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SPECIAL ISSUE

Hannbal H. Bara

Islamic Discourse on Hula-Bangsa-
Agama: The Tausug Concept of State

Meltino J. Sibulan

Sultanate of Sulu: A Legal Discussion

Allen I. Talikan

Enhancing Transparency and
Accountability on the Use of School
Funds

Sayyid A. Hannbal

*Social Issues in Sulu and Its Islamic
Solutions: The College Students
perspective*

SULTANATE OF SULU: A LEGAL DISCUSSION

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I. INTRODUCTION

Now, in order to know a country well, we study history because history is the story of a country and its people.¹ "*Hubbul watan minal iman.*" (Love of nation is part of faith.) [Hadith] "He who does not look back to where he came from will not know where he is going." (*Ang hindi marunong lumingon sa pinanggalingan ay hindi makakarating sa paruruunan.*) So, goes a famous saying.

Long ago, sovereign *ra'ayat* of Sultanate were united as a nation lived in a defined territory under one name. When outsiders came, they refer the country as "Sulu Sultanate."

Based on historical account, Jolo was already a city when the Spaniards came to introduce Christianity. Historians described Jolo seaport as a "Super Port." Jolo was the center of business and international trading with neighboring ASEAN and Middle East countries. When Magellan established the first Spanish settlement in Cebu, Manila was still wilderness, but not Jolo in the Sulu Archipelago. The inhabitants were ruled by a government they call sultanate. The Sultanate of Sulu is, until today recognized as an independent and sovereign state.²

As early as 14th century, "long before the coming of the Spaniards and the Portuguese in the Orient, the Philippines [?! No such term "Philippines" yet; this must be "Sulu Sultanate"] already had commercial and trade relations with her neighbors. Sulu was then very famous as the pearl market of the East. "Port of the Orient Seas" did this refer to Philippines when there was no such term "Philippines" yet or refers to State of Sultanate? Clearly, the Sultanate! Because Sulu's rich pearl beds, traders from Banjarmasin, in Borneo, established trading centers in Sulu. As a result, the men of Banjar, as the people of Banjarmasin were called, settled in Sulu. The Buranun, as the Sulu people were then called, because of the Banjars, but the latter showed their good faith by having their queen marry the Buranun ruler. The good relations between the two peoples that resulted from this marriage became the basis of Sulu's prosperity. In time Sulu became the trade emporium of the orient. Ships from Cambodia, China, Java, and Sumatra anchored at the ports of Sulu to do business.³

Sulu Sultanate has dominion over Sulu including Tawi-Tawi, Basilan Zamboanga Peninsula, Palawan, and North Borneo (Sabah) representing five (5) Stars in the series of her flags. When and how North Borneo (Sabah) became part of territory of the Sulu Sultanate? "Around 1675, when the Sulu Sultan Sultan Salahuddin Bakhtiar Karamat (1650-1680) was asked to intervene to solve an internal dynastic quarrel between two rival sultans in Brunei. The Sulu sultan was able to put an end the conflict and was later awarded with large territory of North Borneo.

¹ Sonia M. Zaide, Philippine History and Government, Fourth Edition, 1999, p. 2

² Prof. Emmanuel D. Mangubat, FRU, Sulu Sultanate: Its Establishment with Historical, Political and Legal Implications, Vol. 1, 2005, p. 44

There were no such terms yet, such as, "Archipelago of St. Lazarus" "Moro", "Bangsamoro", "Felipinas", "Filipinas", "Philippines", "Philippine Islands" or "Republic of the Philippines" prior to the arrival of Big Powers - Spain, Portugal, England, France, and the Netherlands.

When and how all these terms came out? Why did Spain advertise its landing in the Philippines as discovery? It had to do this in order to keep away the other rival European powers from grabbing its new colony. It was like a race for new lands. Whoever got to the place first could plant their nation's flag and claim that land for their king. The Big Powers - Spain, Portugal, England, France, and the Netherlands - competed with each other to be the first to discover or find countries not yet known to others.⁴

This political race to grab new lands around the world was called colonialism. The people of that colony were no longer free. Sometimes, colonialism is also called imperialism.⁵

This paper anchors on the legal parameters that the political status of the Sultanate State of Sulu has never been affected by any colonial policies such as the 1898 Treaty of Paris between the United States and Spain, the Jones Law of 1916 and the 1934 Tyding-Mcduffe Law on the ground that her territory was defended to death, hence unconquered. In fine, the Sultanate State of Sulu was an independent and sovereign State ruled by series of Sultans since 1450; her courageous people and fierce warriors were uncolonized neither Christianized - evidence of her being an unconquered and uncolonized Kingdom, of her independence and her sovereign status before. Why we [Republic of the Philippines] exercising sovereignty over an independent state is a subject of inquiry.⁶ The objective of this paper is to present the legal discussion about the historical and legal status of the Sultanate of Sulu.

The methodology used in this study is based on legal interpretation, historical analysis and opinions of the publicists both local and international.

II. THE SULU SULTANATE STATE

Before, Yes! A country in fact and in law! But now, a country only in fact but not in law! Historically and factually, a country named Sultanate; but legally speaking a non-existent country; erased from the world map already!

A country is a noun means "land, region; countryside; fatherland, home, kingdom, state, territory; nation, people, population."⁷

Again, before, the answer is in the affirmative - the State of Sultanate was a country since 1450 - a fatherland to the sovereign *ra'ayat* or "subjects" of the Sulu Sultanate; a kingdom; a state; a territory of the Sultanate State of Sulu comprising Sulu

⁴ Sonia M. Zaide, *Philippine History and Government*, Fourth Edition, p. 54

⁵ Ibid.

⁶ Prof. Emmanuel D. Mangubat, *FRIJ, Sulu Sultanate: Its Establishment with Historical and Thesaurus*, 202 Geddes & Grosset, p. 602

⁷ Webster's Universal Dictionary and Thesaurus, 2002 Geddes and Grosset, p. 602

including Tawi-Tawi, Basilan, Zamboanga Peninsula, Palawan, and North Borneo (Sabah).

These territories were gallantly defended and effectively ruled by Sulu Sultanate prior to the arrival of colonial and imperial powers; resisted and defended to death for hundreds of years during colonial and imperial attempts of Spain, United States and Japan; and until now the sovereign *ra'ayat* Tausug or subjects, substantial majority of them ignorantly and wrongly called themselves either Moro or Filipinos, of Sulu Sultanate is still resisting and defending against the colonial and imperial inheritor - the Republic of the Philippines.

Who were/are the *ra'ayat* or subjects of the Sultanate is a state before? Tausug! Now? "Stateless Tausug."

In a state, who are the sovereign and powerful? What is sovereignty in legal parlance?

WHAT IS THE MEANING OF A NATION?

Nation is a noun which means, "commonwealth, realm, state; community, people, population, race, stock, tribe."⁸

A. WHAT IS A "NATION" IN LEGAL PARLANCE?

The term nation is used interchangeably with state, e.g., the United Nation or the family of nations, which actually consists of states and not of nation. This is a mistake as the two concepts have different connotations.⁹ Hackworth observes that "the term nation, strictly speaking, as evidenced by its etymology (*nascí*, to be born) indicates a relation of birth or origin implies a common race, usually characterized by community of language and customs."¹⁰

Common race? Malay. Community of language? Bahasa Sug. Customs?

B. WHAT IS THE DIFFERENCE OF NATION WITH STATE?

The difference, therefore, "the State is a legal concept, while nation is only a racial or ethnic concept."¹¹

WHAT IS THE MEANING OF "STATE" THEN?

⁸ Ibid., p. 682

⁹ Isagani I. Cruz, Philippine Political Law, p. 14

¹⁰ Ibid.

¹¹ Digest of International Law (1943), p. 47, Cruz, International Law, 20

State means "xxx; body politic, civil community, commonwealth nation, realm,"¹² kingdom, empire, monarchy.

A. WHAT IS THE MEANING OF STATE IN LEGAL PARLANCE?

What are the legal characteristics which can qualify an entity as a State? What then are the basic criteria for statehood?

The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory (c) government; (d) and capacity to enter into relations with other States."¹³

The "capacity to enter into relations with other states" refers to independence, which many highly qualified publicists¹⁴ consider the decisive criterion of statehood.¹⁵

How is this "capacity" displayed by a State?

Through or by entering into "treaty/ies" and/or "agreement/s" with other "States", as indeed, concluded by Sultanate as a "State" then with China, Spain, Dutch, England, United States, among others. Hence, Sultanate was a State before having full independence and absolute sovereignty.

In another definition, "the state is a community of persons, more or less numerous, permanently occupying a fixed territory, and possessed of an independent government organized for political ends to which the great body of inhabitants render habitual obedience."¹⁶

In Philippine jurisdiction, the Supreme Court had the occasion to define that, "state is a community of persons, more or less numerous, permanently occupying a definite portion of territory, independent of external control, and Possessing a government to which a great body of inhabitants render habitual obedience."¹⁷

B. IS SULU SULTANATE STILL A STATE?

Sulu Sultanate was then having people, territory, government, "independent of external control" and internationally recognized (recognition) and resisted any attempts, as indeed, to control her, hence, a perfect state!

But not nowadays, hence, not a state anymore! What is now her status?

¹² Webster's Universal Dictionary and Thesaurus, 2002 Geddes & Grosset, p. 731

¹³ Article I, 1933 Montivideo Convention on the Rights and Duties of States

¹⁴ Writings of publicists which must be fair and unbiased representation of international law by acknowledged authorities in the field.

¹⁵ Merlin M. Magallona, Fundamentals of International Law, 2005, p. 39, citing Brownlie, p. 76; Crawford, The Creation of State in International Law, 1979, p. 48

¹⁶ Garner, Introduction to Political Science, p. 41

¹⁷ Collector of Internal Revenue vs. Campus Rueda, 42 SCRA 23. [SCRA-Supreme Court Reports Annotated

C. WHAT IS A *DE FACTO* STATE?

"*De facto* state is extended by the recognizing state which believes that some of the requirements for recognition are absent. The recognition is generally provisional and limited to certain juridical relations; it does bring about full diplomatic intercourse and does not give title to assets of the state held or situated abroad."¹⁸

D. WHAT IS A *DE JURE* STATE?

"*De jure* state extended to government fulfilling the requirements for recognition. When there is no specific indication, recognition is generally considered *de jure*. The recognition is relatively permanent; brings about full diplomatic intercourse and observance of diplomatic immunities; and confers title to assets abroad."¹⁹

HOW STATES ARE CREATED?

The creation of states is by revolution, unification, secession, assertion of independence, agreement, and attainment of civilization.²⁰

WHAT IS AN INDEPENDENT STATE?

An independent state has a freedom to direct and control foreign relations without restraint from other states.²¹

G. HOW IS EXTINCTION OF STATES HAPPENED?

Extinction of states is by extinction or emigration *en masse* of its population, loss of territory, overthrow of government resulting in anarchy.²²

H. WHAT IS THE PRINCIPLE OF STATE CONTINUITY?

¹⁸ Antonio B. Nachura, Outline/Reviewer in Political Law, 2005 Edition, p. 536

¹⁹ Antonio B. Nachura, Outline/Reviewer in Political Law, 2005 Edition, p. 53 Lawyers League for Better Philippines vs. Corazon Aquino, G.R. No. 73748, May 22, 1986

²⁰ Ibid., p. 537

²¹ Ibid., p. 538

²² Ibid

The principle of state continuity, the state continues as a juristic being not withstanding changes in its circumstances, provided only that such change does not result in the loss of any of its essential elements.²³

I. WHAT IS MEANT BY A COLONY?

A colony is a dependent political community consisting of a number of citizens of the same country who have migrated therefrom to inhabit another country but remain subject to the mother State.²⁴

J. WHAT ARE THE ELEMENTS OF STATE AS LEGAL

CONCEPT?

In sum, the elements of a state are: 1. People; 2. Territory; 3. Government; and 4. Sovereignty; Experts in international law added 5. Recognition.

Does Sultanate of Sulu qualify as a state? Before, Yes! But now, the answer is in the negative - not a state anymore! why?

III. THE PEOPLE

The people as the first element of becoming a state (absolutely, a condition *sine qua non*) is lacking already! Where are the Tausug people?

People refer simply to the inhabitants of the State.²⁵

While there is no legal requirement as to their number, it is generally agreed that they must be numerous enough to be self-sufficient and to defend themselves and small enough to be easily administered and sustained. The populations of states range from the over one billion like China to a few hundred thousand in the case of the so-called mini-States like Qatar. Obviously, the people must come from both sexes to be able to perpetuate themselves.²⁶

Before, the answer is in the affirmative! The Sultanate has her own gallant, brave and fearless people and "fierce warriors" legally called subjects under monarchical form of government, in vernacular, *ra'ayat* who inhabited and defended to death her territory and people.

