

## BOOK REVIEWS

THE PHILIPPINES' CLAIM TO SABAH. ITS HISTORICAL, LEGAL AND POLITICAL IMPLICATIONS. By M.O. ARIFF. [Oxford University Press. 1970. pp. xiii + 76. \$8].

“... the fact that the issue is at rest for the moment does not deprive the attendant legal problems of their inherent interest.”

Thus motivated, Ariff has attempted to investigate the Philippines' claim to Sabah.

The book contains seven chapters<sup>1</sup>, and in Chapter 1, the author traces out the territory in dispute and the parties to the dispute. Recognising the basic issue to be whether the Federation of Malaysia or the Philippines has sovereignty over Sabah, Ariff in Chapters II to VI of his book considers the legal bases of the respective claims.

A whole list of documents are meticulously studied and this leads him to conclude that British sovereignty over Sabah was established and hence Malaysia's sovereignty to Sabah which arose by virtue of the Malaysia Agreement.

British sovereignty over the region he concludes arose either through (a) prescriptive title or (b) through the process of consolidation. He dismisses the Philippines' claim on the following consideration, viz. —

- (a) there are no proper deeds of title on which the Philippines could base its claim,
- (b) that there was no treaty of cession between the heirs of the Sultan of Sulu and the Philippines Government,
- (c) that the Sultan of Sulu had no capacity to conclude a treaty of cession under International Law,

and (d) that there was no territory under the control of the Sultan of Sulu which was capable of being transferred to the Philippines.

He concludes therefore that Malaysia's sovereignty over Sabah is established with the passing of British sovereignty to the Federation under the Malaysia Agreement which conclusion is supported further by the various manifestations of 'self-determination' by the people of Sabah to want to remain in the Federation. This brings to mind a comment made by former Senator Sumulong of the Philippines,

‘The basic weakness of our claim to Sabah is that the people of Sabah do not want it.’ (*The University of Manila Law Gazette*, (1969), vol. XVIII, p. 265).

In relation to the Philippines' claim, Ariff disregards the point whether the 1878 grant is a lease or a cession on the ground that the agreement being one concluded 'between an independent private association... and the Sultan will not be recognised outright as a cession under International law and therefore will not confer on the original grantees title to the territory'.

When one recalls the author's motivation and purpose for writing on this topic, it is surprising to note the manner in which he summarily dismisses this issue. The more so when it is realised that this is 'the core of the legal basis of the

1. Chapters 1. The Background to the Dispute; 2. Documented Basis of the British Title to Sabah; 3. The British Claim to Sabah; Its Legal Basis; 4. The Philippines' Claim to Sabah; Its Legal Basis; 5. Possession and Consolidation: The Bases of the British Claim to Sabah; 6. The Bases of Sabah's Independence and Integration within Malaysia; 7. The Alternative Modes of Settlement.

Philippines' claim' (Jayakumar, *The Philippines' Claim to Sabah and International Law*, *Malaya Law Review* (1968), vol. 10, 306 at 310.) As pointed by Jayakumar, it is the contention of the Philippines that the 1878 grant was not a cession but a lease and being a lease Dent and Overbeck did not acquire sovereignty over North Borneo and hence the British North Borneo Company and later the British Government could not have acquired sovereignty over North Borneo through Dent and Overbeck. This being so, it is the contention of the Philippine Government that the Sultan of Sulu retained sovereignty over North Borneo which sovereignty he later in 1962 transferred to the Philippines.

It is also surprising to note that Ariff should miss Jayakumar's article altogether. This article is not referred to in any of his footnotes and neither is it referred to in his bibliography. Apart from this omission, however, the author is to be complimented on his research and on his extensive footnoting. The book will most certainly '... be a source of reference for future historians, an interesting legal study for lawyers and a guide to the political enigma...'. .

The author, however, will be well advised to make a few corrections. Some of these corrections may have been necessitated by poor proof-reading. For example in the tenth line on page 3, this statement appears: 'This is discussed in Chapter IV. The chapter in point is not Chapter IV but V.

The eighth line of the third paragraph on page 52 reads: "... The 31 August 1963 or 'Malaysia Day' marks the day on which means in the form of a plebiscite or a referendum". It is submitted that some words have been inadvertently left out from this sentence, because taken as it is, it does not make sense.

On the same page the last sentence of the third paragraph reads:

'Moreover, on the joint request of the Heads of States of the Republic of Indonesia and the Philippines and the Prime Minister of the Federation of Malaya, at the Summit Conference in Manila from 30 July — 5 August 1963, the United Nations' Secretary-General sent a team to the Borneo territories with similar the United Kingdom agreed under the Malaysia Agreement to secure an Act of Parliament to relinquish its sovereignty and jurisdiction over North Borneo and the other 3 states which together with the former States of the Federation of Malaya formed Malaysia'.

It is obvious, one, that some words which should have appeared after the word 'similar' have been inadvertently omitted and, two, the words beginning with 'the United Kingdom agreed...' are the starting words of a new sentence and that therefore the letter 't' in 'the' should be in block.

In addition an inaccuracy in the statement of facts is noted in this last sentence. Instead of 'North Borneo and the other 3 states' it should read 'North Borneo and the other 2 states'.