

DEPARTMENT OF STATE
AIRGRAM

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MANILA
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*File - Philippines
occasional
reaches LOS*

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ORIGINATOR	HANDLING	CLASSIFICATION	MESSAGE REFERENCE NO.
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TO: Department of State

INFO: Amembassies Bangkok, Kuala Lumpur, Jakarta, Singapore

FROM: Amembassy Manila DATE: Sept. 29, 1977

E.O. 11652: N/A

TAGS: PBOR, MY, RP

SUBJECT: SECRETARY OF JUSTICE STATES CONSTITUTIONAL CHANGE NOW REQUIRED FOR RENUNCIATION OF SABAH CLAIM

REF: MANILA 12524

DEPT. DISTRIBUTION			
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In a report on the legal issues surrounding the renunciation of the Philippine claim to Sabah, Secretary of Justice Vincente Abad Santos, has stated it is not necessary to amend the Philippine constitution to drop formally the Philippine claim to Sabah. Article I, Section 1 of the Philippine constitution defines the territory of the Philippines as "the Philippine archipelago, with all the islands and waters embraced therein, and all the other territories belonging to the Philippines by historic right or legal title..." Though not mentioning Sabah by name, the minutes of the 1972 constitutional convention show that the phrase referring to "legal title" was placed in the constitution to support the Sabah claim. Abad Santos concludes, however, that the Philippines has "neither a historic right nor a legal title" to Sabah, but only a disputed claim.

Abad Santos also addressed the question of Republic Act 5446, which defines the baselines of the territorial sea of the Philippines. Section 2 of this act notes that the definition of the baselines

of the Philippine territorial sea "is without prejudice to the delineation of the baselines of the territorial sea around the territory of Sabah...over which the Republic of the Philippines has acquired dominion and sovereignty." Abad Santos concludes that although a Philippine law cannot be invoked to support an international claim, R.A. 5446 should be repealed "if only to dispel any doubt as to the sincerity of the government..."

COMMENT: The expectation here continues to be that President Marcos, as promised at the ASEAN Summit in Kuala Lumpur, will indeed take steps to drop the Philippines claim to Sabah. Exactly how he will accomplish this, however, remains uncertain. The question of the manner in which the Philippines will legally drop its claim is evidently of prime importance to the Malays. Though Malaysian diplomats in Manila are reticent to discuss the issue, both Indonesian and Singapore Embassy officers have opined to the reporting officer that the Philippine constitution must be amended, excising the phrase referring to territories belonging to the Philippines by historic right or legal title in order to convince the Malaysians of the seriousness of the Philippine desire to settle finally the Sabah dispute.

STULL

- Attachment: 1) Santos Report
2) R.A. 5446

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DRAFTED BY: POL/GMTalcott:hrl	DRAFTING DATE: 9/27/77	PHONE NO.: 667	CLASSIFICATION: POL/RHwenzel
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POL/DCellison (draft); POL/R:HWNatzke (draft); LO/LtcLitt (draft)

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MANILA A-233

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to any utility or customer within the area covered by this franchise at rates lower than those at which power is sold to the grantee and without the latter's written consent.

SEC. 2. The grantee shall operate according, and at all times adhere, to the "area-coverage" principle; shall be "non-profit"; and shall during the first twenty-five years or for as long as its obligations are not fully paid, be exempt from all taxes, duties and fees of whatever kind and nature, except income tax as applicable to non-agricultural cooperatives the provisions of any existing law to the contrary notwithstanding.

"Area-coverage", as used in this Act, means that if a person lives in the territory of an electric service cooperative system, he shall be entitled to receive electric service regardless of the place of his residence upon his becoming a member of such cooperative and regardless of the cost of the service to him, whether profitable or not, the feasibility or financial possibility of providing him service being based on the principle that the cooperative system is designed to serve the interest of all its members collectively, and not individually: *Provided*, That membership in the cooperative shall not permit any preference or discrimination.