A. WHAT IS THE MEANING OF RA'AYAT?

²³ Ibid

²⁴ Ibid., p. 539

²⁵ Isagani I. Cruz, Philippine Political Law, p. 15

²⁶ Ibid

Ra'ayat is a noun means, people, subjects, citizens.²⁷

B. WHAT IS THE MEANING OF "CITIZENSHIP"?

Citizenship is defined as, membership in a political community which is personal and more or less permanent in character.²⁸

C. WHAT IS THE MEANING OF NATIONALITY?

Nationality is membership in any class or form of political community.²⁹

D. WHAT ARE THE DISTINCTIONS OF CITIZENSHIP AND NATIONALITY?

The distinctions between citizenship and nationality:

1. Citizenship is membership in a democratic or political community, whereas nationality is membership in any political community whether monarchical, autocratic or democratic.
2. Citizenship follows the exercise of civil and political rights, whereas nationality does not necessarily carry with it the exercise of political rights.
3. A person can be a citizen of one country and a national of another.³⁰

E. HOW CONFLICT OF NATIONALITY RESOLVED?

The 1930 Hague Convention on Conflict of Nationality Laws states:

- a) It is for each State to determine under its own law who are its nationals. This law shall be recognized by other States insofar as it is consistent with international conventions, international customs, and the principles of law generally recognized with regard to nationality.
- b) Any question as to whether a person possesses the nationality of a particular State shall be determined in accordance with the law of that state.³¹

F. HOW IS NATIONALITY LOST?

Nationality is lost by any of the following modes: i) release, e.g., Germany gives its citizens the right to ask for release from their nationality; ii) deprivation, e.g., Philippines, which deprives its citizens of nationality upon entry to the military service of

²⁷ Tausug-English Dictionary: Kabtangan Iban Maana, Second Edition, 1994, p. 377

²⁸ Antonio B. Nachura, Outline/Reviewer in Political Law, 2005 Edition, p.179

²⁹ Ibid

³⁰ Judge Ed Vincent S. Albano, Political Law Reviewer, Third Edition, p. 10, Yes, Philippine Political Law. *Supra*, citing Garner, p. 274

³¹ Antonio B. Nachura, Outline/Reviewer in Political Law, 2005 Edition, p. 580

another State [C.A. No. 63]; iii) renunciation exemplified in [CA No. 63]; and iv) substation, such as what happens when the former nationality is lost *ipso facto* by naturalization abroad.³²

G. WHAT ARE THE MODES OF ACQUIRING CITIZENSHIP?

The three (3) modes of acquiring citizenship are:

1. JUS SANGUINIS - meaning by blood; as when a child is born of Filipino parents, wherever he may be born.
2. JUS SOLI - by place of birth. If a Filipino couple is residing in the USA and they give birth to a child there, the child is American from the point of view of US laws.
3. NATURALIZATION - which is the artificial means or process whether judicial or administrative by which a state places the imprint of a native citizen wherein it adopts an alien and gives him the imprint and endowment of a citizen of that country.³³
4. MARRIAGE.³⁴

H. WHAT IS THE DIFFERENCE BETWEEN SUBJECTS AND CITIZENS?

Thus, nationals may be citizens [if members of a democratic community] or subjects [if members of a monarchical community]. Nationality does not necessarily include the right or privilege of exercisability or political rights.³⁵

I. WHO THEN ARE THE RA'AYATS OR SUBJECTS OF THE SULU SULTANATE BEFORE?

In basic term, generally refers to inhabitants within Sulu Sultanate territory - Sulu including Tawi-Tawi, Basilan, Zamboanga Peninsula, Palawan and North Borneo (Sabah) - Tausug, Yakan, Sama, Badjaw, Palawanis, Kalibugans, Jama Mapun, and other ethnics or tribes closely knitted and bonded with pride and proud to be called Tausug!

In particular, *inter alia*, the people or subjects of the Sulu Sultanate are Tausug, Tausug Sama, Tausug Yakan, Tausug Badjaw, Tausug Palawani, Tausug Jama Mapun, Tausug Melebugnons, Tausug Kalibugan and other different ethnic tribes dwelling in her territories with attachment to the Tausug of Sulu Sultanate.

The Tausug or Suluk people are an ethnic group of Sulu Sultanate [neither of the Philippines nor of Malaysia]. The term Tausug was derived from two words *tau* and *sug* (or Suluk) meaning "people of the current", referring to their homelands in the Sulu Archipelago.

³² Ibid., p. 581

³³ Ibid., p. 275

³⁴ Antonio B. Nachura, Outline/Reviewer in Political Law, 2005 Edition, p.179

³⁵ Ibid

The Tausug people in Sabah refer to themselves as Tausug but refer to their race as Suluk as documented in official documents such as "birth certificates" in Sabah, Malaysia.

The Tausug is not part of the wider 'Moro ethnic group' [besides, there was/is no such Moro ethnic group in the State of Sulu Sultanate, Moro State by History! The term Moro is a name given by Spaniards referring to all Muslims. This is misleading.]; not part of Filipino ethnic groups. They or had an independent state known as the Sulu Sultanate, which exercised sovereignty over the present-day provinces of Basilan, Palawan, Sulu, Tawi-Tawi, Zamboanga Peninsula and the eastern part of the Malaysian state of Sabah (formerly North Borneo).

J. WHAT ARE THE NATIONALITIES OF THE TAUSUG NOWADAYS?

Are the Tausug nowadays still *ra'ayats* or subjects of Sultanate State of Sulu?

Not anymore! the 99% of the Tausug are *ra'ayats* or citizens of either Philippines or Malaysia called Filipinos or Sabahans respectively! only 1% of the Tausug is stateless!

The above-mentioned *ra'ayats* or subjects before were *ra'ayats* or subjects of Sultanate State of Sulu.

Again, not anymore nowadays! Those were the days the Tausug were subjects of Sultanate State of Sulu.

Therefore, Sultanate State of Sulu is no longer a State but a "lost state" or a "lost kingdom" by extinction!

The People as the first of four elements of State is lacking anymore, hence, the remaining three elements - territory, government and sovereignty - are worthless to speak of!

The 99% of Sultanate State of Sulu people had vanished and nowhere to be found, her "*ra'ayat*" or "subjects" in Sulu, Tawi-Tawi, Basilan, Zamboanga peninsula and Palawan are no longer her *ra'ayats* or subjects but already became Filipinos - citizens of the republic of the Philippines!

The Sultanate State of Sulu's *ra'ayats* or subjects in north Borneo (Sabah) became either Malaysian or Filipino citizens!

What more the sultans (?), *datus*, *sharifs*, Buranun etc. were all not "people" or subjects anymore of the sultanate state of sulu.

How come Tausug Filipinos keep on dreaming and aspiring for Sultanate of Sulu's statehood and wealth, when they, as Filipino citizens of the Philippines, have no rights anymore to claim whatever remaining, if there are any, leftovers!

Stop dreaming Tausug Filipinos! stop aspiring for Sultanate of Sulu's statehood and wealth! they are not yours already!!!

we have numerous sultans, *datus*, *sharifs*, Buranuns, and ordinary Tausug claiming to be so of Sultanate State of Sulu. are they really? no! they are Filipinos!

K. ARE TITLES OF ROYALTY OR NOBILITY FOR FILIPINOS LEGALLY RECOGNIZED IN THE PHILIPPINES?

No! while they are Filipino sultans of the Philippines, Filipino *datus* of the Philippines, Filipino *sharifs* of the Philippines, Filipino Buranuns of the Philippines, Filipino Tausug of the Philippines, in the eyes of the Philippine constitution, all of them are Filipinos of the Philippines!

As Filipinos, the Philippine Constitution governs and provides that: "No law granting a title of royalty or nobility shall be enacted."³⁶

Even though these Filipinos attached their claimed title of royalty or nobility to their names, these are legally not recognized under the Philippine Constitution, hence, shame claims in fact before the eyes of Philippine law!

L. WHO AND WHERE ARE THE "STATELESS" TAUSUG "SUBJECTS" OF SULTANATE STATE OF SULU?

They are those still unyielding of their legal and historical rights and allegiance to Sultanate State of Sulu and register neither to the Philippines, Malaysia or other countries! They are Tausug of Sulu Sultanate!

Dreaming and aspiring for Sultanate of Sulu's statehood and wealth are the business of these stateless but still Tausug subjects of the Sultanate State of Sulu.

M. WHAT IS STATELESSNESS UNDER THE INTERNATIONAL LAW?

Statelessness is the status of having no nationality, as a consequence of being born without any nationality, or as a result of deprivation or loss of nationality.³⁷

N. WHAT ARE THE RIGHTS OF STATELESS PEOPLE UNDER THE INTERNATIONAL LAW?

In 1954, under the auspices of the United Nations, twenty-two countries (including the Philippines) concluded a convention relating to the status of stateless persons, under which the contracting States agreed to grant to stateless persons within their territories treatment at least favorable as that accorded to their nationals with respect to: [a] freedom to practice their religion and freedom as regards the religious education of children; [b] access to the courts of law; [c] rationing of products in supply [d] elementary education; [e] public relief and assistance; and [f] labor legislation and social security.³⁸

³⁶ Sec. 31, Article VI - LEGISLATIVE DEPARTMENT, 1987 Philippine Constitution.

³⁷ Antonio B. Nachura, Outline/Reviewer in Political Law, 2005 Edition, p. 582

³⁸ Ibid.

O. HOW ALIENS ARE TREATED?

"Flowing from its right to existence and as an attribute of sovereignty, no state is under obligation to admit aliens. The state can determine in what cases and under what conditions it may admit aliens."³⁹

"This right includes the power to regulate the entry and stay of aliens, the state has the right to expel aliens from its territory deportation of reconduction."⁴⁰

P. WHAT IS MEANT BY DEPORTATION OR EXPULSION?

Deportation or expulsion may be predicated on the ground that the stay of the alien constitutes a menace to the security of the state or entry was illegal, or that permission to stay has expired, or that he has any limitation condition prescribed for his admission and continued stay.⁴¹

Q. WHAT IS MEANT BY RECONDUCTION?

Reconduction is the forcible conveying of aliens back to their home state. Thus, destitute aliens, vagabonds, aliens without documents, aliens, criminals, and the like, may be arrested and reconducted to the frontier without any formalities. And the home state of such aliens has the obligation to receive them.⁴²

What are the other rights of the "stateless" Tausug of Sulu Sultanate? What are the legal and political issues they are/were confronting? What are the remedies? Are there any peaceful solution, legal and political?

NOTA BENE: Tausug or Suluk, as referred to in this paper means, Tausug, Yakan, Sama, Kalibugan, Badjaw, Palawanis, Jama Mapun, and other inhabitants in then territory not now of Sultanate State of Sulu closely knitted and bonded with pride and proud to be called Tausug!

Therefore, Tausug are not Moros! Not Bangsamoros! Not Filipinos! Not Malaysians either!

R. WHY STATELESS TAUSUG ARE NOT MOROS? NOT

BANGSAMOROS? NOT FILIPINOS? NOT SABAHANS?

When the Spaniards came to the Philippines [?! Philippines should be properly written as "May Nilad" a Muslim Kingdom then, there was no term Philippines yet.

³⁹ Ibid., p. 583

⁴⁰ Ibid

⁴¹ Ibid

⁴² Ibid

Besides, this was the Kingdom Spaniards have firstly seen] in 1565. They saw group of people exemplifying practices which they vaguely recognized Islamic. Although at first, they tended to call all the natives in the Philippines [?! No term "Philippines" yet! The state or territory or settlement must be specified.] They in time came to recognize some differences between the non-Muslims and the Muslims.⁴³

"In this phase, the Spaniards were able to check the increasing Bornean political influence and commercial activities in Luzon and the Visayas by capturing the Bornean settlement in Manila in 1571 and destroying the Muslim fortified outposts in Mindoro the previous year."⁴⁴

The Christianizing spirit of the Spaniards, their awareness of the century struggle with the Arabs and the Moors, and their meeting with the Muslims in the Philippines [?! No term "Philippines" yet! Again, the state or territory settlement must be specified properly.] After encircling part of the earth look at the war against Moros [?! Must be "war against Tausug", among others.] as a continuation of the crusades. It will be recalled that the fall of Granada, the last Moorish kingdom in Spain, took place less than seventy-five years before the coming of Legazpi to the Philippines; moreover, Moriscos were not yet expelled from Spain.⁴⁵

These people in the Philippines [?! No term "Philippines" yet! This must be specified such as Tausug people of the Sulu Sultanate, as a "State", among others] gained from Islam a high sense of religious community, new laws, a more developed political organization, a new system of writing, and, above all, ethical outlook on life. Having adopted values that transcended their race and particular culture, they began to consider themselves as a historical people assuming all the time that their history was not the result of their own making or efforts. Without these consciousness as well as all the benefits that Islam brought to the peoples of Sulu, they would have easily been swept away by Western colonialism and relegated to the limbo of conquered peoples.⁴⁶

Thus, Tausug people - all the inhabitants of Sulu Sultanate - were not conquered peoples!

In time, those inhabitants who abandoned what little of Islamic practices they might have adopted as well as those who were clearly not Muslims, were designated "Indios" by Spaniards. Although it appears in early Spanish records that the pagan natives were also called "Indios," this term in time came to mean the Christianized inhabitants of the Archipelago.⁴⁷

On the other hand, the term "Moro" came to be generally reserved for the Muslims of Sulu, Mindanao, and Borneo, regardless of their stage of Islamization. The Moros,

⁴³ Cesar Adib Majul, *Muslims in the Philippines*, p. 77

⁴⁴ Cesar Adib Majul, *Muslims in the Philippines*, p. 108, citing Cf. "Conquest Luzon", Blair and Robertson, Vol. III, pp. 142-147

⁴⁵ *Ibid.*, p. 77

⁴⁶ *Ibid.*, p. 78

⁴⁷ *Ibid.*, p. 80

however, called themselves Islam or, sometimes more correctly, Muslim. They tended to call Spaniards "Kastilas (Castillans)."⁴⁸

It is understandable why the people of Brunei would be unhappy about the coming of the Spaniards to the Philippines [?! No term "Philippines" yet! Again, the state or territory or settlement must be specified properly.] For this was not only an intrusion into their commercial activities but a threat to their leading political influence, considering that the royal families of Manila and Sulu were related to that of Brunei.⁴⁹

The Spaniards came not only to extend the imperial domains and the economic interest of their King but also to introduce Catholicism.

The *ra'ayat* Tausug or subjects of Sulu Sultanate had never been conquered, colonized and Christianized by Spain; therefore, they are NOT SPANISH SUBJECTS! They are not Moros! They are not Indios! They are not Filipinos!

The term "Filipinos" formerly called "Indios" refer to conquered, colonized, and Christianized natives of Luzon, Bisayas and parts of Mindanao thereby became Spanish subjects.

S. WHAT DOES CONQUER MEAN?

Conquer means "to gain victory (over), to defeat; to acquire by conquest; to overcome, to master, to be victor. - conqueror."⁵⁰

Conquest, feudal law. This term was used by the feudists to signify purchase.⁵¹

Conquest, international law. The acquisition of the sovereignty of a country by force of arms, exercised by an independent power which reduces the vanquished to the submission of its empire.⁵²

It is a general rule, that where conquered countries have laws of their own, these laws remain in force after the conquest, until they are abrogated, unless they are contrary to our religion, or enact any *malum in se*. In all such cases the laws of the conquering country prevail; it is not to be presumed laws opposed to religion or sound morals could be sanctioned. 1 Story, Const. Sec. 150, and the cases there cited.⁵³

The conquest and military occupation of a part of the territory of the United States by a public enemy, renders such conquered territory, during such occupation, a foreign country with respect to the revenue laws of the United States. The people of a conquered territory change their allegiance, but, by the modern practice, their relations to each other, and their rights of property, remain the same. 7 Pet. R. 86."⁵⁴

⁴⁸ Ibid., p. 81

⁴⁹ Ibid

⁵⁰ Webster's Universal Dictionary and Thesaurus, 2002 Geddes & Grosset, p.126

⁵¹ Legal Dictionary @<http://www.webster-dictionary.org/definition/Conquest>

⁵² Ibid

⁵³ Ibid

⁵⁴ Ibid

Conquest does not, *per se*, give the conqueror *plenum dominium et utile*, but a temporary right of possession and government.⁵⁵

The right which the English government claimed over the territory now composing the United States, was not founded on conquest, but discovery. *Id.* Sec. 152, et seq."⁵⁶

T. WAS "SULU SULTANATE" CONQUERED BY SPAIN?

The answer is no!

