raided the villages on the coast and rivers of North Borneo, plundering and taking slaves.⁶⁷ Captain Henry Keppel gives a vivid, first-hand account of the chaotic conditions along the northeast coast in 1850. After noting that the coast was infested with pirates he referred to an interview which he had with a Dato in Marudu Bay,

" . . . he and the chiefs with him admitted that nothing could be worse than the unprotected state and want of government under which they lived; that each petty

⁶⁴ Low to Foreign Office, 6 July 1875, FO 12/41; see also N.14.

⁶⁵ *Sarawak Gazette* (Kuching), 24 April 1878.

⁶⁶ For a discussion of Sulu tarsilas see Majul, *op. cit.* The Spanish-Sulu treaties are only slightly more reliable. They refer to the relationship between Sulu and North Borneo variously as dependency (Treaties of 1851 and 1878) and as tributary (Treaty of 1836).

⁶⁷ See K. G. Tregonning, "The Elimination of Slavery from North Borneo" in *JRASMB*, Vol. XXVI, pp. 24-36 (1953). The article notes that as late as 1878 some 600 people were captured as slaves by pirates in the neighborhood of North Borneo.

chief quarreled with and attacked his weaker neighbors, while they in turn lived in constant dread of an attack from the more formidable Bijow or Soloo pirates."⁶⁸

It is certain that the local chiefs considered themselves independent of Sulu and acted accordingly⁶⁹ just as the chiefs along the northwest coast considered themselves independent of Brunei. In 1878 the chiefs of the northeast coast rejected Sulu and Spanish overlordship in preference to company rule in much the same way that earlier the Malay chiefs of Sarawak preferred James Brooke to the Brunei rulers.⁷⁰ A year after his arrival William Pryer, the company's resident in Sandakan, could count on the support of some twenty local chiefs and headmen.⁷¹

The predominant view of the English and the Americans was that North Borneo properly came within the lands nominally held by Brunei. The American Trading Company did not even consider the possibility of a Sulu claim to the area when they received it as a grant from Brunei in 1865. It was only as an afterthought that Baron von Overbeck went to Sulu for a grant of the area when informed by the acting British Consul-General in Brunei that Sulu claimed the northeast coast. Having agreed to pay Brunei \$15,000 (Malaya) per annum for the grant, von Overbeck thought the Sulu claim worth only \$3,000 but compromised on \$5,000. In the eighteen eighties the United States was apparently satisfied that the whole area was under Brunei and was ceded legitimately by Brunei to the English company, for they were assured in correspondence with the Sultan of Brunei and with the British Foreign Office that the "rights of extraterritorial jurisdiction vested in the United States under their treaty with the Sultan of Brunei of 1850" would be maintained in the company's territory.⁷² Further it was apparently not seen fit to apply a similar treaty which the United States had negotiated with Sulu in 1842. Had the United States recognized Sulu sovereignty in North Borneo the treaty of 1842 would have applied.

From the foregoing it seems clear that the Sulu claim to North Borneo is not yet proved; that chaotic conditions along the coasts and the weakness of Brunei and Sulu prevented either state from maintaining control over the area; that pirates were the only effective power over large areas of North Borneo; and that effective rule only came to the area with the assumption of control by the British North Borneo Company. The Philippine claim based upon the Sulu claim is thus also not proved.

We turn now to the treaties negotiated at Sulu by Alexander Dalrymple in the eighteenth century by which North Borneo was granted to the English East India Company.⁷³ If we assume, for the sake of discussion, that the Sulu claim to North Borneo was valid, then on the basis of the Dalrymple treaties it can be argued that England had a better claim to the territory than either Spain or the Philippines. Despite the lack of a serious effort by Britain to press a claim on the basis of the

⁶⁸ Keppel, p. 45. On piracy see L. A. Mills, *British Malaya 1824-1867* (Singapore 1925), chs. XII and XIII.

⁶⁹ Treacher, *op. cit.* pp. 48-55, June 1890.

⁷⁰ Pryer's Diary, *op. cit.*; Tom Harrison (ed.) "The Diary of Mr. W. Pretyman" in *Sarawak Museum Journal*, No. 8, Dec. 1956, *passim*, and No. 11, June 1958, p. 322; and St. John, *Life of Sir James Brooke, Rajah of Sarawak*, Edinburgh 1879, pp. 47-8 and 56-7.

⁷¹ K. G. Tregonning, "William Pryer the Founder of Sandakan" in *JRASMB*, Vol. XXVII, p. 43 (1954); and Pryer's Diary.

⁷² Commander Schufeldt (U.S.N.) to the Sultan of Brunei, 1 March 1880; and Sultan of Brunei to President of the U. S., 8 March 1880, FO 12/55; Pauncefote memo., 28 April 1883, FO 12/60.

⁷³ For a recent treatment of the incidents surrounding these negotiations see H. de la Costa, *op. cit.*

treaties, and despite the advice of the British Law Officers that the treaties could not sustain a claim, the claim exists and forms an impediment with which the Philippines will have to contend in pursuing their present line. If the British stand on the basis of the 1878 grant were seriously weakened by Philippine argument, Britain's prior claim based upon the Dalrymple treaties might be resurrected.