"Non-profit" means that the cooperative shall be operated without any profit or dividend to its members, but the rates, fees, rents or other charges for electric energy and any other facilities, supplies, equipment, or services furnished by the cooperative shall be sufficient at all times: (a) to pay all operating and maintenance expenses necessary or desirable for the prudent conduct of its business and the principal of and interest on the obligations issued or assumed by the cooperative in the performance of the purpose for which it was organized; and (b) for the creation of reserves. The revenues of the cooperative shall be devoted first to the payment of operating and maintenance expenses and the principal and interest on outstanding obligations, and thereafter to such reserves for improvement, new construction, depreciation and contingencies as the board may from time to time prescribe.

SEC. 3. The grantee is hereby authorized to mortgage this franchise and its assets in favor of the Electrification Administration, the Philippine National Bank and its subsidiaries, the Development Bank of the Philippines or any other lending institution subject to the approval of the Public Service Commission. The Development Bank of the Philippines is hereby authorized to obtain foreign loans for lending to the grantee pursuant to the provisions of section three of Republic Act Numbered Four thousand eight hundred sixty.

SEC. 4. This Act shall take effect upon its approval. Approved, September 9, 1968.

S. No. 954

[REPUBLIC ACT NO. 5446]

AN ACT TO AMEND SECTION ONE OF REPUBLIC ACT NUMBERED THIRTY HUNDRED AND FORTY-SIX, ENTITLED "AN ACT TO DEFINE

JULY 21, 1969

OFFICIAL GAZETTE

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THE BASELINES OF THE TERRITORIAL SEA OF THE PHILIPPINES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. To correct typographical errors, Section one of Republic Act numbered thirty hundred and forty-six is amended to read as follows:

"SECTION 1. The baselines for the territorial sea of the Philippines are hereby defined and described specifically as follows:

	N. Latitude	E. Longitude	Azimuth	Distance in Meters
Yami Island (E)	21°07'06"	121°57'21"		
Line 1 (Yami I. (E.) —Tamaruk Rk.)			353°27'	71,656
Tamaruk Rk.	20°28'28"	122°02'00"		
Line 2 (Tamaruk Rk. —Balintang Is.)			317°13'	58,105
Balintang Islands	19°57'47"	122°02'28"		
Line 3 (Balintang Is. —Dilicas Rk.)			357°05'	97,755
Dilicas Rk.	19°01'50"	122°12'18"		
Line 4 (Dilicas Rk.— Iligan Pt.)			350°39'	56,155
Iligan Pt.	18°18'45"	122°20'15"		
Line 5 (Iligan Pt.— Ditolog Pt.)			351°23'	156,020
Ditolog Pt.	17°05'50"	122°31'41"		
Line 6 (Ditolog Pt.— Divilisa Pt.)			16°56'	34,378
Divilisa Pt.	16°48'00"	122°26'00"		
Line 7 (Divilisa Pt.— Dijulan Pt.)			21°01'	57,781
Dijulan Pt.	16°18'45"	122°14'29"		
Line 7a (Dijulan Pt.— Bulabalik Pt.)			10°52'	112,369
Bulabalik Pt.	15°02'56"	121°59'30"		
Line 8 (Bulabalik Pt.— Tinaga I.)			300°15'	126,986
Tinaga I.	14°29'45"	122°57'46"		
Line 9 (Tinaga I.— Horadaba Rks.)			256°27'	148,020
Horadaba Rks.	11°06'41"	121°16'54"		
Line 10 (Horadaba Rks.—Matulin Rk.)			308°34'	1,083
Matulin Rk.	11°06'20"	124°17'23"		
Line 11 (Matulin Rk.— Atalaya Pt.)			331°46'	178,420
Atalaya Pt.	12°40'59"	125°01'02"		
Line 11a (Atalaya Pt.— Pinuk Rk.)			313°30'	22,268