Most of Mindanao and Sulu were excluded. Spain claimed sovereignty (supreme power) over them, but only few coastal areas were really under its control then. The Filipino [?] Muslims (Moros) [?] were not conquered by Spain.⁵⁷

Thus, the terms with [?] are erroneous and misleading. Filipino Muslims (Moros) shall be appropriately written as Tausug under the Sulu Sultanate were not conquered by Spain, among others.

"Interior mountain regions of Luzon and Visayas were also excluded. They were not colonized by Spain. So, the tribes in the highland regions (Ifugaos, Igorots, etc.) remained independent like the Moros[?]"⁵⁸

Thus, the term with "[?]" too are erroneous and misleading. It should be remained independent like the Tausug, among others.

Indeed, again prior to the arrival of the Spaniards, there no such terms such as Moro, Bangsamoro, Felipinas, Filipinas, Filipinos, Philippines, Philippine Islands or Republic of the Philippines yet.

U. WHEN AND HOW THESE TERMS CAME INTO

EXISTENCE?

"After seeing Samar, the Spaniards landed at the island of Homonhon in Leyte Gulf on March 17 [1521]. Here they saw their first Filipinos [?! Should be specific identity, while generally, Muslims; no term "Filipinos" yet! who brought them food. Magellan and his men had been starving until then."⁵⁹

From Homonhon they were driven by a storm to Masao, Butuan in Agusan del Norte, reaching it on March 28 [1521]. There they found a rich Filipino [?! No term "Filipino" yet! Should be specific identity, while generally Muslims.] kingdom with plenty of food, gold, forest, rice fields and mountains.⁶⁰

⁵⁵ *Ibid*

⁵⁶ *Ibid*

⁵⁷ Sonia M. Zaide, *Philippine History and Government*, Fourth Edition, p. 63

⁵⁸ *Ibid*

⁵⁹ Sonia M. Zaide, *Philippine History and Government*, Fourth Edition, p. 55

⁶⁰ *Ibid*

At Butuan, two kings - Raja Kolambo and Raja Siago - met Magellan.⁶¹

He [Magellan] called these areas [should only refer Samar, Leyte and Butuan] "Archipelago of St. Lazarus."⁶²

Crystal clear, Sulu Sultanate was not part of Archipelago of St. Lazarus besides, such name was merely given by Explorer - Magellan. There were no terms such as "Moro", "Bangsamoro", "Felipinas", "Filipinas", "Philippines" "Philippine Islands" or "Republic of the Philippines" yet.

In 1543, Spanish explorer named Roy Lopez de Villalobos gave the name Felipinas to the Philippines. It should be Samar and Leyte only; no term Philippines yet! These were the only places they have seen and landed in honor of Crown Prince Felipe (Philip) who later became King Philip II of Spain.⁶³

However, from 1538 to 1541, King Charles of Spain agreed with his viceroys in Mexico and Guatemala that expeditions should be sent to the East, that is, to the Spice or Moluccas Islands. The viceroy of Mexico chose his brother-in-law, Roy Lopez de Villalobos, to command the expedition. With six ships Villalobos left Mexico on November 1, 1542, crossed the vast Pacific, and reached Mindanao in February 1, 1543. The natives (?) refused to have any dealing with Spaniards. Faced with starvation, Villalobos ordered his men to plant corn to save themselves from death. But the crop failed, and Villalobos was forced to send his men, Bernardo de la Torre, to Tandaya (now Samar) to get some food. De la Torre met with local chieftain, Makandala, who gave him enough food. Villalobos, in his happiness, named the islands of Samar and Leyte Felipinas in honor of Prince Philip of Spain, who later on became King Philip II.⁶⁴

Clearly too, Sulu Sultanate, was not part of Felipinas, besides, such name was merely given by an explorer. There were, again, no terms such as Moro, Bangsamoro, Filipinas, Philippines, Philippine Islands or Republic of the Philippines yet.

The Felipinas later became Filipinas during the Spanish colonial era.⁶⁵ Since 1578 to 1898. The Philippines Should be the conquered territories; no term "Philippines" yet!] was a colony of Spain for 330 years, from the time when Legazpi came in 1565 to the time when Spain lost to America in 1898.⁶⁶

Being a colony [conquered territories] means our lands and our people belonged to the Spanish monarch. The Filipinos practically had no say in who ruled them, what laws applied to them, or what rights they had, in short, rulers, our laws, and our rights were all dictated by Spain.⁶⁷

⁶¹ Ibid

⁶² Ibid

⁶³ Ibid., p. 3

⁶⁴ Teodoro A. Agoncillo, Introduction to Filipino History, pp. 38

⁶⁵ Ibid

⁶⁶ Ibid., p. 63

⁶⁷ Ibid., p. 63

Yes, this was true. True only to conquered and colonized territories but not true to Sulu Sultanate unconquered territories and her uncolonized Tausug people!

Clearly too, Sulu Sultanate was not part of "Filipinas" because she was not conquered neither colonized nor Christianized by Spain.

In June 1578, Captain Esteban Rodriguez de Figueroa, one of the captains who participated in the first Brunei expedition, arrived in Jolo and exacted tribute from the Sulu Sultan in accordance with instructions of Governor Sande.⁶⁸

The Tausug of Sulu Sultanate, which should aptly and correctly be dubbed as, "Tausug wars with Spain" [not Moro wars, but Tausug wars under Sulu Sultanate; Maguindanaon wars under Maguindanao Sultanate, among others], then survived and resisted Spain for 320 years from the time when Captain de Figueroa came in 1578 to the time when Spain ceded "Filipinas" to United States of America under the Treaty of Paris.

To counteract these devastating raids, Spanish authorities in Manila sent an expedition to Sulu in February 1602. Led by Juan Gallinato, about 200 Spaniards and an equal number of native allies attacked the settlement of Jolo. After fierce resistance, the Sulus [Tausug] retired to their fortified positions on a nearby hill. The Spaniards built a temporary fort in the area while laying siege to the fortified positions of the Sulus [Tausug]. With no success in sight after three months and with no reinforcements and provisions running low, the expedition retired to Panay but not before it had destroyed a few settlements, plantations, and properties of the Sulus [Tausug]. Actually, although this expedition failed to capture the Sulu Sultan, it did prevent the Sulus [Tausug] from joining the Maguindanaons and Sangils who had planned to attack the Visayas.⁶⁹

On January 1, 1638, eighty vessels loaded with six hundred Spaniards and 1,000 native allies, including Visayans, Pampangos, and Caragans left Zamboanga. Four days later, they landed in Jolo but found it abandoned. The Sulu Ruler and his warriors had retired to their cotta in a nearby hill on the foothills of Mt. Tumantangis which was closely guarded by defender composed of Tausug, Samals, Tagimaha from Basilan, Makassars and Malays.⁷⁰

"In 1737, Sultan Alimuddin I entered into a "permanent" peace treaty with Gov. Gen. F. Valdes y Tamon⁷¹ - Spanish Governor General.

The series of treaties were pieces of evidence of statehood of Sulu Sultanate - besides, unconquered neither colonized nor Christianized.

Therefore, there is no basis to call Tausug "Filipinos" and Sulu Sultanate part of "Filipinas." Filipinos were Christianized Spanish subjects and Filipinas was a colony, not a State.

⁶⁸ Cesar Adib Majul, *Muslims in the Philippines*, p. 112, citing "Account of Expeditions, "Blair and Robertson Vol. IV. p. 231

⁶⁹ Ibid., p.117

⁷⁰ Cesar Adib Majul, *Muslims in the Philippines*, p. 136

⁷¹ From Wikipedia, the Free Encyclopedia, (Internet)

No wonder, "stateless" Tausug would assert they were/are not Filipinos, which is rightly true by legal and historical rights. If asserted within the concept of "right of self-determination" under the UN Charter and the International Covenants?

Being a colony with people without territory, without independent government and without sovereignty means not a State, hence, lands and people belonged to the Spanish monarch. The conquered lands and Filipinos can be sold, as were indeed sold by Spain to United States of America under the Treaty of Paris on December 10, 1898 for \$20 million, save Sulu Sultanate.

Therefore, lands of Sulu Sultanate were not conquered and colonized and *ra'ayat* Tausug were not Christianized; in no way became part of Filipinas and be called Filipinos respectively! But the proud sovereign Tausug subjects of usurped independent and sovereign state of Sulu Sultanate!

United States had deceived, militarily occupied and illegally usurped the lands, government and sovereignty of the Tausug! The republic of the Philippines did the same as she merely stepped into the shoes of the withdrawing America!

Therefore further, to reiterate, the unconquered lands or territories of the Sultanate of Sulu were never and can never be part of the Filipinas under Spain or Philippine Islands under United States of America!

To sum up, the above-mentioned terms emerged: "State of Sulu Sultanate" (1405), "Archipelago of St. Lazarus" (1521), "Moro"(1565) "Filipinas" (1543), "Filipinas and Filipinos" (1578), "Philippine Islands (1898), "Republic of the Philippines" (1946), "Bangsamoro"(19??), and "Bangsamoro Republic" (19??/200?).

IV. THE TERRITORY

(Without rightful owners as claimants, the arguments below are moot and academic.)

Territory is the fixed portion of the surface of the earth inhabited by the people of the State.⁷²

As a practical requirement only, it must be neither too big as to be difficult to administer and defend nor too small as to be unable to provide for the needs of the population. Legally, the territory can extend over a vast expanse such as those of Russia and China or cover only a small area such as that Abu Dhabi.⁷³

The components of territory are the land mass, otherwise known as the terrestrial domain, the inland and external waters, which makes the maritime and fluvial domain, and the air space above the land waters, which is called the aerial domain.⁷⁴

⁷² Isagani I, Cruz, Philippine Political Law, p. 17.

⁷³ Ibid., p.16

⁷⁴ Ibid

A. DOES SULTANATE STATE OF SULU HAVE TERRITORY?

Before, the answer is in the affirmative! Sulu Sultanate as a "State" has a fixed and defined territory.

The five stars in her series of flags, as another piece of evidence, prior and during her resistance against Spain and America represented 1. Sulu (includes Tawi-Tawi); 2. Basilan; 3. Palawan; 4. Zamboanga Peninsula; and 5. North Borneo (Sabah). In fact, her territory; but in law, no!

They originally had an independent State known as the Sultanate, which exercised sovereignty over the present-day provinces of Basilan, Palawan, Sulu, Tawi-Tawi, Zamboanga Peninsula, and the eastern part of the Malaysian state of Sabah (formerly North Borneo), which survived, unconquered and uncolonized by foreign powers – Spain and America.

The Filipino subjects of Spain even aided Spaniards to subjugate Muslims, the State Sulu Sultanate, among others, but failed.

The Filipino citizens of America aided too the Americans in militarily occupying illegally the State of Sultanate, and then as Filipino citizens of the Philippines inherited the same act of military occupation, hence, belligerent occupants!

The above-mentioned territories were/are Sultanate territories unconquered and were never colonized by Spain and that America had merely militarily occupied them illegally and that the Philippines had merely set into the shoes of the withdrawing Americans, hence, remains to be Sulu Sultanate territories.

No problems with North Borneo (Sabah), it was merely leased and remains owned by the *ra'ayat* stateless Tausug! Sabahan be redeemed at anytime!

Can the claiming Tausug Subjects rightfully get back them in the hands of the now usurper and belligerent occupant - the Republic of the Philippine? Yes! What are the peaceful means - legal and political?

Can the stateless Tausug go to the International Court of Justice and present their case? No! What are the technical requirements?

That, to reiterate, there were no such terms such as Archipelago of St. Lazarus, Moro, Bangsamoro, Filipinas, Filipinas, Filipinos Philippines, Philippine Islands or Republic of the Philippines prior to the advent of the Spaniards. Only after the conquest of Spain of territory outside the "State of Sulu Sultanate" that Filipinas and "Filipinos" among others emerged, yet "not as a State" and "not as a citizenship", but a "colony" and "Spanish Subjects" respectively.

These conquered and colonized territories were separate and distinct from unconquered and uncolonized territories of Sulu Sultanate as a State which has all the attributes of Statehood!

Therefore, the territories of Sultanate of Sulu were never part of then Filipinas, hence, not a colony of SPAIN.

Filipinos and the Moro wars, the word 'Moro' in Spanish means a Muslim, the Filipino Moros [?! Tausug are not Filipinos and are not Moros, they are Muslims. Mindanao and Sulu were not conquered by Spain. Many times, the Moros [?! again misleading, it must be Tausug, among others], were defeated in battles, but they won the war in the end.⁷⁵

"The Filipino Muslims [?! No Filipino Muslims before. Tausug, among other are Muslims but not Filipinos!] also had their heroes. Those who defended Islam [?! In Sulu, the Sultanate as an institution survived all efforts of the Spaniards to destroy it.⁷⁶

The difficulty of conquest was posed by the Sultanate which represented fairly centralized and cohesive political system. But the point to be emphasized here is that the leaders and their followers looked at the Spaniards as threats to their independence and way of life. And what was especially threatened in their way of life was their religion, Islam.⁷⁷

It was patriotism as well as the defense of Islam that made the Muslims resist bitterly all attempts to conquer them.⁷⁸

In this struggle, Islam became transformed into an ideological force which rationalized resistance while at the same time infusing patriotism with sentiment. Consequently, this generated the holy war (*jihad*) against the enemies threatening their faith.⁷⁹

After few centuries of struggle, the elements of patriotism and Islam became so intimately intertwined that they became virtually indistinguishable from one another. What the Spaniards missed in their reflections on the so-called elements which formed a sort of identity and nationalism among the Muslims is the spirit of *jihad fi sabilliah*.⁸⁰

The Treaty of Paris on December 10, 1898, between the Spain and the United States of America for \$20 Million was null and void, illegal and immoral and without any legal effect insofar as the "State of Sultanate of Sulu" is concerned. This Treaty did not and can never affect "Third State without its consent" - Sultanate! Besides, Article III of the said Treaty did not clearly indicate whether or not the Sulu Sultanate is included. Even Sulu Sultanate was included, there was no legal effect!

