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Sultan of Sulu's Sabah Claim: A Case of 'Long-Lost' Sovereignty?

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Synopsis

The recent claim of sovereignty by the Sultan of Sulu over Sabah has sparked unease amongst both Sabahans and the Malaysian government. Is this claim valid under international law?

Commentary

ON 5 MARCH 2013, Malaysian forces launched a land and air counter-offensive to put an end to the intrusion in Sabah by armed men from the self-styled Royal Sulu Army (RSA). The month-long crisis, still ongoing, is tapering off. But it has brought international attention to a long-dormant claim by the descendants of the Philippines-based Sulu Sultanate over Sabah, which has been part of Malaysia since 1963.

President Benigno Aquino III has said he will form a task group to study the Sulu Sultan's claim over Sabah. President Aquino has also stated that his government was also investigating the possibility that the incursion was designed to embarrass his government and jeopardise the peace deal he initiated called the Framework Agreement on the Bangsamoro which was designed to end to the long-running conflict in the southern Philippines. With his administration facing criticism for being 'subservient' to Malaysia, President Aquino has further accused the Sulu Sultan, Jamalul Kiram III, of putting over 800,000 Filipinos living in Sabah – known as Suluks - in harm's way.

History of Sabah claim

The Sulu Sultan sought to support his contention by asserting that the rent paid by the Malaysian embassy in Manila to him was in recognition of his sovereignty over Sabah. The Sultan's spokesman, Abraham Idjirani, stated that the Sultan and his followers would remain in Sabah and not return to the Philippines despite the offensive to dislodge them.

On 2 March, President Aquino had urged the armed followers of the Sultan who had entered Lahad Datu in Sabah to surrender without conditions to prevent further loss of lives. The followers of the Sultan refused to do so resulting in deadly clashes with Malaysian Police. The situation worsened in Lahad Datu and spread to Semporna and Kunak, with the overall death toll so far standing at 62, including eight from the Malaysian police and armed forces.

The former territory of North Borneo was ceded or leased in perpetuity to the British in January 1878 by an

agreement signed between the then Sultanate of Sulu and two British commercial agents, namely Alfred Dent and Baron von Overbeck of the British North Borneo Company, in return for payment of 5000 Malayan dollars per year. The sum was increased to 5,300 dollars when the lease was extended to include islands along the coast of North Borneo. Before that the Sulu Sultanate based in Jolo and parts of Mindanao, was absorbed by the Philippines, which was under Spanish rule. The Philippines became a territory of the United States in 1898, but without North Borneo.

After World War II, the British allowed North Borneo to join the Federation of Malaysia in 1963 and it was renamed 'Sabah'. However, until today, the Malaysian Embassy in Manila continues to pay nominal 'cession money' to the heirs of the Sultan of Sulu, amounting to RM 5,300.00 (73, 940 Filipino peso) per year.

The Philippines claimed sovereignty over Sabah when it joined Malaysia but agreed in 1977 not to pursue the claim. In 2008, an initiative by Nur Misuari, a leader of the Moro National Liberation Front (MNLF) to take the Sabah claim to the International Court of Justice (ICJ) was regarded as a non-issue by the Sabah authorities.

The Sabah claim and international law

There are a number of methods of territorial acquisition under international law, among others, through conquest, prescription and cession. Conquest or annexation was recognised as a method of territorial acquisition in the past but has been deemed illegal under international law since the UN Charter came into force in 1945. Therefore, the most relevant method for Sabah is obviously through cession and prescription.

A state may acquire sovereignty over a certain territory if the sovereignty is transferred or ceded by the sovereign to another. If the British version of the 1878 Treaty is adopted, it is clear that the sovereignty over Sabah was transferred in 1878 by the Sultanate of Sulu to the British, which later transferred the sovereignty over Sabah to Malaysia.

In addition, under international law, prescription refers to acquisition of sovereignty by way of actual exercise of sovereignty, maintained for a reasonable period of time and is effected without objection from any states. Even if the British version is contested and the Sulu version of the 1878 Treaty (that it was leased) is upheld, the Sultanate may not be able to claim sovereignty over Sabah as Malaysia has, since 1963, exercised prescription and administered Sabah without any consistent objection from any members of the United Nations (UN).

Changed scenario

Sabah was not annexed as it voluntarily joined the Federation of Malaysia in 1963. Malaysia has since installed a working government to administer Sabah, with the international community recognising Sabah as part of Malaysia. This could be seen in the 2002 ICJ decision which awarded the islands of Sipadan and Ligitan located off Sabah, which were claimed by Malaysia and Indonesia, to the former. This decision has further underscored the fact that Sabah has always been part of Malaysia.

The claim of Sabah as ancestral territory of the Sultan of Sulu may also seem to be baseless. The claim of 'ancestral territory' does not carry much weight under international law. While historically, Sabah was part of the Sulu Sultanate, the political scenario of Sabah and the Philippines had changed since the Spanish, the British and the Americans colonised this part of the world.

Sabah is now part of Malaysia and the question of whether or not the Sultanate of Sulu could claim sovereignty over Sabah as their ancestral territory is open to debate. In this respect, the claim of Sabah by the Sultan of Sulu could be seen as reminiscent of a 'long-lost' sovereignty.

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