

## International Law and the Sabah Dispute: A Postscript<sup>(1)</sup>

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In the recently released British Government archives appears a letter of March 1917 from the Governor of British North Borneo to the British North Borneo Company about the so-called Carpenter Agreement of 22 March 1915 whereby the Sultan of Sulu lost any temporal sovereignty he might have retained over American Territory. The Governor wrote:

"It is not clear what effect this agreement has on the position of the Sultan as the lessor of parts of British North Borneo to this Government, but it seems that in the unlikely event of our failure to pay the cession agreement, the sovereign rights over this territory would become the property of the United States Government."

The Company replied, however, that it thought that the Carpenter Agreement referred specifically to American territory.<sup>(2)</sup>

In November 1922, after the proposal of a resolution in the Philippine House of Representatives for the return of British North Borneo to the Philippines, the Librarian of the Foreign Office prepared a memorandum which set out the history of British rule in North Borneo and reached the conclusion that no right of reversion to the United States could exist.<sup>(3)</sup> This memorandum was referred to with approval by the Foreign Office nearly ten years later when, in July 1931, the British Consul-General in Manila reported that the Sultan of Sulu had lost his version of the concession of 1878 and was complaining that the British North Borneo Company had refused to supply him with a copy of their version. The Foreign Office referred the Manila dispatch to the Colonial Office which, in turn, transmitted it to the British North Borneo Company. The latter, in a letter to the Colonial Office of 17 November 1931, denied that the 1878 transaction was a "lease" as allegedly claimed by the Sultan, but stated that it was a grant expressed to be "for ever and in perpetuity". The Company stated further that the Governor of North Borneo was being authorized, if he saw no objection, to furnish the Sultan with photographic repro-

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1 See the present writer's article in 1967 *Australian Yearbook of International Law*.

2 This correspondence is filed in the Public Record Office, London, as C.O. 874/1029.

3 F.O. 371/8512.

ductions of the 1878 documents.<sup>[4]</sup> There was no record of whether the Sultan was even sent the copies.

It was clearly the official view at this time that the Sultan's claim to North Borneo was worthless. In 1933, when the Sultan protested about the failure of the North Borneo authorities to provide him with a guard of honour and a salute of guns on a visit to the territory, the Governor told him bluntly: "Your Highness has no authority in this territory."<sup>[5]</sup>

In the article by the present writer in the 1967 volume of this Yearbook, there were set out English translations of the documents by which, in December 1877 and January 1878, the Sultans of Brunei and Sulu respectively purported to transfer certain land interests in Northern Borneo to Overbeck and Dent. These translations were those sent back to London at the time by Treacher, the Acting Governor of Labuan. It was pointed out in the article that there were other English translations of the same documents, in particular those published in the British and Foreign State Papers and the translations published in Maxwell and Gibson's *Treaties and Engagements Affecting the Malay States and Borneo*.

Among the papers of the British North Borneo Company which are now kept in the Public Record Office, London, are the original documents of the various land grants made by native rulers to British interests from December 1877 to April 1903.<sup>[6]</sup> A photo-copy of each original is to be found in a single, separate volume,<sup>[7]</sup> and attached to each photo-copy is a transcription into Romanized Malay script of the original Malay in Arabic script together with a translation into English. The transcriptions and translations are described as having been "revised by the School of Oriental Studies". No date is given for this revision.

The translation given of the Sulu-Overbeck grant of 22 January 1878 is as follows:—

"We, His Highness the Sultan Muhammad Jamaluladzam son of His Highness the late Sultan Muhammad Fadzalun, Sultan in the State of Sulu and all its districts and dependencies, on behalf of Ourselves Our heirs and successors and with the consent of all the Dato's in council assembled have been pleased to grant of Our own will and pleasure to Gustavus Baron de Overbeck residing at Hong Kong and Alfred Dent Esquire residing in London, as representatives of a British Company, together with their heirs associates successors and representatives for ever all the rights and powers belonging to us over all the territories and lands which are tributary to us on the mainland of the island of Borneo from the Pandasan River on the west extending along all the lands on the east coast as far as the Sibuku River in the south and including all the territories on the coast of the Pandasan River and the coast lands of Paitan, Sugut, Bonggaya, Labuk, Sandakan, Kinabatangan, Mumiang, and all the other territories and coast lands

4 The correspondence is filed on F.O. 371/15141.

5 C.O. 874/1029.

6 The original of the Sulu-Overbeck grant mentioned below is filed as C.O. 874/22. It is in an excellent state of preservation.

7 C.O. 874/54.

to the southward thereof on the coast of Darvel Bay as far as the Sibuku River together with all the islands included therein within nine miles of the coast.

"The consideration of this grant is that the said Baron de Overbeck and Alfred Dent promise to pay to His Highness the Sultan Muhammad Jamaluladzam his heirs and successors the sum of five thousand dollars a year payable every year.

"The said territories have been granted from this date to the said Baron de Overbeck and Alfred Dent Esquire co-jointly their heirs associates and successors or representatives for as long as they desire to use these coastlands. Provided, however, that the rights and powers conferred by this grant shall ever be transferred to any other nation or company of foreign nationality without the sanction of Her Britannic Majesty's Government first being obtained.

"Furthermore, in case any dispute or difference shall arise hereafter between Us, Our Heirs and successors, and Gustavus Baron de Overbeck or his Company both parties will submit the matter to the judgment and opinion of Her Britannic Majesty's Consul-General at Brunei.

"Moreover if We, His Highness the Sultan Muhammad Jamaluladzam and Our Heirs and successors should meet with any trouble hereafter, Gustavus de Overbeck and his Company promise to assist in giving us counsel and advice to the utmost of their power.

"This agreement is written in Sulu at the palace of the Sultan Muhammad Jamaluladzam on the 19th day of Muharram, A.D. 1295, i.e. the 22nd January, A.D. 1878."