B. WHAT IS TREATY OF PARIS ON DECEMBER 10, 1898?

"ARTICLE III

⁷⁵ Sonia M. Zaide, Philippine History and Government, Fourth Edition, p. 75

⁷⁶ Cesar Adib Majul, Muslim in the Philippines, p. 105

⁷⁷ Ibid., p. 102

⁷⁸ Ibid

⁷⁹ Ibid

⁸⁰ Ibid

Spain ceded to the United States the Archipelago known as the Philippine Islands, and comprehending the islands lying within the following line:

A line running from west to east along or near the twentieth parallel of north latitude, and through the middle of the navigable channel of Bacchi, from the one hundred and eighteenth one hundred and twenty-seventh degree meridian of longitude east of Greenwich, thence along the parallel and forty-five minutes north latitude to its intersection with the meridian of longitude one hundred and nineteen degrees and thirty-five minutes east of Greenwich to the parallel of latitude seven degrees and forty minutes north to its intersection with the one hundred and sixteenth degree meridian of longitude east of Greenwich, and thence along the one hundred and eighteenth degree meridian of longitude east of Greenwich to the point of beginning.

The United States will pay to Spain the sum of twenty million dollars (\$20,000,000), within three months after the exchange of the ratifications of the present treaty.⁸¹

Was this legally valid and binding upon the State of Sultanate? No! Sultanate of Sulu was neither a party nor has given her consent to the said Treaties!

Tausug should question this Treaty and should try to resolve the disputes emanating therefrom through peaceful political and legal means. Tausug should request Spain and America, once and for all, to peaceful settlement as provided for under United Nation Charter.

In addition to Treaty of Paris, the uncertainty or ambiguity and deception of this Treaty was made clear by a later Treaty on November 7, 1900 – the same, null and void, illegal and immoral and without any legal effects insofar as the State of Sultanate of Sulu is concerned.

C. WHAT IS TREATY ON NOVEMBER 7, 1900?

Those defined in the Treaty concluded between the United States and Spain on November 7, 1900, which were not defined in the Treaty of Paris, specifically the islands of Cagayan, Sulu and Sibutu⁸² for additional \$100.000.

This Treaty did not and can never affect too third State without its consent - the State of Sulu Sultanate!

These internationally scandalous treaties - the Treaty of Paris in 1898 the Treaty in 1900 concluded between Spain and America were illegal and immoral; absolutely null and void with respect to the State of Sulu Sultanate.

⁸¹ See Treaty of Paris in 1898 for full text

⁸² Isagani I. Cruz, Philippine Political Law, p.18

D. WHAT IS A TREATY?

A treaty means an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.⁸³

Contracting State means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force.⁸⁴

Party means a State which has consented to be bound by the treaty and for which the treaty is in force.⁸⁵

Third State means a State not a party to the treaty.⁸⁶

A rule in general international law, a treaty does not create either obligation or rights for a third State without its consent.⁸⁷ To reiterate, the State of Sulu Sultanate was never conquered, hence, a State - independent and sovereign one!

In the same line of reasoning, a treaty (between Spain and the United States of America) does not create either obligation or rights for a third state (Sulu Sultanate) without its consent.

E. WHAT IS PACTA TERTIIS NEC NOCENT NEC PROSUNT?

PACTA TERTIIS NEC NOCENT NEC PROSUNT is derived from Roman law principle of contract means "agreements neither impose obligations nor confer rights on third parties" it finds justification in contemporary international law in the sovereign equality and independence of States.⁸⁸

Hence, Sulu Sultanate remains a state then equal with Spain, America and the rests of the states of the World!

F. WHAT IS PAR IN PAREM IMPERIUM NON HABET?

PAR IN PAREM IMPERIUM NON HABET means "an equal has no power over an equal." A State has no power over other States!

G. WHAT IS PACTA SUNT SERVANDA?

⁸³ Article 2 (1) (a). Vienna Convention on the Law of Treaties

⁸⁴ Article 2 (3) (f). Vienna Convention on the Law of Treaties

⁸⁵ Article 2 (1) (g). Vienna Convention on the Law of Treaties

⁸⁶ Article 2 (1) (h). Vienna Convention on the Law of Treaties

⁸⁷ Article 34. Vienna Convention on the Law of Treaties

⁸⁸ Merlin M. Magallona, Fundamentals of International Law, 2005, p. 203.

PACTA SUNT SERVANDA means "stipulations of the parties must be complied with religiously and in good faith."

PACTA SUNT SERVANDA is in no way should be observed by the State of Sulu Sultanate, not only because of her without consent, but also, she never became a party to the said treaties!

The Treaty of Paris in 1898 and the Treaty on November 7, 1900 between Spain and the United States are valid and binding upon Sulu Sultanate if the subject territories sold were conquered and colonized or Sulu Sultanate has acquiesced or has given her consent; but she was not conquered, nor colonized; did not consent nor her consent was sought by Spain or America.

To reiterate, neither Spain nor United States has conquered and colonized Sulu Sultanate; the said treaties were contracted and concluded not only where consent but also without an iota of knowledge, the more the illegality and immorality is abhorrent and objectionable!

The United States of America, to reiterate, has neither conquered too nor colonized the State of Sulu Sultanate but deceived through Kiram-Bates Treaty, then while within the territory illegally militarily occupied her! Spain and America's illegal acts singly or collectively can never and will never divest nor abolish the statehood of Sulu Sultanate!

"Sovereignty is permanent, exclusive, comprehensive, absolute, indivisible, inalienable, and imprescriptible,"⁸⁹ hence, sovereignty still belongs to Tausug - the still sovereign people of Sultanate.

Thus, the people are declared supreme. It is affirmed that every citizen is an individual repository of sovereignty.⁹⁰

It is supposed to be in Article III where the Sultanate was ceded by Spain to the United States, but it only indicated lines and coordinates, the purpose of which was to deceive us.⁹¹

Thus, the series of Acts of Congress of the United States of America which were based and drew breadth on the "Treaty of Paris in 1898" and "Treaty on November 7, 1900" between Spain and United States, such as, Philippine Bill of July 1, 1902: The Philippine Autonomy Act (Jones Law) on August 29, 1916; and 3. The Philippine Independence Act (Tyding-Mcduffy Act) of March 24, 1934, were null and void, illegal and immoral with respect to and insofar as the "State of Sultanate" is concerned.

Again, "PAR IN PAREM IMPERIUM NON HABET" (An equal has no power over an equal.) A State has no power over other States! Hence, these (3) acts of congress of the

⁸⁹ The Isagani L Cruz, Philippine Political Law, p. 26, citing Laurel v. Misa, 77

⁹⁰ Isagani L Cruz, Philippine Political Law, p. 49 Prof. Emmanuel D. Mangubat, FRU, Sulu Sultanate: Its Establishment with Historical and Political, and Legal Implications, Volume 2, 2005, p. 33

⁹¹ Prof. Emmanuel D. Mangubat, FRU, Sulu Sultanate: Its Establishment with Historical, Political, and Legal Implications

United States of America cannot legally annex or incorporate independent and sovereign state of sulu sultanate under the "Philippine islands."

These Acts of Congress of the United States of America were valid only to or Spain's conquered and colonized territories named "Filipinas" "Philippine Islands" as within the terms contemplated in the said treaties!

Because, the December 10, 1898 Treaty of Paris is not valid, America and Spain archived it. They know that an independent and sovereign State cannot be incorporated to another independent and sovereign State. America knows that by such incorporation, she violated her own 1787 Constitution. So, this treaty must be archived.⁹²

I have been warning this is the condition of our country, and that the government controls this country contrary to the 1787 U.S. Constitution, at least since March 4, 1791 and for sure since March 2, 1867, when an Act of Congress destroyed the 1787 Constitution. (The Constitution of No Authority, which was written in 1869, Lysander Spooner.)

Therefore, as an independent and sovereign State, cannot be subject of other State's legislations i.e. the Acts of Congress of the United States to wit:

H. WHAT IS THE PHILIPPINE BILL OF 1902?

The Philippine Bill of July 1, 1902 (Act of Congress [of United States of America] of July First, Nineteen Hundred and Two, The Philippine Bill, An Act Temporarily to Provide for the Administration of the Affairs of Civil Government in the Philippine Islands, and for other purposes.):

Section 4. That all inhabitants of the Philippine Islands continuing to reside therein who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in the Philippine Islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain

In accordance with the provisions of the treaty of peace between the United States and Spain signed at Paris December tenth, eighteen hundred and ninety-eight."

Section 5. That no law granting a title of nobility shall be enacted, XXX.

Section 7. That two years after the completion and publication of the census, in case such condition of general and complete peace with recognition of the authority of the United States shall have continued in the territory of said islands not inhabited by Moros or other non-Christian tribes and such facts shall have been certified to the President by the Philippine Commission, the President upon being satisfied thereof shall direct the Commission to call, and the Commission shall call, a general election for the choice of delegates to a popular assembly of the people of said territory in the Philippine Islands, which shall be known as the Philippine Assembly.

⁹² Ibid., p. 32

After said assembly shall have convened and organized, all the legislative power heretofore conferred on the Philippine commission in all that part of said islands not inhabited by Moros or other non-Christian tribes shall be vested in a legislature consisting of two Houses - the Philippine Commission and the Philippine Assembly, Said Assembly shall consist of not less than fifty nor more than one hundred members to be apportioned by said Commission among the provinces as nearly as practicable according to population: Provided. That no province shall have less than one member: And provided further, that provinces entitled by population to more than one member may be divided into such convenient district as the said Commission may deem best."

Section 12. That all the property and rights which may have been acquired in the Philippine islands by the United States under the treaty of peace tenth December with Spain, signed eighteen hundred and ninety-eight, except such land or other property as shall be designated by the President of the United States for military and other reservations of the Government of the United States, are hereby placed under the control of the Government of said Islands, to be administered for the benefit of the inhabitants thereof, except as provided in this Act.⁹³

I. WHAT IS THE PHILIPPINE AUTONOMY ACT OF 1916?

The Philippine Autonomy Act [Jones Law] of August 29, 1916 (An Act to declare the purpose of the people of the United States as to the future political status of the people of the Philippine Islands, and to provide a more Autonomous Government for those Islands):

"Whereas it was never the intention of the people of the United States in the incipency of the war with Spain to make it a war of conquest or for territorial aggrandizement:"

"Whereas it is, as it has always been, the purpose of the people of the United States to withdraw their sovereignty over the Philippine islands and to recognize their independence as soon as a stable government can be established therein; and "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the provisions of this Act and the name The Philippines as used in this act shall apply to and include the Philippine islands ceded to the United States government by the treaty of peace concluded between the United States and Spain on the eleventh day of April eighteen hundred and ninety-nine, the boundaries of which are set forth in Article III of said treaty, together with those islands embraced in the treaty between Spain and the United States concluded at Washington on seventh day of November, nineteen hundred."

Section 2. that all inhabitants of the Philippine islands who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in said Islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands, except such as shall have elected to preserve their allegiance to

⁹³ See "THE PHILIPPINES BILL OF JULY 1, 1902" for the full-text

the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain, signed at Paris December tenth, eighteen hundred and ninety-eight, and except such others as have since become citizens of some other country: Provided, That the Philippine Legislature, herein provided for, is hereby authorized to provide by law for the acquisition of Philippine citizenship by those natives of the Philippine Islands who cannot come within the foregoing provisions, the natives of the insular possessions of the United States, and such other persons residing in the Philippine Islands who are citizens of the United States, or who could become citizens of the United States under the laws of the United States if residing therein.

XXX

Section. 3. xxx.

XXX

"That no law granting a title of nobility shall be enacted, xxx."

Section 8. That general legislative power, except as otherwise herein provided, is hereby granted to the Philippine Legislature, authorized by this Act.

Section 9. That all the property and rights which may have been acquired in the Philippine Islands by the United States under the treaty of peace with Spain, signed December tenth, eighteen hundred and ninety-eight, xxx, are hereby placed under the control of the government of said islands to be administered or disposed of for the benefit of the inhabitants thereof, and the Philippine Legislature shall have power to legislate with respect to all such matters as it may deem advisable; xxx

Section 16. That the Philippine Islands shall be divided into twelve senate districts, as follows:

xxx

Eight Districts: Negros Occidental, Negros Oriental, Antique and Palawan.

xxx

Twelfth District: The Mountain Province, Baguio, Nueva Vizcaya, and the Department of Mindanao and Sulu.

Section 17. xxx. Senators and Representatives appointed by the Governor-General shall hold office until removed by the Governor-General.

Section 19. xxx.

xxx

All laws enacted by the Philippine Legislature shall be reported to the Congress of the United States, which hereby reserves the power and authority to annul the same.”

Section 22. xxx

xxx

There is hereby established a bureau, to be known as the Bureau of Non-Christian Tribes, which said Bureau shall be embraced in one of the Executive Departments to be designated by the Governor-General and shall have general supervision over the public affairs of the inhabitants of the territory represented in the Legislature by appointive Senators and Representatives.⁹⁴

H. WHAT IS THE PHILIPPINE INDEPENDENCE ACT OF 1934?

The Philippine independence act [Tyding-Mcduffie Act] of march 34, 1934 (An Act to provide for the complete independence of the Philippine Islands, to provide for the adoption of a constitution and a form of government for the Philippines Islands, and for other purposes):

Section 1. The Philippine Legislature is hereby authorized to provide for the election of delegates to a constitutional convention, which shall meet in the hall of the House of Representatives in the capital of the Philippine Islands, at such time as the Philippine Legislature may fix, but not later than October 1, 1934, to formulate and draft a constitution for the government of the Commonwealth of the Philippine Islands, subject to the conditions and qualifications prescribed in this Act, which shall exercise jurisdiction over all territory ceded to the united states by the treaty of peace concluded between the united states and Spain on the 10th day of December 1898, the boundaries of which are set forth in article iii of said treaty, together with those islands embraced in the treaty between Spain and the United States concluded at Washington on the 7th day of November, 1900. The Philippine Legislature shall provide for the necessary expenses of such Convention.”

