

**AN OPINION BY JUDGE NC NAIDU REGARDING THE SULTANATE OF  
SULU'S CLAIM OVER BRITISH NORTH BORNEO NOW CALLED  
"SABAH."**

**INTRODUCTION**

**I have been asked by His Highness the 29<sup>th</sup> Sultan of Sulu, several lawyers, judges, scholars, sociologists, anthropologists, including the man on the tricycle taxi in the Philippines to issue an Opinion regarding the actual state of affairs surrounding the Philippines/ Sultanate of Sulu's claim over Sabah. I shall refer to it simply as "The Claim."**

**Those who made The Claim blossom into what it has become thus far today are those whom Nathaniel Field described in *A Woman is a Weathercock*, c.1610, thus:**

***Some say men on the back of law  
May ride and rule it like a patient ass,  
And with a golden bridle in the mouth  
Direct it into anything they please.***

**Using the rule of law and the role of justice in a pretzel logic fashion, it does appear that the law of contract governing the affairs of British North Borneo was ridden like a patient ass with the golden bridle (Federation of Malaysia) in its mouth to steer it in any direction the powers that be desired.**

**To fully understand The Claim you must be prepared to take a look into the closets of history in order to allow bright sunshine to become the true disinfectant for aiding in the dispelling and dissipating of the stench of lies, misconceptions, misrepresentations, and distortions so that you could allow the truth to assail your senses with the jettisoning of politics and the fear of political repercussions. You must also protect yourself from the sunburn caused by the bright sunshine of the truth. If you are prepared for this, then journey on with me.**

Everything that is done by the law, within the law, at law, under law must pass muster since “law is the highest reason, implanted in Nature, which commands what ought to be done and forbids the opposite,” as Cicero observed in *De Legibus*, c. 52 B.C. Looking at the Sultanate of Sulu’s geopolitical troubles and accompanying mishaps one is persuaded to wonder whether “the law hath not been dead, though it hath slept.” Shakespeare’s *Measure for Measure*, Act II, scene 2.

There are reliable references to various books, articles and reports in the Sultanate’s website [www.sovereignsulu.com](http://www.sovereignsulu.com). Although I subscribe to the Foucaultian concept of the fictionalizing of history for the purposes, aims and objectives of political mischief one must look at the totality of facts and circumstances to form any dispassionate belief regarding The Claim. Tolstoy said that “History would be a wonderful thing – if it were only true.” But President John F Kennedy hit the nail on the head squarely when he quipped that “When Herodotus found himself short on facts, he didn’t hesitate to use imagination, which may be why he is called the first historian.”

## OBSERVATIONS

By all accounts garnered and recorded in Asian and European annals of history, the Sultanate of Sulu, hereinafter “Sultanate,” has enjoyed a long and colorful history being as it was in the 16<sup>th</sup> century a crucial, pivotal and vital sovereign nation in the crossroads and crosscurrents of maritime trade in the South China Sea. The Sultanate monitored, regulated and controlled the movement and safety of all maritime trade and traders plying the sea routes between the Far East and the Mediterranean. The Sultanate earned its keep by being paid in gold.

Legends, myths and tales of the Sultanate’s wealth, especially gold, reached the ears of the Holy See seated in the Vatican. Swiftly, eager Europeans came to visit the idyllic islands of the Sultanate in the present day Philippines with the specific desire to explore the possibility and the potential of securing this vast repository of gold

**with any and all excuses, reasons and explanations that could be mustered or facilitated or made necessary. Sir John de Mandeville records that Pope Alexander III, who died in 1181, started believing that there was one Emperor Prester John in the Far East who owned untold repositories of fabulous wealth thus setting in motion an entire crusade that failed to meet a non-existent army led by the non-existent Emperor Prester John. For more than three centuries, the Christian world of the West believed in this non-existing emperor which explains why many westerners were keen to head towards the Far East.**

**Recorded history from both Asian and European sources, especially Spanish records, tell us that the European modus operandi to divide and conquer went into action soon after they established religious foundations and missions with the accompanying need to spread Christianity to these “pagans and heathens” for whom Islam, and, in some parts of the Sulu islands, pantheism flourished as entrenched spiritual belief systems . The excuse and explanation of spreading Christianity has always been the most enduring and reliable reason for European incursions into Asian and American territories. A manifest destiny of sorts which worked well in America after 1492 when Pedro Scotto - the real name of Christopher Columbus according to Spanish historian Alfonso Ensenat de Villanlongo - discovered the New World.**

