**Legal and Political Settlement**

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For the Legal and Political settlement of MA1963 and Borneo States' O&G, with the 4 altered boundaries ratified under Article 2(b) and others with 'No two third rule', eroded rights and all grants restored with 20 per cent of local sale tax and balance of 60-65 per cent of the O&G for the Federal/Petronas, as a win-win settlement.

1. Why and how the Borneo States were by 'design' deliberately prevented in claiming the 'no two third rule' and 15 seats of Singapore in the Separation Agreement?

If Sarawak and Sabah knew beforehand about the Separation Agreement of Singapore dated 9th August 1965, Tun Fuad would have asked Tunku Abdul Rahman, DPM Tun Razak and PM Lee Kuan Yew in front of Sabah and Sarawak leaders for the 15 seats of Singapore for Sabah and Sarawak because they have assured that the States of Malaya would not exceed 65.4 per cent under Article 46 and Section 9 MAct 63 to implement always the assured 'no two third rule.'

"Gentlemen, PM……didn't you all assure the leaders of the Borneo States and entice us to join in the formation of Malaysia with the firm assurance that the States of Malaya would never get more than two-third seats in the federal parliament under the assurance in Article VIII of MA63 "in so far as they are not implemented by express provision of the Constitution of Malaysia?"

PM Lee KY and our Malaysian leaders would have confirmed that that would be correct.

"Honourable Prime Minister of Singapore did you not advise the Borneo States' leaders that Singapore would not have joined in the formation of Malaysia under MA1963 without that no two-third rule for the States of Malaya? Singapore and the Borneo States would need that no 'two third rules' to prevent rubber stamping of Federal legislations. Article 46 is just important as immigration under Article V of MA1963. If Borneo States' rights were to be breached we would vote against that and Singapore would ensure no unconstitutional and illegal amendments would be made."

PM Lee would have responded. “That would be correct.”

Most unfortunately, our federal leaders wanted to pre-empt at all costs that embarrassing opportunity to confirm that lawful and constitutional demand for the Singapore 15 seats by the Borneo States. So, they have to expressly agree that the Separation Agreement could only be disclosed to the world, only after its execution. Then it would be too late. The Borneo States would have no chance to confirm and demand from the PM of Singapore, Malaysia with DPM that all the Singapore 15 seats under no two third rules for the Borneo States expressly to be stipulated in the Separation Agreement on 9th August 1965 with a Supplementary Agreement on MA 1963 executed.

Singapore could not exit under ‘Admission’ under Article 2(a) and any amendment of the new article 2(c) could not be done without signing the Supplementary Agreement by the four remaining parties including the deleting of Singapore under Article 1(2)(c) after amending Section 4(2)(c) of MAct63 first. After that surreptitious execution of the Separation Agreement, the Premier LKY of Singapore would understandably have responded.

“Well, gentlemen…..now Singapore is out of Malaysia. I cannot say anything more.”

Years later, Premier LKY did feel remorseful. The Borneo States as ‘equal partners’ should have been consulted and agreed as the two signatories in that Separation Agreement which again was executed with such flying speed without notice.

Unfortunately, the Constitutional nightmares began. Continental Shelf Act 1966 and Petroleum Mining Act 1966 steam rolled in parliament knocking down the pins of entrenched provisions in the Borneo States one by one. Oil would be the turbo charger to ensure success of Malaysia. The dismissal of Dato Kalong Ningkan as the Chief Minister to a great extent was also due to advices of P.E.H Pike, the Sarawak AG, and G. Shaw, the State Secretary of Sarawak, replying in the White Hallstyle for the Chief Minister in refusing to amend the various Articles of the FC and proposed new Federal Acts to protect Sarawak’s rights. That irked our premier Tunku.

The constitutional and political history of the Borneo States since 1966 would speak for themselves including the cancellation of grants with review of only one grant in 1973. The Special Grant (balancing) of RM5.8 million was abolished but the assured consideration of all the O&G offshore proceeds were never assigned by the federal government to Sarawak. These were confirmed by Michael Leigh in the ‘Rising Moon’ and Tan Sri Stephen Yong’s memoir, ‘A Life Twice Lived’ on Petronas’s shares.

Moreover, the present TYT Tun Pehin Sri Taib, then as the Minister of Communication managed to persuade the federal government on 20th July 1966to exempt Sarawak from CSA1966 and PMS1966 until the Emergency Ordinances ('EOs') of 1969.

Tun Fuad who opposed the 5 per cent oil royalty as 'pittance' too, unfortunately met a fatal aircraft accident on 6th June 1976. Eight days later, the Sabah Oil Agreement was signed, exactly 6 months after the late Premier Tun Razak's demise on 14.1.76.

According to the Privy Council's decision on Dato Ningkan's case, The EOs were only meant to be 'temporary' imposed under Article 150 which should have been repealed when the CCO's Bong Kee Chok and his lot surrendered in 1973. The communists were in the jungles, not at sea. The EOs were purely for reducing the putative 12 nautical miles of Sarawak territorial waters to 3.

