

Malaysia Agreement 1963 invalid, claims Sarawak NGO
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By Anisah Shukry

The Malaysia Agreement 1963 is invalid and has been repudiated by Malaya through 51 years of non-compliance and failure to honour the treaty, Sarawak Association for People's Aspiration (Sapa) told a forum today.

Sapa president Lina Soo said the agreement that united Malaya, Sarawak and Sabah into one country was in breach of customary international law, which states that only sovereign states can enter into international treaties.

"The Malaysia Agreement 1963 was not inked between five sovereign states, but entered into between only two independent sovereign states – the United Kingdom and Federation of Malaya – with one semi-colonial Singapore state and the two colonies of North Borneo (Sabah) and Sarawak," said Soo.

She said the five individuals who signed for Sarawak – P.E.H Pike, T. Jugah, Abang Haji Mustapha, Ling Beng Siew and Abang Haji Openg – had no mandate from the people of Sarawak, which at that time was still a colony without any representative government.

Soo said this was in violation of the Vienna Convention on the Law of Treaties Customary International Law, 1980 (VCLT 1980) – an international treaty concerning the international law on treaties between nation-states entered into force on January 27, 1980.

"VCLT may not be retro-action that it is applicable to treaties made prior to this date such as the Malaysia Agreement 1963, yet it is a useful reference to established principles of customary international law and established precedents," said Soo.

She added that the treaty also breached Article 5 of the United Nations Decolonisation Declaration 1960 (UNDD 1960).

The article states that territories which have not yet attained independence should have all powers transferred to them "without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour in order to enable them to enjoy complete independence and freedom".

Soo said: "Britain and Malaya's pre-determined plan to transfer sovereignty of the Borneo colonies over to Malaysia violated Article 5 of the UNDD 1960, as it failed to transfer all powers to the people, and is in denial of the people's rights to complete independence and freedom."

She also said that Malaya, as a foreign power, had no legal right, mandate, standing or authority to interfere in Borneo affairs, according to the UN Charter on Self-Determination.

Britain, meanwhile, had committed a breach of trust by failing to honour their 1946 Cession Treaty to restore independence to Sarawak when the people were ready to rule themselves, said Soo.

"The component states of a federation possess no powers in relation to foreign policy, and so they enjoy no independent status under international law.

"Sarawak is not independent and has no sovereignty to call its own," said Soo.

She also called the bases for Malaysia's foundation, the Cobbold Commission Survey and the United Nations Assessment Mission, as "shams" because neither were conducted properly.

"The Cobbold Commission met with 4,000 people from Sabah and Sarawak in a population of 1.2 million and claimed to receive 2,200 memos and letters from the people.

"Before commencement of the UN Assessment Mission, the new Malaysia date of 16 September was already announced," Soo told the forum.

The assessment report also said a grassroots survey found "little evidence of articulate and organised opposition to the federation", despite thousands protesting around Sarawak and the arrests of anti-Malaysia leaders as well as banning of Chinese newspapers at that time, said Soo.

Soo added that if authorities still insisted the Malaysia Agreement was valid despite these points, it should have been abrogated by Singapore's separation and independence from Malaysia in 1965.

"An international treaty cannot be changed without the agreement and consent of all the parties.

"The bilateral Singapore Separation agreement between Singapore and Malaya in 1965 was made without active involvement of the other three signatory parties," said Soo.

She also claimed that Malaya had repudiated the agreement by its 51 years of non-compliance and failure to honour the treaty.

“The most basic principle of customary international law is that an international treaty must be made and kept in good faith.

“But the Malaysia Agreement and concept of Malaysia was made in bad faith and changed three times without referendum or the people’s consent,” said Soo.

She noted that Brunei refused to sign at the last minute, Singapore had seceded from Malaysia without consulting Sarawak and Sabah, and the Federal Constitution was amended on August 27, 1976 to change the status of Sarawak and Sabah into the 12th and 13th states.

“Malaysia has deviated from its original concept as a Federation of three nation-states to a unitary state of 13 states where all powers and sovereignty is solely held by the central government.

“This in effect would mean a fundamental breach of the Malaysia Agreement,” said Soo. – June 15, 2014

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