**Factions, feuds, quarrels, skirmishes, battles, wars and other shades of disruptive activities lasted some two hundred years from the 1650's onwards with several generations of princes and sultans assuming and ascending the throne of Sulu. Some were pro-European, otherwise were fiercely anti-European. Treaties, agreements and covenants became the order of the day each attempting to subsume the previous ones while gaining instant superiority with currency on their side. The Spanish influence over the Philippines is very much evident today with bibliography, remains and relics of old forts and other paraphernalia.**

**History has done an excellent job of recording the meddling by European traders and soldier politicians into Asian affairs and “Indian” affairs in North America. They called it ‘manifest destiny.’**

**While Asia philosophized with prose and poetry; and engineered canals and forts while dabbling in mathematics and astronomy Europe opportunistically wore the mantle of war and conquest thanks to the legacy of Alexander of Macedonia.**

**Sulu affairs were quite the talk of the British aristocracy. In a letter dated January 17, 1876, reportedly from the Earl of Derby to Lord Odo Russell, the former denies any Spanish claim of sovereignty over Sulu which was confirmed by Acting Consul General Treacher to the Earl of Derby. What proof and evidence these gentlemen possessed is beyond doubt and suspicion because the Sultanate of Sulu was a constitutional and legal bulwark representing Asian affairs of state during the 16<sup>th</sup>, 17<sup>th</sup> and 18<sup>th</sup> centuries. Some universities in England have preserved these important epistles.**

**My particular interest, investigation and research into The Claim begins with the 1878 Overbeck-Dent Pact when two European merchants went into business to *lease* British North Borneo (Sabah) from the Sultan of Sulu. The original lease agreement was translated and transliterated into Arabic, Malay and English when, mysteriously it would appear, the word *lease* was replaced surreptitiously with *cede* which has an altogether different meaning for political purposes. Linguistic legerdemain aimed at advancing political expediency seems to have replaced economic necessity.**

**It must be noted that North Borneo (Sabah) was gifted to the Sultan of Sulu in 1450 by the then Sultan of Brunei in appreciation of the former's relentless efforts to quell local subversive uprisings against the latter's sovereignty, suzerainty and jurisdiction over maritime matters including local affairs of state. It was during this momentous time that another kingdom was suffering a different fate – the sacking of Constantinople by the Turks. In Europe metal plates were being used for the first time in printing. Pedro Scotto (Christopher Columbus) was born in 1451, and Glasgow University was being founded.**

**The fiercely anti-European supporters gained utterance for the Sultanate which expressed the view that they were not at all**

**motivated or encouraged into surrendering or ceding British North Borneo because that was not the scope, scale, effect, intent, content or extent of their understanding of the Overbeck-Dent Pact at that material time when it was signed by both willing parties.**

**The European stand on the Pact was that it was a cession. For obvious reasons several books, articles and reports support this theory. The Asian and European versions of the substance and pith of the Overbeck-Dent Pact are at odds with each other. But the future bodes well for the Sultanate as far as political developments are concerned starting from 1963 when British North Borneo was shoehorned into the Federation of Malaysia.**

**I was urged to remember how present day Manhattan in New York was acquired by the British from the Dutch in exchange for a nutmeg producing island called Pulau Run in Indonesia's Banda Islands due to the bargaining efforts of one Johan de Witt (1625-1672). No lease or cession was necessary.**

**The Claim over Sabah needs detailed examination as I have attempted to undertake in writing this Opinion.**

**Professor K G Tregonning, former Professor of History at the Raffles Institution, Singapore, advances the proposition in his *"History of Modern Sabah: 1881-1963"* that the Overbeck-Dent Pact was a cession. Nicholas Tarling, however, in his *"Sulu & Sabah: A Study of British Policy Towards The Philippines & North Borneo From the Late 18<sup>th</sup> Century"* published in 1978, offers an unbiased position regarding the lease characteristics of the Overbeck-Dent Pact of 1878.**