Tun Razak dared not go to the Privy Council for a Declaratory Judgement on the PDA1974 notwithstanding the EOs, as the strong bench of Lord Wilberforce, CJ Barwick of Australia and Lord Fraser would only have adopted the strong British judicial attitude against Emergency Ordinances related to aliens, not on the frivolous issues of reducing Sarawak territorial waters totally unrelated to the declared Emergency. PDA1974 would be declared certainly unconstitutional under Article 2(b) and the 7 FCs unconstitutional against the continental shelf, international boundaries and territorial waters for its O&G established under the OIC1954 (Alteration of Boundaries) and illegal against valid Sarawak Land Code and Oil Mining Ordinance 1958 in the 7 PMS.

For aborting the Declaration Judgement of PDA1974 in the Privy Council, Tun Razak under Article VIII of MA1963 assured to pay another 5 per cent unofficial royalty from its O&G as cash payment for Sarawak dressed up for additional development fund not grant in addition to the 5 per cent cash payment by Petronas, as a rose by another name.

That verbal assurance, with verifiable part payments can be reconciled quite distinctly from other grants for Sarawak's development.

Sarawak retained the export and import of timber products after obtaining the exemption from the Malaysian Timber Industry Board (incorporation) Act 1973 and also from Perbadanan Pembekalan Letrik Sarawak Act 1983 [CAP 279] under Article 95D.

In 1995, Sarawak passed the Sarawak Gas Supply services (OP) Ordinance 1995 to pre-empt the federal Gas Supply Act 1993 Act [AC501].

So in the Gas Supply (Amendment) Act 2016, this Act should not be applicable to Sarawak 'unless consented by the state authority.' Distribution of Gas Ordinance 2016 was passed to reinforce our state's right. Sarawak should do likewise under the holistic

amendments on Articles I (2), I (4), 2(a), 2 (c), 2A and 46A to ratify the constitutional lacunas and limbos, apart from imposing its local sale taxes.

Unfortunately Sabah had voluntarily relinquished both rights above, apart from waiving its rights on immigration, education, religion and Labuan as a Federal Territory in 1984. So Sabah and Sarawak cannot be one State besides the vexatious annual Sulu's 'rent' (padjak) of RM5,300.00.

Sarawak's thorny road to restoration of its rights by amendments is tough; Sabah's path of restoration will be ten times harder, even with Datuk Liew Vui Keong as the law minister in the PM's department.

2. There are other necessary main amendments

Firstly, after the proper constitutional amendments under Article 2(a) & (c) and others, Article 1(2) should be restored in its original format with amendments after restoring MAct63 Section 4 under the Supplementary Agreement, to read as follows:

I (1) the Federation of Malaysia shall be known, in Malay and English by the name of Malaysia

(2) the States of the Federation of Malaysia shall be

(a) the States of Malaya, namely Johore…. Terengganu.

(b) the Borneo States, namely, Sabah and Sarawak; and

(c) to incorporate the 13 seats of the Federal Territories under Article 1(4).

(3) subject to Clause 2(c) the Territories of each of the States mentioned in Clause 2 are the territories comprised therein immediately before Malaysia Day.

But, the Federal Territories shall be defined under Article 160 (2), if thought fit, as follows;

"The Federal Territories mean the geographical areas or special territories excised from the States of the Federation with the consents of those States' Legislatures representing only the States of Malaya with their total quotas less than two third of the total numbers of the House of Representatives and Senators in the Senate approved by Sabah and Sarawak."

Therefore, articles 1(4), 45, 46, 47, and 48 shall be amended after amending Sections 4, 8 and 9 of MAct1963 under a Supplementary Agreement to MA1963 including the 32 additional seats to the total of 254 seats in the House of Representatives for Sarawak and Sabah proportionally.

Under the new Article 2(c), Parliament must ratify this unconstitutional 'exit' of Singapore, namely 'Approve the exit of States or Federal Territories of the Federation', after amending Section 4(3)(c) under the Supplementary Agreement, not by Act 59/66.

Secondly for the ratifications of the violations of the 4 boundaries of Sarawak, Council Negeri has to advise Putrajaya and the parliamentary committees when the August House has promulgated the Sarawak Laws on Boundaries under the proviso of Articles 2(b), 7FCs, 7PMs and UNCLOS 1982.

Council Negeri must request the federal government to adopt the provisions of UNCLOS as New Article 2A stipulated below to restore its original international boundaries at sea on Malaysia Day and to follow the same municipal laws that must be passed by the Borneo States' Legislatures first, to clarify on and update the laws on the (Alterations of [the 4 Borneo States']Boundaries) under the unrepealed OIC1954 which was never extended to Merdeka of Malaya in 1957.

(1) Territorial Sea (New Article 2A(1)

"In pursuance to Article 3 Section 2 Part III of the United Nations Convention on the Laws of Seas ('UNCLOS 82'), the breath of the territorial sea of the coastal State of Sarawak [Sabah] shall be to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this convention."