Section 2. (a) xxx,

xxx

(4) That the Government of the Philippine Islands, on becoming independent of the United States, will assume all continuing obligations assumed by the United States under the treaty of peace with Spain ceding said Philippine islands to the United States.

xxx

"RECOGNITION OF PHILIPPINE INDEPENDENCE AND WITHDRAWAL OF AMERICAN SOVEREIGNTY"

⁹⁴ See THE PHILIPPINE AUTONOMY ACT [JONES LAW] OF AUGUST 29, 1916 for the full-text

Section 10. (a) On the 4th, day of July immediately following the expiration of a period of ten years from the date of the inauguration of the new government under the constitution provided for in this Act the President of the United States shall by proclamation withdraw and surrender all rights of possession, supervision, jurisdiction, control or sovereignty then existing and exercised by the United States in and over the territory and people of the Philippine islands, including all military and other reservations of the government of the United States in the Philippines (except such naval reservations and fueling stations as are reserved under section 5), and, on behalf of the United States, shall recognize the independence of the Philippine Islands as a separate and self-governing nation and acknowledge the authority and control over the same of the government instituted by the people thereof, under the constitution then in force.⁹⁵

Again, all these Acts of United States and Spain pertaining to the above said treaties as well as the Acts of US Congress affecting the independence and sovereignty of the Sulu Sultanate were internationally scandalous, illegal immoral and null and void!

I have been warning this is the condition of our country, and that the government controls this country contrary to the 1787 U.S. Constitution, at least since March 4, 1791 and for sure since March 2, 1867, when an Act of Congress destroyed the 1787 Constitution. (The Constitution of No Authority, which 1105 written in 1869, Lysander Spooner.)

Hence, Republic of the Philippines has no legal right and/or historic title over the unconquered territories of the Sulu Sultanate State! The territorial integrity of Sultanate is still and legally and politically hers and not part and can never be part of the Republic of the Philippines.

Republic of the Philippines merely inherited and continued the illegal military occupation of the United States of America!

hence, the Philippines has acquired no better rights but merely stepped into the shoes of the America, hence, illegally occupied the sultanate state of sulu territory!

Can the real owners - the sovereign "stateless" Tausug take back rightly? yes!

By waging wars? No need, but by peaceful means, legal and political.

"By virtue of R.A. 4166 passed on August 4, 1962 during the presidency of the late President Diosdado Macapagal, the Independence Day we [Filipinos, not" Tausug] have celebrated for 16 years which is July 4 was changed to June 12 by virtue of Gen. Emilio Aguinaldo's proclamation at Cavite Viejo in 1898."⁹⁶

"The question is asked because when Gen. Aguinaldo proclaimed independence on June 12, 1898, his revolutionary government which was dictatorial did not have complete control over all the Philippine Archipelago. Mindanao was still at war with the Spanish colonial government.⁹⁷ Besides, Sulu Sultanate has her own distinct

⁹⁵ See THE PHILIPPINE INDEPENDENCE ACT [TYDINGS-MCDUFFIE ACT] OF MARCH 34, 1934 for full-text.

⁹⁶ Prof. Emmanuel D. Mangubat, FRU, Sulu Sultanate: Its Establishment with Historical, Political, and Legal implications, Volume 1, 2005, p. 52.

⁹⁷ Ibid

"international personality" and "statehood" hence, the declaration of Aguinaldo has no legal effects and implications to Sulu Sultanate as a "State" and to the Tausug people!

"On the contrary, when America granted us [to Filipinos only over legally bought and colonized territories and Filipino people, save "State of Sultanate because there is no need to grant independence to already independent Sulu Sultanate.] independence on July 4, 1946, she had complete control of the entire archipelago except Sulu which is until today an independent and sovereign state. So, R.A. 4166 vis-à-vis July 4, Independence Day."⁹⁸

"Without a doubt, Sultanate is illegally usurped of her territory, governance and sovereignty and militarily occupied by RP!

If sovereign "stateless" Tausug of Sultanate have legal and political rights and historic title, what are the remedies? Legal and political remedies? Peaceful solutions? Solutions must be peaceful, legal, and political! No need to wage Tausug Wars against the Republic of the Philippines!

Again, "*PAR IN PAREM IMPERIUM NON HABET*" (An equal has no power over an equal). Therefore, the Republic of the Philippines should withdraw from the territory of the State of Sulu Sultanate!

"The Constitution not only binds nobody now, but it never did bind anybody. It never bound anybody, because it was never agreed to by anybody in such a manner as to make it, on general, principles of law and reason, binding upon him. It is a general principle of law and reason, that a written instrument binds no one until he has signed it. (The informer asked me to inject here: that in Title 12 it is your signature that brings you to the debt, and or the lack of a signature that makes you an involuntary contributor.) This principle is so inflexible a one, that even though a man is unable to write his name, he must still "make his mark," before he is bound by a written contract. This custom was established ages ago, when few men could write their names; when a clerk - that is, a man who could write -- was so rare and valuable a person, that even if he were guilty of high crimes, he was entitled to pardon, on the ground that the public could not afford to lose his services. Even at time a written contract must be signed; and men who could not write, either "made their mark," or signed their contracts by stamping their seals upon wax at the parchment on which their contracts were written. Hence the custom of affixing seals, that has continued to this time." (The Constitution of No Authority which was written in 1869, Lysander Spooner.)

Again, "The very men who drafted it, never signed it in any way to bind themselves by it, as a contract. And not one of them probably ever would have signed it in any way to bind himself by it, as a contract." (The Constitution of No Authority, which was written in 1869, Lysander Spooner)

"....And yet we have what purports, or professes, or is claimed, to be a contract - the Constitution -- made eighty years ago, by men who are now all dead, and who never had any power to bind US, but which (it is claimed) has nevertheless bound three generations of men, consisting of many millions, and which (it is claimed) will be binding upon all the millions that are to come; but which nobody ever signed, sealed, delivered,

⁹⁸ Ibid

witnessed, or acknowledged; and which few persons, compared with the whole number that are claimed to be bound by it, have ever read, or even seen, or ever will read, or see. And of those who ever have read it, or ever will read it, scarcely any two, perhaps no two, have ever agreed, or ever will agree, as to what it means." (The Constitution of No Authority", which was written in 1869, Lysander Spooner.)

Hence, all the above-mentioned laws passed by the US Congress were null and void, illegal and immoral with respect to Sulu Sultanate.

The United States of America had never or neither conquered the State of Sulu Sultanate, nor colonized her. Besides, Sultanate has never abdicated her throne. The US pretext had led to perfect illegal military occupation!

K. WHAT IS KIRAM-BATES TREATY?

During the Philippine-American War, the Americans adopted a policy of noninterference in the Muslim areas, as spelled out in the Bates Agreement of 1899 signed by Brig. Gen. John C. Bates and Sultan Muhammad Jamalul Kiram II of Jolo. Although the Bates Agreement had pacified, to a certain extent, the Sulu Sultanate, resistance continued."⁹⁹

L. WHAT IS CARPENTER AGREEMENT?

As another piece of evidence of Sulu Sultanate's being an independent and sovereign state were the Kiram-Bates Treaty and the Carpenter Agreement, that by definition of a treaty and agreement, only independent and sovereign States can be parties thereto.

While it is true that, it was unilaterally abrogated by the United States of America, the independent and sovereign character of the State of Sultanate Sulu remains!

As to the legal effects of the Carpenter Agreement to the independence and sovereignty of the State of Sulu Sultanate, there was none! The Sulu Sultanate did not abdicate her throne. The Sulu Sultanate and the United States of America have merely reached mutual understandings.

M. IS A TREATY AND AN AGREEMENT THE SAME?

A treaty means "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation."¹⁰⁰

The first part of the clause recognizes the facts that a "treaty" may refer to one single formal instrument or to an international agreement consisting of two or more instruments, such as exchange of notes, or other forms of simplified agreements which

⁹⁹ Che Man, 1990, pp. 46-47

¹⁰⁰ Article 2 (1) (a), Vienna Convention on the Law of Treaties

have become common of common use, such as "agreed minutes" or "memorandum of understanding." Without respect to such form and as they differ in the method of conclusions and entry in force from single formal instruments, they are subject to the international law of treaties in regard to validity, interpretation, affectivity, enforcement, and termination in terms of content.¹⁰¹

The second part of the clause means that the nomenclature of the agreement is of no legal significance. Regardless of their designation, whether they are entitled "treaty", "covenant", "pact", "concordant", "declaration", "exchange of letters", or "modus Vivendi", still they are embraced by generic use of the term "treaty" under the Convention.¹⁰²

With the ratification of the Carpenter Agreement in 1915 and the death of Sultan Muhammad Jamalul Kiram II in 1936 without heir, the Sultanate of Sulu has never been abolished nor has the throne been abdicated. The throne would either be to the "First Heirs Apparent" of Al-Marhum Sultan Alimmudin I (reigning from) 1735-1748 and 1764-1774) or to "Second Heirs Apparent" of Al-Marhum Sultan Muizzuddin (reigning from 1748-1763) - the elder and younger sons of Al-Marhum Sultan Badaruddin I (reigning from 1718-1732) respectively.

Sovereignty is permanent. Government which is the Sultanate is also permanent which exists even without a sultan on the throne; administration headed by a sultan is transitional and changing.

N. WHO SHOULD BE CROWNED AS SULTAN OF SULU

SULTANATE AFTER AL-MARHUM SULTAN JAMALUL

KIRAM II (REIGNING FROM 1884-1936)?

Who are the "First Heirs Apparent" of Al-Marhum Sultan Alimmudin I of the Sulu Sultanate? Who are the "Second Heirs Apparent" of Al-Marhum Sultan Muizzuddin of the Sulu Sultanate? Who has the better rights now? The "First" or the "Second"?

While either one has the better rights, who are the sovereign in the State of Sulu Sultanate?

The sovereign, supreme and superior in power are the *ra'ayats* of Tausug subjects of the Sulu Sultanate, a country where the Sultans, *Datus*, *Sharifs*, Buranuns, and ordinary Tausug belong to the class – Tausug.

Stateless Tausug subjects of the Sultanate can still be Tausug without a sultan; a Sultan can be enthroned from among the Tausug having Royal blood at any time; but a sultan can never be a *de jure* sultan without a mandate from the sovereign Tausug!

¹⁰¹ Merlin M. Magallona, *Fundamentals of International Law*, 2005, p. 173

¹⁰² *Ibid*

Ra'ayat Tausug merely delegated limited sovereign power to their Sultan who shall act within the said limit. All other powers and "Act of State" outside the limits are for sovereign Tausug to decide!

Absolutely, Tausug are the powerful in the *negara* Sulu! After Al-Marhum Sultan Jamalul Kiram II, "to whom" sovereign Tausug delegated their sovereign powers? Or "to whom" sovereign Tausug entrusted the mandate? To none yet!

With all due respect, Tausug are the proclaimers to be a sultan of Sultanate of Sulu to confer a status of *de jure* sultan. On the strength of such proclamation, any doubt as to who the real sultan is, would be cleared out.

From then on, a sultan shall faithfully carry out the mandate of the sovereign stateless Tausug without fear and favor!

From then on, the Sultan and the Ministers entrusted with the mandate by the sovereign Tausug shall diplomatically negotiate with the authorities of the Republic of the Philippines and the Malaysians authorities with the pleasing of the United Nations, support of other States and international organizations of entities, etc.

Furthermore, the non-recognition to "any" successor of the sultanate was implemented by President Manuel L. Quezon in Memorandum 20 September 1937, was in no way to mean abdication or abolishment of the Sultanate of Sulu "state"; besides, recognition by Philippine President is unnecessary because the Sulu Sultanate is an independent and sovereign state; not part of the Republic of the Philippines. Sovereignty remains with the sovereign Tausug of Sulu Sultanate State.

What then is the status of Sultanate vis-a-vis Republic of the Philippines? Militarily occupied by the Republic of the Philippines! Philippines merely stepped into the shoes of the United States as the United States militarily occupied then Sulu Sultanate.

O. WHEN IS THERE MILITARY OCCUPATION OVER A TERRITORY?

1. There is war between two (2) States);
2. The armed forces of one of the belligerents take actual physical possession of the territory of the other state.
3. The armed forces of the belligerent are able to establish effective control and administration.

If one of these is lacking, there can be no military occupation in the legal sense.”¹⁰³

Is Sulu Sultanate within this contemplation? No questions with 2 and 3. How about the number 1?

¹⁰³ Judge Ed Vincent S. Albano, Political Law Reviewer, Third Edition, p. 10, citing Gonzales, Philippine Political Law, supra, citing Garner, p.13

Sulu Sultanate was a state, hence, at war then with Spain. Sulu Sultanate was a state, hence, at war then with America. Sulu Sultanate is still a state, at war with Republic of the Philippines?

P. IF SO, MILITARILY OCCUPIED, WHAT ARE THE RULES?

In *Laurel vs. Misa*, 44 O.G. 1176, the Supreme Court said that, “the absolute and permanent allegiance of the inhabitants of a territory occupied by the enemy to their legitimate government or sovereign is not abrogated or severed by the enemy occupation, because sovereignty of the government or sovereign *de jure* is not transferred thereby to the occupier, and if it is not transferred to the occupant, it must necessarily remain vested in the titular government. What may be suspended is the government of the territory occupied by the enemy which passes temporarily to the occupant. And, since sovereignty itself is not suspended and subsists during the enemy occupation the allegiance of the inhabitants to their legitimate government or sovereign, subsists and therefore, there is no such thing as suspended allegiance.”¹⁰⁴

The rule, however, that political laws of the occupied territory are suspended or held in abeyance during the military occupation is a rule intended for the government of the civil inhabitants of the occupied territory and does not bind the enemies at war.¹⁰⁵

Is Sultanate of Sulu an enemy at war with the Republic of the Philippines, hence, political laws of the later do not bind the former? Technically, yes.

What were the political laws of Sulu Sultanate held in abeyance? If the political laws of the belligerent occupant (the Philippines) do not bind the Sulu Sultanate, can Sulu Sultanate legally and politically enforce and implement their political laws? The answer is in the affirmative!

On the other hand, the last Sultan of Sulu Sultanate was Sultan Muhammad Jamalul Kiram II who died "without any children" thus, the throne of the Sultanate of Sulu is until now vacant to be filled by the rightful "heir and successor" who will then succeed to the throne and faithfully carry out the mandate of the sovereign Tausug of Sulu Sultanate.