**But in all fairness, I can only take the side of the indisputable truth. Tregonning and Tarling may be persuaded by unknown reasons, pressures and opinions. I can take note of their work as a reliable source to piece together all the facts and circumstances so that a coherent case is available for the world to appreciate as far as The Claim is concerned.**

**Professor Conklin's translation of the Arabic version of the thirty-three copies of the 1878 Pact was found by a Mr. Quintero in Washington D.C. in late 1878 together with a July 4, 1878 Letter from the then Sultan of Sulu denying that Sandakan in North Borneo was ceded; and a later Letter dated July 22, 1878, when the Sultan of Sulu threatened to cancel and terminate the lease. The Library of Congress in Washington D.C. is reported to be the custodian of these crucial Letters. Here is undeniable proof that the then Sultan of Sulu, soon after the conclusion of the Pact, was adamant at the distortions advanced by certain political elements of a legally binding agreement.**

**The Sultanate maintains its stand till today that it was a lease that was supposed to have lasted 99 years, that is, it ought to have ended in 1977. *Semper in dubiis benigniora praeferenda* is a Latin maxim which means "in doubtful matters the more liberal view is always to be preferred." But the Pact was abruptly abandoned in 1963 - a good 14 years prior to maturity and expiry of the Pact. It may have inspired the proponents of political association to justify the violating of a previously agreed upon contract. Under the provisions of Republic Act 1643 of the Philippines Civil Code the invalidation of a lease before it's designated term of expiry is a breach and violation of the law. The Overbeck-Dent Pact which was bulldozed over prior to the expiry of 99 years qualifies as a mala fide act. Herein lies a triable issue for the World Court.**

**When I examined all the surrounding circumstances and facts, I found some interesting nuggets of the truth and the accompanying justification for The Claim. All that the Sultan of Sulu, and the Government of the Republic of The Philippines have to do is to file a claim of *usucapio*. This Latin maxim encapsulates the concept of ownership due to lengthened possession. The native people of Sulu, and the island of Mindanao under the suzerainty and sovereignty of the Sultanate of Sulu were there since time immemorial, thus they occupied the islands before the arrival of other migrants and settlers, and therefore their claim of *usucapio* stands. It is *res judicata* as far as ownership is concerned. *Usucapio constituta est ut aliquis litium finis esset* - usucapion was instituted that there might be an end of lawsuits; the right of property**

**conferred by lengthened possession was introduced, or made law, in order that after a certain term no question should be possible concerning the ownership of property.** This Latin legal maxim has always been the basis for adjudicating such territorial claims. The 1981 *Mabo* case in Queensland, Australia, brought great relief to the aboriginals because the argument in favour of those opposing aboriginal claims was based on the doctrine of *terra nullius* – no man’s land. Alas, it was not no-man’s land because the aboriginals were already resident thereat when the Europeans arrived declared the Australian Supreme Court.

## **EXISTING FACTS**

Firstly, The Government of Malaysia continues to pay a yearly stipend to the Sultanate for the *cession*. Evidence of this payment can be viewed on the Sultanate’s website at [www.sovereignsulu.com](http://www.sovereignsulu.com).

I decided to check several dictionaries for the meaning of the word ‘cede’ and ‘cession’. All, bar none, offered meanings like *withdraw, yield, give up, surrender, resign because of force as a result of being conquered*. The law dictionary defines cession thus: “*in the civil law, a voluntary surrender of a person’s effects to his creditors to avoid imprisonment.*” I checked the period 1878 and a few years previous to this. There is no mention, proof or evidence of a battle, a skirmish, a war, a debt, a financial obligation by the then Sultan of Sulu to cede his territories to anyone. All accounts say the Sultan was impressed by the British approach of doing business unlike the others who came to take by force. So the obvious question is: why does the Malaysian government continue to pay for the lease, or cession, till this day given the fact that no war warranting a conquest ever happened to necessitate the Overbeck-Dent Pact?

Secondly, Malaya desired and wanted British North Borneo into the territorial alliance soon to be called Malaysia with Sarawak and Brunei as co-equal states. The latter declined due to sound British advice regarding its oil and gas deposits which may end up occupying other coffers. The British, it would appear, did not give

the same advice to the Sultan of Sulu regarding its own oil and gas deposits.