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	N. Latitude	E. Longitude	Azimuth	Distance (in Meters)
Baguan I.	6°06'00"	118°26'42"		
Line 36a (Baguan I.— Taganak I.)			76°52'	15,585
Taganak I.	6°04'05"	118°18'30"		
Line 37 (Taganak I.— Gt. Dakkungaan)			118°39'	24,805
Gt. Dakkungaan	6°10'22"	118°06'42"		
Line 37a (Gt. Dak- kungaan—Sibaung I.)			130°04'	18,470
Sibaung I.	6°17'45"	117°59'15"		
Line 38 (Sibaung—I.— Muligi I.)			215°30'	79,915
Muligi I.	6°53'00"	118°25'00"		
Line 39 (Muligi I.— Mangsee Is.)			119°14'	140,541
Mangsee Is.	7°30'10"	117°18'20"		
Line 39a (Mangsee Is.— Cape Melville)			134°50'	48,815
Cape Melville	7°48'50"	116°59'30"		
Line 40 (Cape Mel- ville—Ligas Pt.)			153°54'	15,665
Ligas Pt.	7°56'23"	116°55'45"		
Line 41 (Ligas Pt.— Cay)			170°40'	5,666
Cay	7°59'30"	116°55'15"		
Line 41a (Cay—Secam I.)			204°52'	22,925
Secam I.	8°10'47"	117°00'30"		
Line 42 (Secam I.—N. of Canipan Bay)			202°09'	54,990
N. of Canipan Bay	8°36'50"	117°15'06"		
Line 43 (N. of Cani- pan Bay—Tatub Pt.)			218°57'	18,570
Tatub Pt.	8°44'40"	117°21'28"		
Line 44 (Tatub Pt.— Punta Raja)			222°04'	45,125
Punta Raja	9°02'50"	117°37'58"		
Line 45 (Punta Raja —Malapackun I.)			223°30'	32,195
Malapackun I.	9°15'30"	117°50'04"		
Line 46 (Malapackun I.—Piedras Pt.)			225°50'	148,200
Piedras Pt.	10°11'28"	118°48'18"		
Line 47 (Piedras Pt.— Tapiutan I.)			203°19'	124,900
Tapiutan I.	11°13'40"	119°18'28"		
Line 48 (Tapiutan I.— Pinnacle Rk.)			208°47'	185,590
Pinnacle Rk.	12°18'34"	119°51'45"		
Line 49 (Pinnacle Rk.— Cape Calavite)			200°40'	134,230

	N. Latitude	E. Longitude	Azimuth	Distance (in Meters)
Cape Calavite	13°26'40"	120°18'00"		
Line 50 (Cape Cal- avite—Cabra I.)			148°12'	58,235
Cabra I.	13°53'30"	120°09'58"		
Line 51 (Cabra I.— Caponos Is.)			170°20'	119,400
Caponos Is.	14°55'00"	120°00'20"		
Line 52 (Caponos Is.— Falaug Pt.)			168°09'	58,109
Falaug Pt.	15°25'50"	119°53'40"		
Line 53 (Falaug— Hermans Mayor I.)			164°17'	40,870
Hermans Mayor I.	15°47'10"	119°47'25"		
Line 53a (Hermans Mayor I.—Tambobo Pt.)			167°10'	20,490
Tambobo Pt.	15°58'00"	119°44'55"		
Line 54 (Tambobo Pt.— Rena Pt.)			181°43'	22,910
Rena Pt.	16°10'25"	119°45'18"		
Line 54a (Rena Pt.— Cape Bolinao)			191°39'	18,675
Cape Bolinao	16°20'20"	119°47'25"		
Line 55 (Cape Bolinao —Darigayos Pt.)			226°20'	80,016
Darigayos Pt.	16°50'15"	120°20'00"		
Line 56 (Darigayos Pt.—Dile Pt.)			170°58'	81,610
Dile Pt.	17°31'30"	120°19'58"		
Line 56a (Dile Pt.— Pinget I.)			188°27'	12,060
Pinget I.	17°40'58"	120°20'53"		
Line 56b (Pinget I.— Badoc I.)			192°40'	27,170
Badoc I.	17°55'20"	120°24'22"		
Line 57 (Badoc I.— Cape Bojeador)			195°03'	65,270
Cape Bojeador	18°29'30"	120°34'00"		
Line 58 (Cape Bojeador— Dalupiri I.)			223°16'	101,740
Dalupiri I.	19°10'15"	121°13'02"		
Line 59 (Dalupiri I.— Catanapan Pt.)			213°29'	25,075
Catanapan Pt.	19°21'35"	121°20'56"		
Line 60 (Catanapan Pt.—Dequey I.)			202°27'	116,870
Dequey I.	20°20'06"	121°46'35"		
Line 61 (Dequey I.— Ralle)			180°47'	42,255

