

LETTER | Time to fight Sulu claims on legal grounds, competently

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LETTER | International law does not recognise the use of history to advance one's territorial claims. Period.

If history can be used as an antecedent, the whole of the South China Sea, which China is claiming based on sheer historical right, would have been an open and shut case. But the United Nations International Tribunal On the Laws of the Seas, of which the government of the Philippines is a litigant, successfully claimed that “history”, indeed cannot form the basis of China's claim in 2017.

Indeed, with a “living” civilisation spanning 5,000 years, so the Chinese often like to claim, augmented further by the scholar Zhang Wei Wei, who referred to China as a “civilisational state”, there isn't a single part of Asia, for that matter, Africa, even the entire arch that forms the Silk Road, is untouched by Chinese “history”. Even the computer bears the imprint of the famous Chinese Abacus.

By this token, one of the most outrageous arguments of the “historical claims”, of

the clan of Sultan Qiram, whom some believe has further subdivided into eight different clans, by some accounts a galling “sixteen”, is that the Malaysian government is legally entitled to pay the whole Qiram clan a total of US\$15 billion.

Failing which, a compound interest rate of 10 percent would be added to the above amount each year. This is akin to the court acting as an illegal loan shark. That the adversarial French legal system can stoop so low is, for the lack of a better word, abysmal.

What is most unique is the nature of the Qiram “Family”, (first) legal salvo. Rather than reclaiming Sabah, it aimed at the most valuable asset of Malaysia - Petronas. If the legal claim is built on the claim of ownership of the Qiram Family on Sabah, shouldn't the case revolve entirely and wholly on the state?

Yet it wasn't. The Qiram Family does not want the onerous responsibility of taking back one of the poorest states of the Federation of Malaysia. Goaded and shepherded by its money-grabbing legal sherpa - Letheum incorporated in London - the Qiram Family was coached and coached, perhaps, coerced, into cherry-picking the law. Thus, Petronas became its target. Should this act of helping the enemy of Sabah come from within elements of the state, the laws of treason should abidingly apply without fail, invariably, for aiding and abetting an

enemy, to conduct what can only be called “lawfare” against Malaysia.

To be sure, the national oil and gas entity is indeed responsible for up to 11 percent of the fiscal revenue of the Malaysian government. Should all the operations of Petronas be crippled, it is not a tall stretch to wonder that there are certain higher colonial forces that are fanning the ember to trigger a fire that would burn Malaysia to a crisp. By this token, all parties must be careful of the foreign machinations that are working in cahoots in some elements of Sabah to either reap a financial payout, or, to seek a plea bargain to come to a price that Petronas is asked to agree to. Either way, the enemies within and without having won a handsome windfall.

There are three reasons why Malaysia needs to fight this legal farce that verges neo-colonial conspiracy of the worst kind. While more can be listed, it suffices to name just three.

First and foremost, who really is the true inheritor of the Qiram Family. If it is a royal family, with a single line of blood succession, perhaps the Qiram Family may ostensibly have some locus standi to press the claims of US\$15 billion against Petronas, the leading oil company of Malaysia.

But if the Qiram Family has many offshoots with no clear family tree, other than

sharing the namesake of Qiram, of which some, if not a majority of them, may have one decided to remain in Sulu to ply a normal life, content with one without any accoutrement of the slightest luxuries, or, alternatively, become naturalised Sabahans, then what right do they possess over anything that is extracted from the state? None.

Second, regardless of which is which, the Qiram Family is not a united and cohesive entity. That is the key point. Whether Malaysia kept paying an annual lease of RM5,800 from 1878 until 2013 is not tantamount to acknowledging their sovereignty. Each year, Malaysia pays a membership of US\$2 million to the Asean Secretariat in Jakarta too, as do the rest of the ten member states of Asean. Does that mean Malaysia can intervene in the affair of Singapore just because the ten member states have pledged to be a single Asean community by 2025. Again, the answer is negative.

Third, the very fact that they needed 144 years to bankroll their claim against Petronas, backed by a legal vulture named Thereum, can only suggest one thing: that the Qiram Family was merely taking a wild jab in the dark based on sheer legal sophistry. Not facts.

For the lack of a better word, this was clearly a case of the right hand not knowing what the left hand was doing. Little wonder then that when the verdict

in favour of the supposed legal claim of the Qiram Family was announced by the French arbitration court, an immediate stay of judgement was automatically granted to Petronas the following day.

While the New York Convention on Arbitration forms part of international law, where it does allow the case that was originally heard, then spurned in Spain, to be heard in the arbitration chamber of France, the US\$64 million question is this.

Granted that the issue in contention was the 1878 lease granted by the sultan of Qiram to the North Borneo British Company, why didn't the Thereum Group that is backing the Qiram's family claim display the temerity to file the legal charges in the very courts in the very heart of London itself? Were they afraid that the statute of limitations on the lease has long expired?

To be sure, Thereum is a company, not even a law firm proper, that backs spurious legal claims with the goal of scoring one of the firm's largest financial windfalls ever. It is a financial predator that embraces the ethics of Wall Street - greed is good.

Granted, the compensation was strictly pecuniary in nature, it is as clear and night and day that the firm is nothing less than a fly-by-night money grabber and badger. Such entities thrive on the ambiguities of any laws. From reputational

damage, without an iota of proof, to supposed libel that has jeopardised the livelihood of the accused. You name them, you have them.

In desperate times, such leading firms normally go for quick wins, to abscond with the lowest hanging fruits.

Is it any wonder - again - that Thereum is an entity without any official presence in Kuala Lumpur at all, let alone the Sulu sultanate, the very client it seeks to back?

Indeed, granted that the Philippines is a republic, ruled by a president with various theoretical divisions of power, it boggles the mind how a presidential and congressional system, with the southern Mindanao being granted an autonomous status, can provide the legal status to the Qiram Family in Sulu when the whole of Mindanao is what the Philippines has sought to claim since the 16th century.

For what is worth, the legal eagles in Petronas should not be resting on their laurels. The same applies to the Attorney-General's Chambers and, for that matter, the research department and the police's Special Branch. Truly, someone is trying to stir the proverbial pot in Sabah. Whatever their sinister goal is, Malaysia must take this case seriously with the right legal competencies to protect and preserve its sovereign territories and rights.

Thus, all these agencies, especially the government and opposition alike, be they at the federal or state level, should be closely watching how the Qiram Family has been manipulated to enlarge its global arbitrate claims.

The key of their strategy seems to be to cut Petronas to size before the crown jewel of Malaysia can launch any counterattack.

Sometimes defence is not necessarily the best offence, especially when the opposite side is supported by a spurious and amorphous entity.

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