Hence, since there was/is not *de jure* Sultan yet in view of the above premises, all acts of self-proclaimed sultans and/or impostors, with all due respect, plus further without endorsement and overwhelming popular support of the sovereign Tausug of Sulu Sultanate were/are null and void legally unbinding upon the "State of Sulu Sultanate" more so, for her sovereign people - the sovereign Tausug!

Hence further in particular that, "the living heirs of the late Sultan Muhammad Jamalul Kiram II signed an instrument whereby they irrevocably recognized, admitted and accepted the ultimate sovereignty, title and dominion of the Republic the Philippines

¹⁰⁴ See *Laurel vs. Misa*, 44 O.G. 1176, for the full text

¹⁰⁵ See *Ruffy, et al. vs. chief of staff*, 75 Phil. 875

without prejudice to such proprietary rights as the heirs of Jamalul Kiram II may have,"¹⁰⁶ is null and void, politically illegal and legally unbinding upon the State of Sultanate. The consent and concurrence of the sovereign Tausug citizens of Sulu Sultanate is absolutely a condition *sine qua non* to be valid, legal and binding upon State of Sulu Sultanate!

The heirs of the Sultan can give and abdicate rights what rightfully belong to them only; but not and cannot abdicate rights, by themselves, of the Tausug citizenry.

A distinction must be made for properties: "properties are either of public dominion - those for public use and those belong to the State without being for public use and are intended for some public service or for the development of the national wealth." "All other properties of the state are patrimonial." "On the other hand, "property of private ownership consists of all property belonging to private persons, either individually or collectively."

Thus, property of public dominion is owned by the state, in fine, owned by all *ra'ayat* Tausug; while as, private property, by inheritance, belongs to the heirs.

It is for the sovereign *ra'ayat* Tausug of Sultanate of Sulu to decide if they do wish to abdicate North Borneo (Sabah) and not the heirs with all due respect; the territories and Tausug people of Sulu Sultanate are outside the commerce of the heirs of late Sultan Muhammad Jamalul Kiram II, besides these territories and properties of Sulu Sultanate are owned by the "state of Sulu" or "negara Sulu" - owned by all *ra'ayat* Tausug and within the sovereignty of the sovereign *ra'ayat* Tausug of Sulu Sultanate.

Thus, the State of Sulu Sultanate remains an independent and sovereign one and that any sovereign acts are vested with the sovereign *ra'ayat* Tausug!

With all due respect, Muhammad Esmal E. Kiram I has neither been authorized by *ra'ayat* Tausug to make any instrument of cession and/or whatsoever "act of State"; the instrument of cession was without the imprimatur of the sovereign *ra'ayat* Tausug especially those living in North Borneo (Sabah), Sultanate of Sulu.

Therefore, the "Instrument of Cession of the Territory of North Borneo by His Majesty Sultan Muhammad Esmal E. Kiram I, Sultan of Sulu, acting with the advice and authority of the *Ruma Bitsara*, to the Republic of the Philippines, 12 September 1962 was legally and politically null and void.

Q. WHAT IS A CESSION?

Cession means a yielding or giving up.¹⁰⁷ Cession, which is the transfer of territory by a treaty.¹⁰⁸

¹⁰⁶ Instrument of Cession of the Territory of North Borneo by His Majesty Sultan Muhammad Esmal E. Kiram I, Sultan of Sulu, Acting with the Advice and Authority of the *Ruma Bitsara*, to the Republic of Philippines, 12 September 1962

¹⁰⁷ M.H. Guandolo, Legal Dictionary, 1968 Merlin M. Magallona, Fundamentals of International Law, 2005, p. 42

¹⁰⁸ Merlin M. Magallona, Fundamentals of International Law, 2005, p. 42

Again, with all due respect, it is for the sovereign Tausug to decide and that the consent of every Tausug - bearer of particle of sovereignty - is a condition *sine qua non*. If the heirs gave up, the sovereign Tausug did not yet!

What is then the status of North Borneo (Sabah), becomes territory of the Philippines?

R. TWO REFERANDA HELD IN NORTH BORNEO: WHAT ARE THE LEGAL EFFECTS?

In 1962, an election was held in North Borneo (and Sarawak) in which joining Malaysia was the key issue. The people of Malaysia decided by a substantial majority in favor of the pro-Malaysia party.¹⁰⁹ The legal effects?

The Secretary-General of the United Nations confirmed it in 1963: he said there was "no doubt about the wishes of a sizable majority of the peoples these territories to join the Federation of Malaysia." The legal effects?

Still territory and part of State of Sulu Sultanate, hence, neither part of Republic of the Philippines nor of Malaysia, with all due respect! North Borneo as a State part and parcel of State of Sultanate merely federated to Malaysia, the sovereign wishes of the peoples of North Borneo is still supreme and carries great respect internally and externally.

S. WHAT IS PLEBISCITE AND REFERENDUM?

Plebiscite means popular vote¹¹⁰ while referendum means determination of legislation by direct vote of the people.¹¹¹

T. INTERNATIONAL COURT OF JUSTICE DECISION IN THE

CASE CONCERNING SOVEREIGNTY OVER PULAU

LIGITAN AND PULAU SIPADAN

(INDONESIA/MALAYSIA)

Judgment was in favor of Malaysia. Malaysia has sovereignty over Pulau Ligitan and Pulau Sipadan. What are the implications to North Borneo issues?

V. THE GOVERNMENT

¹⁰⁹ Excerpt from International Court of Justice transcript of the proceedings the case concerning "Sovereignty Over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia). (internet)

¹¹⁰ M H. Guandolo. Legal Dictionary, 1968, p. 153

¹¹¹ Ibid., p.170

Government is the agency or instrumentality through which to the will of the state is formulated, expressed, and realized.¹¹²

From the viewpoint of international law, no particular form of government is prescribed, provided only that the government is able to represent the state in its dealings with other States.¹¹³

The government performs two kinds of functions, to wit, the constituent - the very bonds of society and are therefore compulsory such as "administration of political duties, privileges and relations of citizens; the dealings of the state with foreign powers; the preservation of the state from external danger or and encroachment and the advancement of its international interests,"¹¹⁴ and ministrant - are those undertaken to advance the general interest of society such as public works among others.¹¹⁵

One of the important tasks of the government is to act for the states as *parens patriae*, or guardian of the rights of the people.¹¹⁶

Regardless of their form, government is either *de jure* or *de facto*.

A. WHAT IS A *DE JURE* GOVERNMENT?

De jure government has rightful title but no power or control either because this has been withdrawn from it or because it has not yet actually entered into the exercise thereof. A *de facto* government, on the other hand, is a government of fact, that, it actually exercises power or control but without legal title.¹¹⁷

A *de jure* government is a government of right; a government established according to the constitution of the state, and lawfully entitled to recognition and supremacy and the administration of the state but is actually ousted from power or control, it is the true and lawful government.¹¹⁸

WHAT IS A *DE FACTO* GOVERNMENT?

B. *De facto* government, on the other hand, is that government which unlawfully gets the possession and control of the rightful legal government and maintains itself there by force and arms against the will of the rightful legal government and claims to exercise the powers thereof. It is a government of fact.¹¹⁹

¹¹² Isagani I. Cruz, Philippine Political Law, p. 16, citing *Poindexter v. Green* 114 US 270

¹¹³ Isagani I. Cruz, Philippine Political Law, p. 18 *Malcolm, Government of the Philippine Islands*, p. 19

¹¹⁴ *Malcom, Government of the Philippine Islands*, p. 19

¹¹⁵ Isagani I. Cruz, Philippine Political Law, p. 23

¹¹⁶ *Ibid*

¹¹⁷ *Ibid*

¹¹⁸ Gonzalez, Philippine Political Law, 1996 Edition, p. 16, citing Aruego, pp. 133-135

¹¹⁹ Gonzales, Philippine Political Law, 1966 Edition, p. 16, citing *Black's Lay: Co Kim Chan vs. Than Keh*. 75 Phil.

In view of the above premises, in the State of Sultanate, Sulu Sultanate government is the *de jure* government and the government of the Republic of the Philippines a *de facto* one.

C. THREE KINDS OF *DE FACTO* GOVERNMENT

"The three kinds of *de facto* government are as follows:

- a. The government that gets possession and control of, or usurps, by force or by the voice of the majority, the rightful legal government and maintains itself against the will of the latter, such as the government of England under the Commonwealth, first by Parliament and later by Cromwell as Protector.
- b. That established as an independent government by the inhabitants of a country who rise in insurrection against parent state, such as the government of Southern Confederacy in revolt against the Union during the war of secession in the United States.
- c. That which is established and maintained by military forces who invade and occupy a territory of the enemy in the course of war, and which is denominated as a government of paramount force, such as the cases of Castine in Maine, which was reduced to a British possession in the war of 1812, and of Tampico, Mexico, occupied during the war with Mexico by the troops of the United States.¹²⁰

"It has been held in number of cases that the Second Republic of the Philippines was a *de facto* government of paramount force, having been established by the Japanese belligerent during the occupation of the Philippines in World War II. The characteristics of this kind of *de facto* government are:

- a. Its existence is maintained by active military power within the territories, and against the rightful authority of an established lawful government.
- b. During its existence, it must necessarily be obeyed in civil matters by private citizens who, by acts of obedience rendered in submission to such force, do not become responsible, as wrongdoers, for those acts, though not warranted by the laws of the rightful government. Actual governments of this sort are established over districts differing great in extent and conditions. They usually administered by military force."¹²¹

D. WHO HAS THE SOVEREIGN POWER TO RECOGNIZE GOVERNMENT?

The Supreme Court unanimously held in *Lawyers League for Better Philippines v. Corazon C. Aquino*¹²² that "the people have made the judgment; they have accepted the government of President Corazon C. Aquino which is in effective control of the entire country so that it is merely a *de facto* government but in fact and law a *de jure*

¹²⁰ Isagani I. Cruz, *Philippine Political Law*, p. 24, citing *Co Kim Chan v. Valdez Tan Keh*, 75 Phil. 113.

¹²¹ *Co Kim Chan v. Valdez Tan Keh*, 75 Phil. 113

¹²² G.R. No. 73748, May 22, 1986

government. Moreover, the community of nations has recognized the legitimacy of the present government.”

By analogy, the people have the sovereign power to recognize a government - his or her or their government legally and politically.

Thus, the *ra'ayat* Tausug must have to decide whether to recognize their Sultanate or the Government of the Republic of the Philippines.

Ra'ayat Tausug must have first recognized their Sultanate before any other people or countries of the world would do. Besides, an act of recognition is a political right and that questions arising therefrom, are political questions, hence, the people are the sole judge!

Ra'ayat Tausug may assert their legal and historical rights! *Ra'ayat* Tausug may assert their "right of self-determination" under the United Nations Charter! *Ra'ayat* Tausug may assert their civil, political, economic, social and cultural rights under the International Covenants! *Ra'ayat* Tausug may assert their human rights, their rights to peaceably assemble, freedom of expression among others! These are all rights and freedoms.

No person shall be detained solely by reason of his political beliefs and aspirations.¹²³

E. GOVERNMENT DISTINGUISHED FROM

ADMINISTRATION

Furthermore, government must be distinguished from administration which is the group of persons in whose hands the reign of government is for the time being. The administration runs the government, as a machinist operates his machine.¹²⁴

Administration is transitional whereas the government is permanent.¹²⁵

What is the permanent government of the Sultanate? Sultanate Government Administration headed by a Sultan as "Head of State together with a Prime Minister and his or her ministers to lead the Government is transitional and changing.

State of Sulu Sultanate still exists even without an enthroned Sultan yet. Sovereign *ra'ayat* Tausug may endorse and enthrone one at any time.

Section 1. The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.¹²⁶

By analogy also, Sultanate of Sulu is a Sultanate State. Sovereignty resides in the Tausug people and all government authority emanates from them.

¹²³ Section 18. (1). Article II, 1987 Philippine Constitution

¹²⁴ Isagani I. Cruz, Philippine Political Law, pp. 24, citing U.S vs. Dorr., 2 Phil. 332

¹²⁵ 1987 Philippine Constitution, Section 1. Article II - DECLARATION OF PRINCIPLES AND STATE POLICIES

¹²⁶ Isagani I. Cruz, Philippine Political Law, p. 26, citing Laurel v. Misa, 77

Sovereignty is permanent, exclusive, comprehensive, absolute, indivisible, inalienable, and imprescriptible.¹²⁷

Tausug, categorically speaking, sovereignty is permanently exclusively Tausug, comprehensively Tausug, absolutely Tausug, indivisibly Tausug, inalienably Tausug, and imprescriptibly Tausug.

VI. THE SOVEREIGNTY

Sovereignty is the supreme uncontrollable power inherent in a State by which that State is governed.¹²⁸

Juristically speaking, sovereignty means the supreme, uncontrollable power, the *jure summi imperii*, the absolute right to govern." ¹²⁹

It is the supreme will of the State, the power to make laws and enforce them by all the means of coercion it cares to employ.¹³⁰

There are two kinds of sovereignty, to wit, legal and political.

A. WHAT IS LEGAL SOVEREIGNTY?

Legal sovereignty is the authority which has the power to issue final command whereas political sovereignty is the power behind the legal sovereign, or the sum of the influences that operate upon it. In our country [Philippine], the Congress is the legal sovereign, while the different sectors that mold public opinion makes up the political sovereign.¹³¹

Legal sovereignty is the possession of unlimited power to make laws.¹³²

In the State of Sulu Sultanate, there is no dispute, *Shari'ah* is the law.

B. WHAT IS POLITICAL SOVEREIGNTY?

Political sovereignty is the sum total of all the influences in a state which lie behind the law. It is roughly defined as the power of the people. It is the sovereignty of the

¹²⁷ Garner, Political Science and Government, 238. 170

¹²⁸ Story on the Constitution cited in Gonzales, Philippine Political Law, 1966 Edition, p. 23

¹²⁹ Strong on the Constitution, cited in Gonzales, Philippine Political Law, 1966 Edition, p. 23

¹³⁰ Isagani I. Cruz, Philippine Political Law, p. 26

¹³¹ Isagani I. Cruz, Philippine Political Law, p. 26.