	N. Latitude	E. Longitude	Azimuth	Distance (in Meters)
Finch Rk.	12°32'40"	125°12'57"		
Line 12 (Finch Rk.— SE of Manjud Pt.)			313°56'	12,665
SE Manjud Pt.	12°27'54"	125°17'59"		
Line 12a (SE of Man- jud Pt.—Sora Cay)			322°27'	14,225
Sora Cay	12°21'41"	125°22'46"		
Line 13 (Sora Cay— Bunga Pt.)			321°03'	22,793
Bunga Pt.	12°12'10"	125°30'40"		
Line 13a (Bunga Pt. —Tubabao I.)			331°50'	12,686
Tubabao I.	12°06'06"	125°33'58"		
Line 14 (Tubabao I.— Tugnug Pt.)			355°22'	83,235
Tugnug Pt.	11°21'06"	125°37'40"		
Line 15 (Tugnug Pt.— Suluan I.)			331°03'	75,325
Suluan Island	10°45'20"	125°57'40"		
Line 16 (Suluan I.— Tuason Pt.)			347°51'	107,070
Tuason Pt.	9°48'33"	126°10'00"		
Line 17 (Tuason Pt.— Cauit Pt.)			355°25'	55,415
Cauit Pt.	9°18'35"	126°12'25"		
Line 18 (Cauit Pt. Arangasa Is.)			342°44'	49,703
Arangasa Is.	8°52'50"	126°20'28"		
Line 19 (Arangasa Is. —Quinabangan I.)			318°40'	131,310
Quinabangan I.	7°42'58"	126°34'30"		
Line 19a (Quinab- ngan I.—Above Lan- guyan R.)			353°08'	25,619
Above Languyan R.	7°29'10"	126°30'10"		
Line 20 (Above Lang- uyan R.—Pusan Pt.)			355°52'	22,489
Pusan Pt.	7°16'50"	126°30'50"		
Line 21 (Pusan Pt.— Tugubun Pt.)			26°39'	36,269
Tugubun Pt.	6°59'24"	126°28'00"		
Line 22 (Tugubun Pt. —Cape S. Agustin N.)			20°33'	63,350
Cape San Agustin (N)	6°17'03"	126°12'08"		
Line 22a (Cape S. Agustin (N)—Cape San Agustin (S))			30°18'	1,707
Cape San Agustin (S)	6°16'15"	126°11'40"		
Line 23 (Cape S. Agustin (S)—Pan- guil Bato Pt.)			39°23'	125,106

	N. Latitude	E. Longitude	Azimuth	Distance (in Meters)
Panguil Bato Pt.	5°23'45"	125°28'42"		
Line 23a (Panguil Bato Pt.—Tapundo Pt.)			66°32'	7,184
Tapundo Pt.	5°22'08"	125°24'58"		
Line 24 (Tapundo Pt. —Mananil I.)			89°19'	7,667
Mananil I.	5°22'05"	125°20'50"		
Line 24a (Mananil I. —Balut I. (W))			139°01'	3,051
Balut I. (W)	5°23'20"	125°19'45"		
Line 25 (Balut I. (W) —Middle of 3 Rk. Awash)			124°47'	149,840
Middle of 3 Rk. Awash	6°09'39"	124°13'02"		
Line 25 (Middle of 3 Rk. Awash—Tong- quil I.)			36°18'	259,490
Tongquil I.	6°00'15"	124°52'45"		
Line 27 (Tongquil I.— Sunbasamba I.)			61°29'	115,950
Sunbasamba I.	5°30'10"	120°57'35"		
Line 28 (Sunbasamba I.—Kinapusan Is.)			43°19'	44,415
Kinapusan Is.	5°12'37"	120°41'05"		
Line 29 (Kinapusan Is.—Manuk Manka I.)			63°14'	101,290
Manuk Manka I.	4°47'50"	119°52'10"		
Line 30 (Manuk Man- ka I.—Frances Reef)			58°30'	80,817
Frances Reef	4°24'54"	119°54'54"		
Line 31 (Frances Reef —Bajaja Reef)			131°34'	29,330
Bajaja Reef	4°36'04"	119°03'36"		
Line 32 (Bajaja Reef —Panguan I.)			161°08'	13,480
Panguan I.	4°43'06"	119°01'36"		
Line 33 (Panguan I.— Omapey I.)			238°48'	42,470
Omapey I.	4°55'02"	119°21'15"		
Line 34 (Omapey I.— Sanga-Sanga I.)			240°11'	51,005
Sanga-Sanga I.	5°06'12"	119°46'30"		
Line 35 (Sanga-Sanga I.—Pearl Bank)			170°05'	80,200
Pearl Bank	5°49'04"	119°39'01"		
Line 36 (Pearl Bank— Boguan I.)			103°13'	137,050