At least twice during the hundred years following the negotiation of the treaties, Sultans of Sulu referred to their validity and recognized that North Borneo was owned by Britain. In 1769 Sultan Alimuddin himself confirmed the transfer and in 1849 Sultan Muhammad Pulalon reminded Raja James Brooke that his great-grandfather had "ceded" North Borneo to the English.⁷⁴ Several times in the nineteenth century the British Foreign Office considered pressing a claim to North Borneo based on the Dalrymple treaties.⁷⁵ When Spanish war vessels attempted to raise the Spanish flag over Sandakan and other points along the coast, not only were they obstructed by company officials but Foreign Secretary Lord Salisbury sent a strong protest to Madrid, jointly with Germany, mentioning among other things that the "British prior claim must be respected."⁷⁶

While the Law Officers of the crown were undoubtedly correct in thinking that the Dalrymple treaties would not by themselves sustain a British claim they do support the thesis that on two occasions Sulu took legal steps to transfer its claims in North Borneo to British hands. The Dalrymple treaties go a long way toward indicating that it was a long standing Sulu policy that Englishmen should possess the neighboring territory. The reasons for this policy are not hard to find. The English were reputed to be more humane and fair in their relations with indigenous peoples of the Malay Archipelago than were the Spaniards.

The Philippines argue that their claim rests on the interpretation of the Sulu grant to von Overbeck and Dent of January 22, 1878, as a lease and not a cession.⁷⁷ They further point to the letter written by the Sultan of Sulu to Baron von Overbeck on July 22, 1878, the same day on which Sulu capitulated to Spain, in which the Sultan supposedly cancelled his grant. But by a later letter from the Sultan we learn that the letter of cancellation was written by the Spanish interpreter and that the Sultan signed it under protest. While the Philippines declare that Baron von Overbeck used threats to compel the Sultan to yield, Consul Treacher reported that von Overbeck, in all his dealings at Sulu, "acted with the utmost courtesy." At a later date the Spanish Governor of Sulu attempted to obtain from the Sultan a pre-dated cession of Borneo territory to Spain, but the Sultan refused.⁷⁸

The grant of 1878, written in Arabic script, has been interpreted variously as lease and as cession. The Philippines cite what is supposedly a copy of the Sultan's grant in Arabic obtained in the United States and translated by Professor Harold Conklin of Yale University. The English version found in the British North Borneo Company

⁷⁴ Capt. Trotter to Court of Directors, 30 Nov. 1769 in *Home Miscellaneous Series*, Vol. 102, pp. 337-8, East India Company papers, India Office Library, London, as noted in V. T. Harlow, *op. cit.* p. 90, and H. de la Costa, and Keppel, p. 67.

⁷⁵ FO memo., 28 Sept. 1878, FO 12/53; and Wyndham to FO, 27 August 1880, FO 71/15.

⁷⁶ Salisbury to West, 20 May 1879, FO 71/15.

⁷⁷ See also Ortiz, p. 25.

⁷⁸ Treacher to FO, 22 Jan. 1878, FO 12/53; and Treacher to FO, 10 Nov. 1879, FO 71/15.

papers uses the phrase "grant and cede."⁷⁹ It is, I think, impossible to apply a precise legal meaning to these terms used in a rather vague way in the nineteenth century. There are many examples of the casual use of these terms where grants of territory are concerned. For example, Hong Kong in 1842 was "ceded" to Britain "to be possessed in perpetuity." But Kow Chaw was, in 1898, "ceded" to Germany, for a term of 99 years, and Kuang-Chau Wan was "given by lease for 99 years" to France. The Island of Labuan in 1846 was "ceded" in perpetuity to Britain.⁸⁰ The constant factor in all these examples of territorial transfer in the nineteenth century is in the stipulated length of time of the grant. In the case of North Borneo all versions of the grant indicate that North Borneo was transferred, not for a period of years, but "forever and in perpetuity," as in the Conklin translation, or "forever and until the end of time" as in the English version. When it is further considered that von Overbeck's commission from the Sultan of Sulu as Dato, and Raja of Sandakan appointed him "supreme and independent ruler . . . with all powers and rights usually exercised by and belonging to sovereign rulers" it would seem that the intention of the Sultan was clear.⁸¹ He intended that the British company should possess and rule North Borneo as sovereign. He further agreed, in effect, to place the foreign relations of North Borneo in the hands of the British crown by stipulating that the company should not transfer the country to a foreign power without Britain's consent.⁸²

Few people seriously questioned the British North Borneo Company's rights of sovereignty until the Philippines pressed their claim in 1962. Most observers of the last and present century refer to the cession as complete.⁸³ Indeed, Britain in reply to the Philippine claim stated, "Her Majesty's Government are convinced that the British crown is entitled to and enjoys sovereignty over North Borneo. . . ."⁸⁴ The British and Malaysian view, of course, is that the Republic of the Philippines is the successor to the United States and Spain in the Philippine Islands. As Spain abandoned her claim to North Borneo in the protocol of 1885, and as a line of demarcation was agreed to by the United States and Britain in 1930, the Philippines could not possibly sustain a claim of sovereignty over North Borneo. As for the Philippine argument that sovereignty over North Borneo having been vested in the Sultan of Sulu was thence transferred to the Philippines by cession in September 1962,⁸⁵ such an

⁷⁹ *Philippine Claim*, p. 23; and W. G. Maxwell and W. S. Gibson, *Treaties and Engagements Affecting the Malay States and Borneo*, London, 1924, p. 157.