The 18-Point and 20-Point Agreement regarding North Borneo (Sabah) and Sarawak are concealed somewhere in historical archives with the recurrent belief and unshakeable faith amongst Malaysian politicians that *most people* in North Borneo agreed to join the federation of Malaysia. You can only agree when you know what is in store for you. That's like taking an oath and not knowing what you are swearing to. Here, the nagging question is : "Did the people of British North Borneo fully know and understand what was going to happen to their future in this federation called Malaysia?"

I am also inclined to take into account the attitude of Winston Churchill (1874-1965) who reportedly said in 1920 during the heightened crisis in Baghdad, Iraq, when Kurdish rebels were becoming more than a bee in the British bonnet: "I do not understand this squeamishness about the use of gas. I am strongly in favour of using poisoned gas against uncivilized tribes." Resorting to any means expedient, necessary, useful or practical to solve a politically charged situation is acceptable given pax britannica's mindset.

The Inter-Governmental Committee of the Cobbold Commission (the British Task Force Study Team regarding the formation of Federation of Malaysia) supposedly "worked out future constitutional arrangements including safeguards for the special interests of North Borneo," among other things. As of today, July 6, 2010, the presence of the absence of safeguards for the protection of special interests is evident, therefore it is safe to assume that was not *ex abundante cautela* (out of excessive caution) that motivated the supposed safeguards.

Thirdly, on January 28, 1963, then President of the Philippines, Diosdado Macapagal declared in his State-of-the-Nation Address that he has filed on June 22, 1962 a formal claim in the United Kingdom of sovereignty, jurisdiction and proprietary ownership over North Borneo as successor-in-interest for the Sultanate of

**Sulu. President Macapagal must have been advised about *usucapio* by a legally trained mind.**

**In September 1968, the Philippine Republic Act No. 5446 formally declared and recognized the dominion and sovereignty of Sabah (North Borneo).**

**On July 21, 1968 then President Ferdinand Marcos announced a plan to seek the intervention of the International Court of Justice (ICJ) at The Hague regarding the Sabah claim. This plan was swiftly abandoned in the interests of the preservation of peace and harmony in the Southern Philippines because of retaliatory actions by the Moro Islamic secessionists ostensibly aided and abetted by Malaysian Islamic support. Malaysia's Permanent Representative in the United Nations, R. Ramani, dared the Philippines to bring the case to the ICJ during an United Nations General Assembly session when Narciso Ramos, Secretary for Foreign Affairs of the Philippines, urged the world body to *hear* the Sabah claim. Here we have a situation where one diplomat asks to be heard, while the other dares him to fight it out in a court of law full well knowing that the act of litigating would be the fuse waiting to be lit by the southern Philippines extremists and separatists.**

**Extensive analyses of the Sabah claim were carried out by such essayists, writers, and researchers like Michael Leifer, Lorenzo Sumulong, Bernabe Africa, James Francis Warren, James B Ongkili, Cyril Alliston, Martin Meadows, Pacifico Ortiz and Leigh R Wright. All agree on a common theme - that Sabah rightfully belongs to the de facto Sultanate of Sulu with evident de jure rights which ought to be pursued by the sovereign government of the Republic of the Philippines because Sulu and Mindanao are geographically located in the Philippines.**

**Fourthly, on 13<sup>th</sup> February, 2008, the Syariah High Court of the State of Sabah, Malaysia, an Islamic religious court of law, declared in Case No. 123000-099-0013-2006 His Highness Prince Hadji Rodinood Maadil Sultan Julaspi Kiram as the 29<sup>th</sup> Sultan of Sulu and *North Borneo*.**

Not surprisingly, this religious tribunal declared Prince Rodinood as Sultan of *North Borneo* as well. This means that although North Borneo (Sabah) was included in the federation of Malaysia for *political* purposes, the *legal* mooring to lengthened possession – *usucapio*- was recognized by this august Court which obviously subscribes to the doctrine of the separation of powers and the supremacy of the Malaysian Federal Constitution. The findings of fact and law by the Syariah Court of the State of Sabah has not been challenged, overruled, vacated or set aside by any organ of state in Malaysia.