MANILA 11-23

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Republic of the Philippines
KAGAWARAN NG KATARUNGAN
Department of Justice
Manila.

REPORT OF THE SECRETARY OF JUSTICE
ON THE CONSTITUTIONALITY OF THE
WITHDRAWAL OF THE SABAH CLAIM
AND OTHER LEGAL ISSUES RELATED THERETO

The decision to drop the Philippine claim to Sabah raises two legal issues: (1) whether the renunciation necessitate an amendment to the Constitution, particularly Article I, Section 1, defining the national territory; and (2) whether there is a necessity to repeal or amend R.A. No. 3046, as amended by R.A. No. 5446; otherwise known as the "baselines law".

Article I, Section 1 of the Constitution provides as follows:

"SEC. 1. The National territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all the other territories belonging to the Philippines by historic right or legal title, including the territorial sea, the air space, the subsoil, the seabed, the insular shelves, and the other submarine areas over which the Philippines has sovereignty or jurisdiction. The waters around, between, and connecting the islands of the archipelago, irrespective of their breadth and dimensions, form part of the internal waters of the Philippines." (Art. I.)

And Section 2 of R.A. No. 5446, which law amends R.A. No. 3046 (defining the baselines of the territorial sea of the Philippine Archipelago) reads as follows:

"SEC. 2. The definition of the baselines of the territorial sea of the Philippine Archipelago as provided in this Act is without prejudice to the delineation of the baselines of the territorial sea around the territory of Sabah, situated in North Borneo, over which the Republic of the Philippines has acquired dominion and sovereignty."

1. It must be observed at the outset that the definition of the national territory in the Constitution makes no specific reference to the Sabah territory. However, some quarters have suggested that the inclusion of Sabah in the national territory is to be deduced from the phrase "all the other territories belonging to the Philippines by historic right or legal title". The question then that has to be resolved is whether Sabah territory belongs to the Philippines by historic right or legal title. Unfortunately, we can only honestly assert that what the Philippines has in respect of the Sabah territory in North Borneo is neither a historic right nor a legal title thereto but a disputed claim. Hence, all references in connection with the relation of Sabah to the Philippines invariably are to a so-called "Sabah claim".

As a matter of law, the term "historic right" as used with reference to the acquisition of territory by a state, connotes title created in derogation of international law through historical processes by which one State has asserted a jurisdiction originally illegal and this has been acquiesced in by the community of nations. In essence, the title is validated only by the creation of a specific custom, which is an expression of universal or almost universal consent.

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	N. Latitude	E. Longitude	Asimuth	Distance (in Meters)
Raile	20°43'00"	121°46'55"		
Line 62 (Raile—Y'ami I. (W)			200°30'	48,140
Y'ami I. (W)	21°07'26"	121°56'39"		
Line 63 (Y'ami I. (W)—Y'ami I. (M)			238°40'	237
Y'ami I. (M)	21°07'30"	121°56'46"		
Line 64 (Y'ami I. (M)—Y'ami I. (E)			307°08'	1,376
Y'ami I. (E)	21°07'03"	121°57'21"		

SEC. 2. The definition of the baselines of the territorial sea of the Philippine Archipelago as provided in this Act is without prejudice to the delineation of the baselines of the territorial sea around the territory of Sabah, situated in North Borneo, over which the Republic of the Philippines has acquired dominion and sovereignty.

SEC. 3. This Act shall take effect upon its approval.
Approved, Sept. 18, 1968.