⁸⁰ See E. Hertslert, *China Treaties*, Vol. 1, London 1908; and Maxwell and Gibson, *op. cit.*, p. 143.

⁸¹ *Philippine Claim*, p. 63; and in BNBCoP. The terms of the Brunei and Sulu grants are substantially the same.

⁸² This point was further implemented in the British North Borneo Company Charter when Britain retained the right to dissent from, and negate any act of the company in its handling of foreign relations.

⁸³ E.g. Sixto y Orosa, *The Sulu Archipelago and Its People*, Yonkers 1931, p. 32 says, "In 1878 Sultan Jamalul Alum ceded the remaining Sulu possessions in Borneo to the Sabah North Borneo Company . . ."; Harlow, p. 90; and Keppel, p. 67.

⁸⁴ British Note to Philippines of 25 May 1962, noted in *Philippine Claim*, p. 150.

⁸⁵ "A Proclamation" by the Sultan of Sulu, 25 Nov. 1957 in *Philippine Claim*, p. 147; and "Instrument of Cession . . . of North Borneo" by Sultan of Sulu, 12 Sept. 1962, Document 84, Philippine Government, Manila. In 1915 the Sultan renounced "his pretensions of sovereignty" which in fact he had not possessed after 1878, in a "Memorandum Agreement" with the U. S. Governor-General of the Philippines (the "Carpenter Agreement of March 1915"), *Philippine Claim*, pp. 126-128. A pronouncement by C. F. C. Macaskie of the High Court of the State of North Borneo in 1939 recognized that the Philippine Government was "successor in sovereignty" of the Sultan and of Spain over the Sultanate of Sulu and does not imply that North Borneo was a part of the Sultanate (see Ortiz, p. 37 and C. F. C. Macaskie, "The Philippine Claim to Borneo" in *North Borneo News and Sabah Times*, 7 Sept. 1962).

argument falls down when it is considered that the Sultan of Sulu relinquished his sovereignty to Spain in July 1878.

North Borneo became British because of the success of British diplomacy in the nineteenth century. It is clear that Britain did not, after the grant to von Overbeck and Dent in January 1878, consider North Borneo a dependency of Sulu, if indeed it had ever been one, as Spain claimed in her treaty with Sulu of July 1878. If confirmation of the von Overbeck-Dent grant were needed as far as Spain is concerned it was inherent in the abandonment of her claim in the 1885 protocol. Thus if North Borneo had been under Sulu as late as 1885 the protocol would have the effect of partitioning Sulu territory between Spain and the British North Borneo Company. This would have been technically possible because Spain as of July 1878, and not the Sultan, held the sovereignty of Sulu and its dependencies. In theory Spain could dispose of any part of Sulu as she wished or as British and German diplomatic pressure indicated.

Whether the correct term for the Sulu grant of North Borneo is lease as the Philippines contend, or cession, is not the central issue of the North Borneo question. Indeed, the question of sovereignty is not the real issue. The fact is that a British sponsored company legally acquired and effectively ruled the territory, and that Sulu and Spain acquiesced in the scheme. An explanation by the British Foreign Office to the government opposition in Parliament that the company held the territory under the suzerainty of the Sultans of Brunei and Sulu⁸⁶ quieted opposition to the granting of a royal charter to the British North Borneo Company, but does not negate the contention that sovereignty was effectively held by the company.⁸⁷ That was decided in 1885 and confirmed in 1888, in 1930 and in 1946.

Britain and Malaysia have never denied a financial obligation to the descendants of Sultan Mohammad Jamalul Alam with regard to the "cession" money. This is undoubtedly the true issue pending at the present time. It involves questions such as, which of the heirs of the Sultan are entitled to money, should it continue to be paid annually or should a lump sum settle the question. Once the Borneo issue ceases to be a highly charged political question, perhaps the Philippines and Malaysia can settle down to resolving this financial claim, which is the only real point of contention in the Borneo dispute.

⁸⁶ Pauncefote memo. to Granville, 8 July 1880, FO 12/55; Pauncefote Minute on CO to FO, 2 June 1881, and Law Officers to FO, 14 July, 1881, FO 12/56; *Hansard (British Parliamentary Debates)*, 3rd series, Vol. CCLXVII, c. 1148 ff., 17 March 1882; and Vol. CCXCV, c. 448-9, 9 March 1885.

⁸⁷ See the Protectorate Agreement of 1888.