(2) Continental Shelf (Article 2A(2)

"In pursuance to Article 76, particularly 4, 5 and 6 Part VI of UNCLOS 82 on the continental shelf, the boundary of Sarawak's [Sabah's] continental shelf shall be [incorporated]as follows

[No.4] For the purpose of that convention I(a) to incorporate (4)(a) (i) and (ii), 1(b)

[5]"The fixed points comprising the line of the outer limits of the continental shelf on the seabed, drawn in accordance with Paragraph I(a)(i) and (ii), shall not exceed 350 nautical miles from the baselines from which the breath of the territories sea is measured or shall not exceed 100 nautical miles from the 2,500 metre isobaths which is a line connecting the depth of 2,500 metres." That all the 5 offending acts shall not be

applicable to the Borneo States and all references to the amended boundaries altered shall be under Article 2A based on UNCLOS 1982.

(3) Exclusive Economic Zone (Article 2A(3)

"In pursuance to Articles 55, 56 and 57 Part V of the UNCLOS1982, the boundary of Sarawak's [Sabah's] exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breath of the territorial sea is measured"

Council Negeri has to advise the federal government to amend all the 5 offending Acts including the Fisheries Act 1985 ('FA1985') and Item 9(d) of the Federal List 9th Schedule on Fisheries in 1963by stipulating that they "shall not be applicable to the coastal Borneo States" for breaches of Article 2(b) and the provisions of UNCLOS 1982.

(4) The International Boundaries (Article 2A(4)

i. Council Negeri has to pass a law 'to ratify the proper international boundaries of Sarawak [Sabah] on 15th September 1963', not what is shown at sea in this map attached which was 'compromised' by the Federal government with boundaries of another nation overlapping Sarawak's EEZ and continental shelf after 1963 for fear that in reclaiming the Sarawak's international boundaries next to Brunei, with areas beyond the EEZ area where Petronas has avoided licensing any PSC there, the publicity would have triggered off knowledge and earlier claims by the Borneo States for restoration of their international boundaries, continental shelves and their O&G with earlier claims for the increases of royalty or local sales tax.

ii. That federal government with the Council Negeri shall restore its international boundaries based on Malaysia Day including sending diplomatic notes on the foreign structures or lighthouse within its EEZ about 44.5 nautical miles off Bintulu, to prevent future international adverse squatter title under 'Acquisition of Territories' on Sarawak's oil, gas and fisheries and to avoid power politics in future. "Prevention is better than cure" else no cure in future. "Good fences make good neighbours."

iii. That final demarcation of boundaries between Sarawak and Indonesia should be approved by the Council Negeri.

Thirdly, the Federation of Malaysia Agreement 1957 under Article 162(3) on dealing with the designations of officials of the States of Malaysia can be amended inside the square brackets adequately, as follows, if thought fit : "References in any existing law to the Federation of Malaya established by the Federation of Malaya Agreements 1948 and [1957]…… and to any officer holding office …. the Federation of [Malaya] or to any authority or body constituted in or for that Federation of Malaya [and to the extent applicable under the Federation of Malaysia] (including any references falling to be

construed as such reference by virtue of Clause 135 of the Federal Constitution of the Federation of Malaysia Agreement 1963) shall be construed, ….. on and after Merdeka Day [of Malaysia], as reference to the Federation [of Malaysia]that is to say, the Federation established under the Federation [of Malaysia Agreement 1963] and its territories …… to correspond to any officer, authority or body referred to in any existing law."

Sarawak hopes that the federal government will still negotiate on low profile, with mutual respect, benefit and let the various parliamentary committees study them carefully without rushing the proposed holistic approach also in English under the Rule of Law to restore the 4 actual boundaries under Article 2(b) and amend the broader, deeper and critical articles as stated above. All these must also be amended by increasing the total seats of the House of Representatives under the 'no two-third rule' from 222 to 254, with the additional 32 seats to be allocated to Sarawak and Sabah in the ratio of 31 to 25, when the 13 seats of the Federal Territories could not be admitted under Articles 2(a), 46, 47 and 4(1) nor the 4 Senate seats of the FTs under Article 45 constitutionally and legally, confirmed in the present Article I(3) per se, as not States of Malaysia.

The present federal government has promised to undertake the implementations of more immediate financial benefits of O&G, education, healthcare and infrastructure constitutionally than mere paper restoration of rights, otherwise, failure to finalise the legal and political settlement would land up in court as the bad alternative for the restoration of MA1963. So, there is no need to hurriedly, as proven in the case of PDA 1974 legislations, to amend the skin-deep cosmetic Article 1(2) by July. Repent at leisure is never an option. It is prudent to take a holistic approach to amend the above mentioned Constitutional lcunas and limbos in toto with quid pro quo.

As a corollary, let Sarawak share 20 'Mau san wan' durians from its different orchards, licensed to the contractor, the Federal/Petronas, which would share 65 thorny fruits in appointing subcontractors to harvest only with rewards of 15 fruits with Petronas having a second bite.



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