¹³² Sinco, Political Law, p. 20 cited in Political Law, Gonzales, 1966 Ed., p. 2

electorate; or in its general sense, the sovereignty of the whole body politic.¹³³ It is conferred upon the people.¹³⁴

C. WHAT IS POWER OF THE PEOPLE?

Power of the people is in essence, sovereignty in legal parlance!

In the State of Sulu Sultanate, power of the Tausug is the sovereignty of the Tausug.

Sovereignty simply means, independence.

The dual aspects sovereignty may also be internal or external.

D. WHAT IS INTERNAL SOVEREIGNTY?

Internal sovereignty refers to the power of the state to control its domestic affairs.¹³⁵

E. WHAT IS EXTERNAL SOVEREIGNTY?

External sovereignty, which is the power of the state to direct its relations with other states, is also known as independence.¹³⁶ It also means "the absolute independence of one state as a whole with reference to the other states."¹³⁷

Internal also means "the supremacy of a person or body of person in the state over the individuals or association of individuals within the area of its jurisdiction."¹³⁸

F. WHAT ARE THE CHARACTERISTICS OF SOVEREIGNTY?

Sovereignty is permanent, exclusive, comprehensive, absolute, indivisible "inalienable, and imprescriptible."¹³⁹

Hence, the sovereignty of the Sultanate of Sulu is permanently hers1 exclusively hers, comprehensively hers, absolute hers, indivisibly hers, inalienably hers, and imprescriptibly hers.

¹³³ Judge Ed Vincent S. Albano, Political Law Reviewer, Third Edition, p. 10, citing Gonzales, Philippine Political Law, p. 24

¹³⁴ Ibid., p. 36.

¹³⁵ Ibid

¹³⁶ Ibid., p.142

¹³⁷ Gonzales, Philippine Political Law, 1996 Edition, p. 23, citing Sinco, Philippine Law, p. 18

¹³⁸ Isagani I. Cruz, Philippine Political Law, p. 26, citing Laurel v. Misa, 77 Phil. 856

¹³⁹ Co Kim Chan v. Valdez, supra

G. WHAT IS THE EXERCISE OF ACTS OF SOVEREIGNTY?

By virtue of these characteristics, sovereignty is not deemed suspended although acts of sovereignty cannot be exercised by the legitimate authority. Thus, sovereignty over the Philippines remained with the United States during the Japanese occupation of our country although the Americans could not exercise any control over the occupied territory at the time.¹⁴⁰ What the belligerent occupant took over was only the "exercise of acts of sovereignty."¹⁴¹

In the same line of reasoning, the sovereignty of the Sultanate is not deemed suspended although the acts of sovereignty cannot be exercised by the legitimate authority - the Sulu Sultanate State. Thus, sovereignty over the Sulu Sultanate remains with Sulu Sultanate during the Philippine illegal military occupation of the Sulu Sultanate although Tausug could not exercise control over the occupied territory (Sulu Sultanate territory) by this time. What the belligerent occupant (Republic of the Philippines) took over was only the "exercise of acts of sovereignty."

What the Republic of the Philippines took over was only the exercise of acts of sovereignty.

H. WHAT IS *JUS POSTLIMINIUM*?

Postliminium is the revival or reversion to the old laws and sovereignty of territory which has been under belligerent occupation once control of the belligerent occupant is lost over the territory affected.¹⁴²

There being no change of sovereignty during the belligerent occupation, the political laws of the occupied territory are merely suspended, subject to revival under the *jus postliminium* upon the end of the occupation. But non-political laws are deemed continued unless changed by the belligerent occupant since they are intended to govern the relations of individuals as among themselves and are not generally affected by changes in regimes or rulers.¹⁴³

In the same vein also, there being no change of sovereignty during the belligerent occupation by the Republic of the Philippines, the political laws of the Sulu Sultanate are merely suspended, subject to revival under the *jus postliminium* upon the end of the occupation by the Republic of the Philippines. But non-political laws are deemed continued unless changed by the Republic of the Philippines since they are intended to govern the relations of Tausug as among themselves and are not generally affected by changes in regimes or rulers.

¹⁴⁰ Isagani I. Cruz, Philippine Political Law, p. 26

¹⁴¹ Antonio B. Nachura, Outline/Reviewer in Political Law, 2005 Edition, p. 599, citing *Kim Chan v. Valdez Tan Keh*, 75 Phil 113

¹⁴² Antonio B. Nachura, Outline/Reviewer in Political Law, 2005 Edition, p. 599 *Chan v Valdez Tan*

¹⁴³ Peralta V. Director of Prisons, 75 Phil. 749

I. WHAT IS MEANT BY BELLIGERENT OCCUPATION?

"It is the temporary military occupation of the enemy's territory during the war. The occupants need not have its feet planted on every square foot of territory, provided it maintains effective control and military superior therein," being able to send, in case of attack, sufficient forces to assert its authority within reasonable time."¹⁴⁴

J. WHAT IS POLITICAL LAW?

Political law is that branch of public law which deals with the organization and operations of the government organs of the state and defines the relations of the state with the inhabitants of its territory.¹⁴⁵ Examples are laws on citizenship, right of assembly, freedom of speech, press, etc.¹⁴⁶

It has been held that the Constitution of the Commonwealth, being political law, was not effective in the Philippines during the Japanese occupation.¹⁴⁷ But non-political laws like the Civil Code and the Insurance remained in force during the period except only where they were amended or superseded by affirmative act of the belligerent occupant.¹⁴⁸

However, the rule suspending political laws affects only the civilian inhabitants of the occupied territory and is not intended to bind the enemies in arms.¹⁴⁹

Who are enemies in arms of the Republic of the Philippines? Tausug people of Sulu Sultanate? MNLF? ASG? Other armed Groups?

K. WHEN IS THERE A CHANGE OF SOVEREIGNTY?

Where there is change of sovereignty, the political laws of the former sovereign are not merely suspended but abrogated. As they regulate the relations between the ruler and the ruled, these laws fall to the ground *ipso facto* unless they are retained or re-enacted by positive act of the new sovereign. Non-political laws, by contrast, continue in operation, for the reason also that they regulate private relations only, unless they are changed by the new sovereign or are contrary to its institutions.¹⁵⁰

Was there any change of sovereignty over Sultanate territories and Tausug people? It depends upon sovereign Tausug people!

In particular, did the Republic of the Philippines acquire sovereignty over the territories and Tausug people of Sultanate as a State? Same, it depends upon sovereign Tausug people!

¹⁴⁴ Antonio B. Nachura, Outline/Reviewer in Political Law, 2005 Edition

¹⁴⁵ Macariola vs. Asuncion, 114 SCRA 77; People vs. Perfecto, 43 Phil. 887

¹⁴⁶ Judge Ed Vincent S. Albano, Political Law Reviewer, Third Edition, p. 12

¹⁴⁷ Alcantara v Director of Prisons. 75 Phil. 749

¹⁴⁸ Isagani I. Cruz, Philippine Political Law, p. 27

¹⁴⁹ *ibid*

¹⁵⁰ *Ibid.*, p. 28

On the other hand, did Malaysia acquire sovereignty over North Borneo, which is still territory of Sulu Sultanate as a State? Again, same, it depends upon sovereign Tausug people!

Since it depends upon stateless Tausug, what are the decision of sovereign Tausug?

Otherwise, asserting your legal and historical rights, who are your leaders - The Sultan and the Ministers, truly mandated by the sovereign Tausug to negotiate with the Philippines and Malaysia; to solicit the help and support of other countries, inter alia...?

Who are the truly mandated by the sovereign Tausug to stand and assert their rights and act as *parens patriae*?

L. WHAT IS AN ACT OF STATE DOCTRINE?

An act of state is an act done by the sovereign power of a country, or by its delegate, within the limits of the power vested in him. An act of state cannot be questioned or made the subject of legal proceedings in a court of law.¹⁵¹

Done by the sovereign power of a country? Who are the sovereign powers? The people of a country – the sovereign Tausug!

Or by its delegate, within the limits of the power vested in him? Who are the delegates of the sovereign Tausug? The Sultan! The power vested to Sultan is limited by the sovereign Tausug!

With particular reference to political law, an act of state is an act done by the political departments of the government and not subject to judicial review. An illustration is the decision of the president, in the exercise of his diplomatic power, to extend recognition to a newly-established foreign state or government.

M. WHAT IS JUSTICIABLE QUESTION?

A purely justiciable question implies a given right, legally demandable and enforceable, an act or omission violative of such right, and a remedy granted and sanctioned by law, for said breach of right.¹⁵²

N. WHAT IS POLITICAL QUESTIONS?

The term 'political question' connotes what it means in the ordinary parlance, namely a question of policy. It refers to those questions which, the Constitution, are to

¹⁵¹ Isagani I. Cruz, Philippine Political Law, p. 26. citing Black's Law Dictionary

¹⁵² According to Justice Makasiar in *Casibang v. Aquino*, 92 SCRA 642

be decided by the people in their sovereign capacity. It is concerned with issues dependent upon wisdom not legality of a particular measure.¹⁵³

Are to be decided by the people in their sovereign capacity, simply means, supremacy of the Tausug of Sulu Sultanate!

Can Tausug people make decision within the contemplation of political questions?

Yes! Tausug people are the sovereign in the Kingdom of Sultanate!

VII. SUCCESSION

Who are the right heirs and successors?

Some historians claim that the title should have shifted to the Second Heir-Apparent.

Following the Sulu Sultanate protocol system or *tartib*, upon the death of a Sultan with no heir to the throne, the title should shift to the second heir-apparent since that time.

The non-recognition to any successors of Sultan Muhammad Jamalul Kiram II by President Manuel L. Quezon in Memorandum 20 September, 1937, refers only to "the primary heir" of the Sultanate and does not mean abolishment of the Sulu Sultanate.

Despite the policy of non-recognition of leadership succession by President Quezon of the Philippine Commonwealth Government, the ruling elites of the Sultanate of Sulu still appointed Umbra Amilbangsa who is not from the royal family as the successor to Sultan Muhammad Jamalul Kiram II. Sultan Umbra Amilbangsa was the husband of Dayang Piyandaw, the sister of Sultan Muhammad Jamalul Kiram II. But Sultan Umbra Amilbangsa gave way to Esmail E. Kiram I who was proclaimed as the 32nd Sultan of the Sultanate of Sulu. After the death of Sultan Esmail E. Kiram I, his son Datu Mahakutta Kiram was proclaimed as the 33rd Sultan of Sulu on August 1974.

This is a high point of contention in the foreign policy of the countries now in possession of this Sultanate: namely those of the Philippines and Malaysia, but the government of the Philippines never recognizes the sovereignty of the Sultanate of Sulu itself over these disputed lands. Naturally!

Is recognition of the Republic of the Philippines a condition *sine qua non* to restoring the "Statehood" of Sulu Sultanate?

Was it really Moro Wars with Spain then? No! Tausug wars against Spain as far as State of Sulu Sultanate was concerned.

Was it really Moro Wars with America then? No! Tausug wars against America as far as State of Sulu Sultanate was concerned.

¹⁵³ Tañada V. Cuenco, 100 Phil. 1101, cited by Isagani I. Cruz, Philippine Law p. 78

Were the then wars and the present wars or resistance in the territory of Sulu Sultanate Tausug wars against Philippines?

Kamlun War or Resistance?

MNLF War or Resistance?

ASG War or Resistance?

Other Group Wars or Resistance?

Are Tausug wars against the Philippines necessary? not necessary!

What are the legal, political and peaceful solutions?

VIII. THE "RIGHTS", "BILL OF RIGHTS" AND THE "INTERNATIONAL BILL OF HUMAN RIGHTS"

Do Tausug have legal and historical rights?

Yes! above premises considered, forms foundation of legal and historical rights.

Parallel to legal and historical rights, do Tausug have the Right to Self Determination?

Yes! With the creation of the United Nations (UN), self-determination of peoples becomes an established principle of international law. The principle embodied in the UN Charter and in both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Common Article 1 (1) of these Covenants provide that, "All peoples have the right of self-determination."

Congruent to the right to self-determination, do Tausug have Civil and Political rights? Yes, under the 1987 Philippine Constitution and the International Covenant on Civil and Political Rights! Article 1(1) also provides that "All peoples have the right of self-determination."

Congruent to civil and political rights, do Tausug have economic social and cultural rights?

Yes, under the International Covenant on Economic, Social and Cultural Rights. Article 1(1) also provides that, "All peoples have the right of self-determination."

"International bill of Human Rights" is a convenient designation of the three main instruments of human rights on the international plane which are the universal declaration of human rights; the international covenant on economic, social and cultural rights; and the international covenant on civil and political rights. Along the analogous line of the "Bill of Rights" in municipal law, the designation underscores the primary important of these three instruments in the content of human rights they embody.¹⁵⁴

¹⁵⁴ Merlin M. Magallona, Foundation of International Law, 2005, p. 251

Do Tausug have human rights?

Yes! The more under the 1987 Philippine Constitution and the International Human Rights Law.

IX. THE RIGHT OF SELF-DETERMINATION

Adat is always the basis of the Tausug to assert their right to self-determination. There are five approaches to exercise the right to self-determination as follows:

1. Peoples' power. This refers to massive peaceful uprising of the people for the purpose to overthrow unjust government as illustrated by the 1979 Iranian Islamic Revolution and the 1986 EDZA uprising.
2. Regional autonomy. This refers to the creation of an Autonomous Regional Government as in the case of the Bangsamoro Autonomous Region in Muslim Mindanao.
3. Federalism. The purpose of federalism is to grant state to all minority groups under the supervision of the Federal Government in order they can exercise their right to self-determination.
4. Decolonization. This is to set free all colonized nations of the world by giving them independence by way of political negotiation, voluntary action of the colonial master or through revolution. A good example is the case of East Timor which became an independent state through the UN supervised referendum.
5. Independence. The colonized people will build their political strength and power to enable them to declare an independent sovereign nation. A good example is the declaration of independence by most colonized nations after the Second World War II.

According to Paul J. Magnarella of the University of Florida, "self-determination consists of the political and legal processes and structures through which a people gain and maintain control over their culture, society, and economy. With the creation of the United Nations (UN), self-determination of peoples became an established principle of international law. The principle is embodied in the UN Charter and in both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Common, Article 1(1) of these Covenants provides that "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development."