H. No. 17066

[REPUBLIC ACT NO. 5447]

AN ACT CREATING A SPECIAL EDUCATION FUND TO BE CONSTITUTED FROM THE PROCEEDS OF AN ADDITIONAL REAL PROPERTY TAX AND A CERTAIN PORTION OF THE TAXES ON VIRGINIA-TYPE CIGARETTES AND DUTIES ON IMPORTED LEAF TOBACCO, DEFINING THE ACTIVITIES TO BE FINANCED, CREATING SCHOOL BOARDS FOR THE PURPOSE, AND APPROPRIATING FUNDS THEREFROM.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Declaration of policy: creation of Special Education Fund.*—It is hereby declared to be the policy of the government to contribute to the financial support of the goals of education as provided by the Constitution. For this purpose, there is hereby created a Special Education Fund, hereinafter referred to as the Fund, to be derived from the additional tax on real property and from a certain portion of the taxes on Virginia-type cigarettes and duties on imported leaf tobacco, hereinafter provided for, which shall be expended exclusively for the following activities of the Department of Education:

(a) the organization and operation of such number of extension classes as may be needed to accommodate all children of school age desiring to enter Grade I, including the creation of positions of classroom teachers, head teachers and principals for such extension classes, which shall not exceed the standard requirements of the Bureau of Public Schools: *Provided, That under equal circum-*

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Absence of protest is the key to the legal reality of the title. (O'Connell, International Law, Vol. I, pp. 485-486.)

It is general knowledge that the Philippines has not succeeded in establishing or perfecting its claim to Sabah as against Malaysia, which has consistently disputed our claim to this territory. It is to be conceded also that no state has acquiesced in, or supported, the Philippine claim, and that the Philippines has never at any time exercised effective possession, much less jurisdiction or control over any part of the North Borneo territory; worse still, the Philippines has not made much headway in pressing its claim. It will be recalled that in 1963, the Philippine government signed an accord whereby it agreed to an ascertainment, in line with the principle of self-determination, through a survey to be conducted by the UN Secretariat, of the preferences of the people of North Borneo. This accord allowed for the possibility that the result might be favorable to the inclusion of Sabah in the federation of Malaysia. As it turned out, the UN survey revealed that the North Borneans wanted to join Malaysia, and this result necessarily militated against the strength of our claim. Furthermore, the continued refusal of the government of Malaysia to submit to the jurisdiction of the International Court of Justice, the legal issue on the Philippine claim, despite the invitation of the Philippine government to do so, has made a legal solution to the Sabah problem more elusive than ever. And a military solution to the problem is definitely out of the question. For such an action will contravene the Charter of the United Nations, the Philippine Constitution and the ASEAN Treaty of Concord and Amity. Accordingly, it would be pretentious and untenable to assert, that Sabah is a territory belonging to the

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Philippines by historic right or legal title and that it is already a part of the Philippine territory as defined by the Constitution.

The conclusion that what the Philippines has, with respect to Sabah, is only a claim, is shared by the framers of the new Constitution as indicated by the report of the subcouncil of the Constitutional Convention that drafted the article on national territory. The report states as follows:

"This provision had been lengthily discussed on the floor of the Convention but just to recapitulate, the idea here is to adopt the archipelagic theory in the definition of our National Territory; to remove the vestiges of colonialism by deleting the treaties mentioned in Article I of the 1935 Constitution which showed that the Philippines had been the object of international commerce; to provide for a broad and all-embracing delineation of our territorial jurisdiction so as to include the waters in and around and in between our multifarious islands regardless of their breadth and length; and finally, to safeguard our claims to certain territories, like Sabah, through historical right or legal title." (Pp. 37-38, Vol. XVI, No. 5, Journal of the Constitutional Convention of 1971.)

In justifying the need to "protect the pending Sabah claim of the Republic of the Philippines", the committee recited the unsuccessful efforts undertaken by the Philippine government in pressing its claim over North Borneo since April 24, 1962 when the House of Representatives approved a resolution urging the President of the Philippines to take the necessary steps to recover the Sabah

territory, up to the breakdown of the Bangkok talks in 1968 when the Malaysian representative refused to discuss the modes of settlement of the Philippine claim. The committee stated that "it is probable that there will be talks on the Sabah dispute in the future" and it was because of this probability, among other reasons, that the committee justified the phraseology of the article on national territory in the Constitution. Separate statements of committee members also invariably make references to the Sabah territory as "a claim" of the Philippine government (e.g. sponsorship speech of Delegate Jal M. Anni on Feb. 12, 1972; Position Paper of Delegate J. Hermoso dated Jan. 13, 1972.)