Fifthly, Article 169(a) of the Malaysian Federal Constitution clearly provides that “*any treaty, agreement or convention entered into before Merdeka Day between her Majesty or her predecessors or the Government of the United Kingdom on behalf of the Federation or any part thereof and another country shall be deemed to be a treaty, agreement or convention between the federation and that other country.*” This would include the Overbeck-Dent Pact because the British North Borneo Trading Company received a charter from Her Majesty’s Government before going into business for itself when it decided to sell its rights to Baron Overbeck and Sir Alfred Dent who in turn approached the Sultan of Sulu. This was during peace time. The question of a cession is appalling if not ludicrous.

Now, Article 169 of the Malaysian Federal Constitution must be read with Article 76 of the Malaysian Federal Constitution which declares the power of the Malaysian Parliament to legislate for the States in certain cases except in matters involving native law or Islamic law.

Therefore, syllogistically, Article 76 read with Article 169 upholds the Syariah High Court ruling of June 2008 which declared Prince Rodinood the legitimate Sultan of Sulu and *North Borneo*. One must also be reminded that Article 4 of the Malaysian Federal Constitution declares the Constitution as the supreme law of the land.

Thus, it is my duty as a judge to uphold the supreme law of the land – the Constitution of Malaysia– as the benchmark for truth and

**justice particularly in Malaysia. There can be no moral or legal arguments to the contrary germane to the declarations and findings of the supreme law of the land as espoused by the Syariah High Court of the State of Sabah whose jurisdiction is sacrosanct under the supreme law of Malaysia. Even the Malaysian Attorney General is forbidden from interfering in its findings and rulings vide Article 145(3) of the Malaysian Federal Constitution - the supreme law of Malaysia.**

**Lastly, the United Nations has tacitly recognized Prince Rodinood as the true and only Sultan of Sulu and *North Borneo* in a letter written to His Majesty on March 3, 2003 when it address His Majesty as “His Majesty Prince Rodinood Kiram II, Its Indigneous People & Sultan of Sulu and North Borneo.” This letter is also available for review on [www.sovereignsulu.com](http://www.sovereignsulu.com).**

**I am therefore left with no doubt in my mind that The Claim over Sabah is real, measurable, lawful, legal, and legitimate. We must invoke the wisdom of the World Court and the International Court of Justice in The Hague to ponder and decide The Claim so that political expediency, economic necessity and social policy can be harmonized for the Sultan of Sulu and His Highness’s people.**

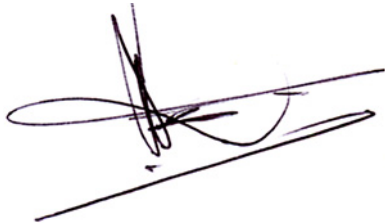
**A lot of emails asked me how the Malaysian people would have felt if Malaya was unceremoniously dragged into a federation of the Philippines, and later on wanted to leave the federation unceremoniously too like Singapore did in 1965 when it left Malaysia and became an independent nation state. I am no expert in conjecture, so I am ill equipped to respond to that hypothetical question. But lurking behind that awkward, yet appropriate and angry question is a nugget of truth. What if the tables were turned, and the Malays in Malaya wanted out of the Philippines if indeed Malaya was now part of the Philippines?**

**But a court of justice has no time to address conjecture and hypotheses. It can only look at the past and take all the facts and circumstances surrounding a controversy to arrive at a just, equitable and honest opinion. As always, I am motivated to remember the future and do what is best for the hapless and**

**disenfranchised Sultan of Sulu who has indeed suffered a great injustice by an awkward and dishonest page of history filled with political legerdemain, innuendo, slogans and propaganda.**

**But as Justice Oliver Wendell Holmes, Jr. said, “a page of history is worth a pound of logic.” It is hoped that history and the appropriate application of law and justice will prevail on behalf of His Highness Prince Rodinood Hadji Maadil Juslaspi Kiram and the people of Sulu and Mindanao.**

**All that is required for evil to triumph is for good men to do nothing, noted Edmund Burke. I trust a few good men and good women will do something for the Sultanate of Sulu through diplomatic channels instead of a litigation effort because a lawsuit is when a cow goes through one end and a sausage emerges at the other end.**

A handwritten signature in dark ink, appearing to read 'Aidun NC Naidu', with a long horizontal line extending to the right.

**Seattle, Washington, USA, July 7, 2010  
Judge Aidun NC Naidu  
Chief Judge  
Lipan Apache Band of Texas, USA,**