The UN General Assembly invoked this principle in its 1960 Declaration on the granting of independence to Colonial Countries and Peoples, in which stated that subjection of peoples to alien domination constitutes a denial of fundamental human rights and violates the peoples' right to freely determine their political status and pursue their economic, social, and cultural development. This declaration also reaffirmed the principle of the territorial integrity of existing states and gave rise to the so-called "salt water test" (which limits the rights of self-determination to colonized lands that exist across the oceans from the colonizing country). In accordance with the principle of self-determination and the salt-water test, the UN supported the independence of overseas colonies in Africa, Asia and elsewhere. Once these colonies became independent, however, they too became reluctant to recognize their own ethnically distinct citizens'

full right to self-determination, fearing it might lead to demands for separation and secession.

Although there is no international legal definition of "peoples," who are entitled to the right of self-determination, the term is generally used to describe a population who shares the following characteristics: (1) a common historical tradition; (2) self-identity as a distinctive cultural group; (3) a shared age; (4) a shared religion; and (5) a traditional territorial connection.

Today, many indigenous communities throughout the world are claiming the right to self-determination. These are peoples, such as American India and Australian Aborigines, who constitute a "first people," with a prior history of territorial occupation and an ancestral attachment to their land before it was conquered and occupied by others. At various international fora, spokesperson for indigenous groups have claimed that their situations are identical to those of colonized peoples who have been conquered and then ruled by others. They argue that the salt water test should not apply to them. Both the UN's Draft Declaration on the Rights of Indigenous Peoples and the Inter-American Draft Declaration on the Rights of Indigenous People provide for the right of self-government or autonomy for indigenous peoples within their states of residence. Neither draft, however, recognizes a right of complete territorial and political independence. For example, the UN Draft Declaration states that "as a specific form of exercising their right of self-determination, [indigenous peoples] have the right to autonomy or self-government in matters related to their internal and local affairs. Although the exercise of self-determination can include secession from an existing state and the creation of a new one, it also includes other less dramatic choices. The UN General Assembly's 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States explains that implementation of the right to self-determination need not conflict with the territorial sovereignty or political unity of a state. The Declaration provides that a people exercising their right of self-determination may choose to form a federation with an existing state, integration into an existing state as an autonomous region, or "any other political status freely determined by a people short of secession."

The Declaration goes on to explain the conditions under which peoples are not justified in seeking secession and independence from a sovereign state. It states that independent countries possessing a government that effectively represents the whole of their population (ethnic minorities included) are considered to be conducting themselves in conformity with the principle of equal rights and self-determination of peoples. For example, if an indigenous people or ethnic minority resides in a democratic state that enables them to participate effectively in the political process and economy and to practice their real culture, then they are exercising their right of self-determination and have no cause to secede.

The right to secede is an option of last resort, justified by serious government violations of human rights, persistent discrimination, and other grave injustices. Self-determination examples of secession in recent decades include the dissolution of the Soviet Union and Yugoslavia, the separation of East Pakistan from West Pakistan to form Bangladesh, and the separation of East Timor from Indonesia,

Examples of self-determination within an existing state include Italy's five special autonomous regions with extensive local powers defined by the constitution: Trentino-Alto Adige (containing the German-speaking people of the South Tyrol), Friuli-Venezia Giulia (containing Slovene and Friulian speakers), Val d'Aosta (containing French speakers), as well as the islands of Sardinia and Sicily. Each of these regions has unique, "non-Italian" cultural, linguistic, and historical characteristics that have justified extensive delegations of powers from Rome to the regional authorities to permit decision-making on local educational, economic, cultural, and budgetary issues. Some other autonomy arrangements include the Sami Parliaments in the Nordic countries, the Nunavut territory in Canada, and the ancestral territory of indigenous people in Panama.

The trend in world politics has been for enlightened states to attempt sincerely to accommodate the self-determination aspirations of their ethnic minorities and indigenous peoples, while other states continue to suppress and deny subjugated peoples this fundamental right."

Other Authority says:

"The principle of self-determination, often seen as a moral and legal right is that every nation is entitled to a sovereign territorial state, and that every specifically identifiable population should choose which state it belongs to, often by plebiscite. It is commonly used to justify the aspirations of an ethnic group that self-identifies as a nation toward forming an independent sovereign state, but it equally grants the right to reject sovereignty and join a larger multi-ethnic state.

"Although there is a consensus that international law recognizes the principle of self-determination, the principle does not, by itself, define which group is a nation, which groups are entitled to sovereignty, or what territory they should get for that purpose. Its application in international law creates a tension between this principle and the principles of territorial integrity non- intervention in internal affairs."

"The principle of self-determination formally expresses a central claim of nationalism, namely the entitlement of each nation to its own nation state. It has itself become a typical demand of nationalist movements. However, the formal expression of the principle came later than the nationalist movements, and the first nation-state. In the 20th century the principle was central to the process of decolonization, but its use is not limited to contesting colonialist or rule."

"Some interpretations of the principle in ethics treat it as a translation extension of universal rights of individuals (political freedom, freedom of religion, freedom of speech) to a group. Sometimes it is treated as a specific collective right, distinct from individual rights. It is a disputed principle in ethics, with some arguing that no such entitlement exists, other than perhaps the right to resist or secede from tyranny."

X. THE UNITED NATION CHARTER

PARAGRAPH 3, ARTICLE 2

"All Members shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered."

PARAGRAPH 1, ARTICLE 33, CHAPTER VI

"The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall first of all seek a solution by negotiation, enquiry, mediation conciliation, arbitration judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice."

THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE

CHAPTER II

COMPETENCE OF THE COURT

PARAGRAPH 1, ARTICLE 34,

"Only states may be parties in cases before the Court."

PARAGRAPH 1, ARTICLE 36

"The jurisdiction of the Court comprises all cases which the parties refer to it and all matters especially provided for in the Charter of the United Nations or in treaties and convention in force."

CASE CONCERNING SOVEREIGNTY OVER PULAU LIGITAN AND PULAU SIPADAN (INDONESIA/MALAYSIA)

1. ACQUISITION OF JURISDICTION BY INTERNATIONAL COURT:

By Special Agreement between the two parties - Indonesia and Malaysia, which was signed in Kuala Lumpur on 31 May 1997 and entered into force on 14 May 1998.

Conclusion of the public hearings on the application for permission to intervene by Philippines.

For Indonesia: "The Republic of Indonesia respectfully submits that the Philippines should not be granted the right to intervene. For Malaysia: "May I therefore respectfully urge the Court to deny the Philippines the undeserved privilege of any further participation in this matter and reject its request to intervene in this case."

2. ARGUMENTS:

FOR INDONESIA AND MALAYSIA:

The Philippine claim to Sabah is separate from the Indonesian claim to Ligitan and Sipadan.

The Philippines claim to Sabah has been rejected by the people of Sabah.

In 1962, an election was held in North Borneo (and Sarawak) in which joining Malaysia was the key issue. The people of Malaysia decided by a substantial majority in favor of the pro-Malaysia party. A commission established by the then administering authority, Great Britain, reached the same conclusion. The Secretary-General of the United Nations confirmed it in 1963: he said there was "no doubt about the wishes of a sizeable majority of the peoples of these territories to join the Federation of Malaysia. Despite this clear verdict, for a time the Philippines maintained its claim to Sabah. It wanted its claim to the territory to override the wishes of the people. For the last ten years or more the Sabah claim has not been advanced at all; it has remained completely dormant."

"In fact, and law, the Philippine claim to Sabah is totally lacking in foundation.

"Malaysia states that "the State of Sabah has been under effective control of Malaysia and its predecessors in title since the late nineteenth century."

And as for the bald and unsupported claim that cession by the heirs of the Sultan of Sulu to the Philippines in 1962 was worthless, xxx"

FOR PHILIPPINES:

"On 28 April 1950, both Houses of the Congress of the Government of the Republic of the Philippines adopted a concurrent resolution: "that subject to the lease rights of the British Government, the territory known as British North Borneo belongs to the heirs of the Sultanate of Sulu and falls under the ultimate sovereignty of the Republic of the Philippines.

"On 24 April 1962, the heirs of the Sultan of Sulu issued an official declaration entitled "Recognition and Authority in favor of the Republic of the Philippines", which by its terms ceded and transferred sovereignty over territories in North Borneo to the Philippines. This declaration was a follow up on the petition dated 5 February 1962 by the heirs of the Sultan of Sulu addressed to the Philippine Department of Foreign Affairs, wherein the heirs expressed their desire to see a portion of North Borneo, to which they had succeeded in title, included in the national territory of the Philippines."

THE BASIS OF THE CLAIM OF THE REPUBLIC OF THE PHILIPPINES

"On the basis of the Philippines claim: the Philippine territorial claim in North Borneo is based on two-fold argument: (1) that dominion and sovereignty over portion of North Borneo was validly and effectively transferred to the Philippine Government by the way of cession, and (2) that Great Britain's arrogation of sovereignty over the portion of North Borneo was illegal and improper under international law."

CONCLUSION OF THE REPUBLIC OF THE PHILIPPINES

"Let me conclude Mr. President, Members of the Court, with a few propositions. The foregoing examination of some of the treaties, agreements and documents which illuminate the legal status of North Borneo, specifically from 1878 up to 1946, shows that the Sultan of Sulu enjoyed *de jure* continuous and uninterrupted sovereignty over those territories in North Borneo which the Sultan leased to the BNBC and were under the latter's administration. Great Britain and the BNBC who, by their conduct and legal commitments, have upheld the independence and sovereignty of the Sultan over North Borneo, within the framework of the British legal system as well as before the international community, are now stopped from asserting otherwise."

"Great Britain recognized the Sultanate's sovereignty over North Borneo from 1878 up to 15 July 1946, when the Sultanate as an international legal personality was sought to be abolished by Great Britain through the 1946 Cession Order. The annexation of Sulu's dominion in North Borneo effected through this Cession Order was thus wholly illegal."

2. JUDGMENT: Malaysia has sovereignty over Ligitan and Sipadan.

NB: Please read the transcripts of the public hearings of the INTERNATIONAL COURT OF JUSTICE at the PEACE PALACE, THE HAGUE, THE NETHERLANDS (2001)

XI. THE 1987 PHILIPPINE CONSTITUTION

ARTICLE II

Section 5. The maintenance of peace and order, the protection of life, liberty, and property, and promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy.

Section 11. The State values the dignity of every human person and guarantees full respect for human rights.

ARTICLE III

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Section 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise, as prescribed by law.

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

Section 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

It is stressed at the outset that freedom of expression is available only insofar as it is exercised for the discussion of matters affecting the public interest.¹⁵⁵

One of the functions of this freedom [of expression] is precisely, according to U.S. Supreme Court, "to invite dispute."¹⁵⁶

Voltaire was grandiloquent: "I may not agree with what you say, but I will defend to death your right to say it."¹⁵⁷

As an Individual particle of sovereignty, every citizen has a right to offer his views and suggestions in the discussion of the common problems of the community or nations. This is not only a right but a duty.¹⁵⁸

Modes of Expression - Freedom of expression is usually exercised through language, verbal and written. Symbolisms may also be used, like the clenched fist, the bended knee, the salute to the flag, the flag itself, the mace of the legislature, the picket line, pictures, caricatures and cartoons. Wordless, they articulate.¹⁵⁹

The right of assembly is important to freedom of expression because public issues are better resolved after an exchange of views among the citizens meeting each other for the purpose. The public meeting is an effective forum for the ventilation of ideas affecting the common welfare. The size of these gatherings is an open dependable gauge of the people's support.¹⁶⁰

"Under the Public Assembly Act (B.P. 880), a permit for the holding of a public assembly shall not be necessary where the meeting is to be held in a private place, in the campus off a government-owned and operated educational institution, or in a freedom park."

¹⁵⁵ Isagani I. Cruz, *Philippine Political Law*. p.198

¹⁵⁶ *Terminiello v. City of Chicago*, 337 U.S. cited by Isagani, p. 200

¹⁵⁷ Isagani I. Cruz, *Philippine Political Law*. p. 200

¹⁵⁸ *Ibid* p.199

¹⁵⁹ *ibid* p. 201

¹⁶⁰ *Ibid* p. 230

Section 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel. (2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

(4) The law shall provide for penal and civil sanctions for violations of section as well as compensation to the rehabilitation of victims of torture of similar practices, and their families.

Section 14. (1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved and shall enjoy the right to be heard by him and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused: Provided, that he has been duly notified and his failure to appear is unjustifiable.

Section 17. No person shall be compelled to be a witness against himself

Section 18. (1) No person shall be detained solely by reason of his political beliefs and aspirations. It is now or never.

XII. CONCLUSION

The Sultanate and the history of the Tausug and their *adat* are the three pillars that hold the Tausug society together. They represent the symbols of unity and solidarity of the whole inhabitants of the present Sulu Archipelago. The Tausug were the first to build nation, the first to establish centralized government in this country and the first to embrace Islam in Southeast Asia.

If sovereignty is a permanent characteristic of any State under international law, therefore, the political status of the Sultanate State of Sulu would remain. *PAR IN PAREM IMPERIUM NON HABET* (An equal has no power over an equal) therefore the status of the Sultanate of Sulu has never been affected by any colonial rule and policies from the 1898 Treaty of Paris to the 1934 Philippine Independence Act known as the Tyding-Macduffe Law on the ground that her territory was intact even after the rise of the Republic of the Philippines on July 4, 1946 as *de facto* government. The decline of the political power of the Sultanate of Sulu after the imposition of the new super structure from US colonial government to the Republic of the Philippines did not mean loss of the Sultanate's

sovereignty. The Sultanate of Sulu still remains a *de jure* state. It was a fact that the Sultanate State of Sulu was an independent and sovereign State ruled by series of Sultans since 1450; her courageous people and fierce warriors were uncolonized neither Christianized - evidence of her being an unconquered and uncolonized Kingdom, of her independence and her sovereign status before.

Until today the Tausug still dominate and continue to rule the core territory of the Sultanate such as the present island provinces across the Sulu Archipelago. The political organization of the Sultanate and its traditional laws are still functional. The Sulu Sultanate has still *ra'ayat*; is still governing its *ra'ayat* whose support to the Sultanate is unbreakable. Only the *ra'ayat* can make and unmake the Sulu Sultanate. Giving historical recognition of the role of the Sultanate of Sulu in the struggle against colonialism is a legitimate concern if only to make the history of the Philippines complete and united.

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