It is clear, therefore, that by making reference to territories belonging to the Philippines by historic right or legal title, the framers of the Constitution did have in mind the Sabah claim, but there was no doubt in their minds that we only hold a claim. The report indicates that the Convention merely anticipated the possibility that the Philippine claim might ultimately be decided in our favor. At the time the Constitution was enacted, the Convention could not have ignored the manifest fact that Sabah was not yet a part of the Philippine territory, and in contemplating to "safeguard our claim" to Sabah, it merely provided for a contingency, as indeed it was in no legal position to affirm a conclusion which is not only obviously contrary to fact, but also one actively disputed by parties upon whom the Philippine Constitution has no binding effect.

It is true that R.A. No. 5446 was already in force at the time of the adoption of the Constitution. Section 2 of this law, which amended R.A. No. 3046, defining the baselines of the territorial sea of the Philippines, provided

that the definition of the baselines therein is without prejudice to the delineation of the baselines of the territorial sea around the territory of Sabah, situated in North Borneo, over which "the Republic of the Philippines has acquired dominion and sovereignty". But it cannot seriously be contended that this law conferred legal title or confirmed "historic right" to Sabah. The Philippine claim is being disputed by Malaysia, and the Sabah issue is not a domestic or internal problem to be settled by national legislation. The enactment therefore of R.A. No. 5446 amounted to no more than a unilateral or self-serving declaration or assertion on the part of the government, which cannot have binding effect upon or be decisive of the rights of, a foreign state disputing the claim. At the time of the enactment of R.A. No. 5446, the legislature was not unaware that the legal merits of the Philippine claim to Sabah had already been considerably weakened by the result of the UN Secretariat's survey which was favorable to the inclusion of Sabah in the Federation of Malaysia. No amount of legislation can establish the conclusion that the Philippines had acquired dominion and sovereignty over Sabah where this assertion is manifestly against the existing facts. There is reason to believe that the statutory declaration merely reflected the Instrument executed by the living heirs of the Sultan of Sulu on April 24, 1952, whereby the said heirs recognized and accepted the ultimate sovereignty, title and dominion of the Republic of the Philippines over the Sabah territory and authorized the Philippine Government to prosecute the claim to said property through any and all peaceful modes of international settlement, as well as the "Instrument of Cession of the Territory of North Borneo" dated September 12, 1962, whereby the heirs of the Sultan of

Sulu formally ceded and the Philippine Government formally accepted, the Territory of North Borneo which, according to the instrument, had theretofore been under the sovereignty, title and dominion of the Sultanate of Sulu for "the last two hundred and more years", and a later document executed in 1968 whereby the said heirs recognized the right and authority of President Ferdinand E. Marcos to act for or on their behalf with a view to effecting settlement of whatever proprietary rights and benefits the heirs may be entitled to. But R.A. No. 5446, being purely municipal law, cannot be the basis of historic right or legal title as against Malaysia.

In fine, the inclusion in the definition of the national territory in the Constitution of "territories belonging to the Philippines by historic right or legal title" provided for the possibility that Sabah might eventually become a part of Philippine territory, but it did not, as it could not, have settled or established the Philippine claim to Sabah, even by a categorical declaration that Sabah is a part of the Philippine territory. It is my conclusion, therefore, that the renunciation of the Sabah claim does not require an amendment of Article I, Section 1 of the Philippine Constitution, as Sabah is not included in the definition of the national territory, whether expressly, or by necessary inference.

2. Regarding the necessity to repeal the provision of Section 2 of R.A. No. 5446, amending R.A. No. 3046 (defining the baselines of the Philippine territorial sea), it is my opinion that this section ought to be repealed, if only to dispel any doubt as to the sincerity of the government in its announced position that it is no longer pursuing its claim

against Malaysia. While, as earlier stated, our own law cannot be invoked to support our claim as against Malaysia, the fact remains that the expressed intent to extend the baselines of the Philippine territorial sea to the baselines of the territorial sea around the territory of Sabah, is inconsistent with the present position of the Philippine government to abandon or renounce the Philippine claim to Sabah.

Submitted by:

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