Observations on the letter of the Council of the European Union, dated 25 February 2008

Jose Maria SISON, born 8/2/1939 in Cabugao, Ilocos Sur, Philippines, whose domicile is Rooseveltlaan 778, 3526 BK Utrecht, Netherlands.

Represented by:

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where Jose Maria Sison has domicile for the present procedure.

1. Relation to cases T-47/03 and T-341/07 before the Court of First Instance of the European Communities

Jose Maria Sison observes that most of the elements presented in the letter of the Council of 25 February 2008 (hereafter referred to as the letter) were already discussed – and already contradicted in general and in detail– in the case T-47/03 (hereafter referred as to "the case T-47/03") before the Court of First Instance of the EC, leading to the decision of the Court of First Instance dated 11 July 2007 as well as in case T 341/07 (hereafter referred as to "the case T-341/07) , which is still pending,.

The present document summarises the arguments developed in the cases T-47/03 and T 341/07. Insofar as it may be necessary due to the letter of the Council of 25 February 2008, Jose Maria Sison refers to all the documents of the proceedings and the annexes which have been submitted to the Council in the framework of the said proceedings. These documents have to be considered as fully reproduced here.

Jose Maria Sison furthermore observes that the letter of the Council contains the following somewhat ambiguous paragraph.

"Then new information has been supplied to the Council on decisions of a competent agency as meant in Article l, paragraph 4, of Common Position 2001/931/GBVB. After study of the new information the Council intends to maintain your client on the aforesaid list. For this reason the Council has accordingly modified the motivation."

As it is well established case law of the European Court of Justice that a statement of reasons can not be modified once the decision has been taken, Jose Maria Sison reads the letter of the Council dated 25 February as a statement of the Council on its intention to include him in a new list to be adopted in the future by the Council.

2. Consent of Jose Maria Sison to make the present document public (article 4.4 of Regulation 1049/2001)

Jose Maria Sison considers the present document a public one and completely agrees with disclosure pursuant to article 4.4 of the regulation 1049/2001. He also considers that no portion of the present document is covered by any of the exceptions in article

4 of the aforementioned regulation. He requests the Council make the present document directly accessible to the public in electronic form and through the public register of the Council in accordance with articles 11 and 12 of the aforementioned regulation.

3. Incompetence of the Council

Jose Maria Sison considers that the Council has no competence to impose sanctions such as those provided by Regulation 2580/2001 and is therefore incompetent to take any decision to include Jose Maria Sision in the list based on the said regulation. The EC Treaty does not offer any valid legal basis authorizing the Council to adopt such a decision. On 24 October 2002, the European Parliament expressed "doubts that effective co-ordination of a European anti-terrorism policy is possible under the present structure of the Union" and urged the Convention on the Future of Europe to create "the necessary legal basis to allow the EU to freeze assets and cut off funds of persons, groups and entities of the EU involved in terrorists acts and included in the EU list." (Annex 30 of the application in the case T-47/03: "Combating terrorism", European Parliament Resolution on "Assessment of and prospects for the EU strategy on terrorism one year after 11 September 2001", October 24, 2002, point 36, P5_TA-PROV (2002) 0518).

As already developed in detail in the proceedings T 47/03 and T 341/07, Jose Maria Sison considers that his inclusion in the list is similar to a criminal penalty. It follows that only a judicial body can have the legal authority and mandate to make such a decision, in accordance with proceedings that respect all the guarantees of a fair trial enshrined in article 6 of the European Convention on Human Rights. The Council of European Union is not an impartial and independent judicial body, and has thus no jurisdiction in this matter.

4. Refutation of the "motivation" of the Council

The letter of the Council of 25 February 2008 commits an error by introducing Jose Maria Sison under the alias of Armando Liwanag, chairman of the Central Committee of the Communist Party of the Philippines (point 1.9 and point 2. 13 of article 1). The letter also states erroneously that Prof. Sison is "leader of the CPP including the NPA" and that he "advocated the use of violence".

Those erroneous statements will be answered. It will then be explained how the Council misinterprets the Dutch judicial decisions. Subsequently, it will be demonstrated that the Council has completely failed to fulfil the legal requirements for inclusion of Jose Maria Sison on the list.

4.1. Erroneous factual allegations of the Council

4.1.1 Jose Maria Sison is not Armando Liwanag

The Council erroneously asserts that Jose Maria Sison is Armando Liwanag. It does not offer any credible, competent and admissible element to support its "motivation.". Neither do any elements presented in the case T47/03 allow the Council to reach such a conclusion.

4.1.2. Jose Maria Sison is not the leader or the head of the CPP, including the NPA

Jose Maria Sison cannot be the leader or the head of the CPP because it is materially impossible to direct a political party in his situation of exile for more than 20 years. Since his arrest by the Marcos regime on 10 November 1977, he has been separated from the position of CPP chairman for a continuous period of more than 30 years, including more than 8 years of imprisonment under maximum security.

Jose Maria Sison denies that he is in charge of the NPA or that the NPA is linked to him. It is publicly known that the NPA is in the charge of the National Operational Command and is not linked in any operational way with him.

Jose Maria Sison was elected Chairman of the Central Committee of the Communist Party of the Philippines at its Congress of Re-establishment on 26 December 1968. He held that position until he was arrested on 10 November 1977 by the Marcos dictatorship and subsequently detained until Marcos fell from power in l986. From 1977 to 1986, he was always under maximum-security detention and for more than five years he was in solitary confinement.

It is of public knowledge that Jose Maria Sison lost his position as Chairman of the Central Committee of the CPP on 10 November 1977 as a result of his arrest and detention and that Rodolfo Salas assumed said position that he had vacated.

From his release from prison on 5 March 1986 until his departure for Australia on 31 August 1986, he was kept constantly under surveillance by some agencies and factions of the military forces and had therefore no opportunity to be involved in any type of clandestine action.

He was appointed senior research fellow with the rank of associate professor at the Asian Studies Center of the University of the Philippines in April 1986. He was preoccupied with a series of ten written lectures on the Philippine crisis and responses of the social movement in April and May 1986. He chaired the many meetings of the preparatory committee that established the People's Party up to its founding on 30 August 1986. He had daily public speaking engagements and press interviews up to his departure for Australia on 31 August 1986.

From September 1986 to September 1988, he was preoccupied with a lecture tour mainly in universities. He was in the Asia-Pacific region (Australia, New Zealand,

Thailand, Japan, Hongkong and India) from September 1986 to January 1987. Subsequently, he visited twenty West European countries. In twenty-six countries, he went to some 80 universities. He held meetings of various sizes with overseas Filipinos and trade unions and visited the offices of various institutions and organisations.

While Jose Maria Sison was still in Japan in November 1986, the Enrile faction of the Armed Forces of the Philippines (AFP) carried out its operational plan, “God Save the Queen”, to kill "communist suspects". He was a target of the plan. In his absence, the military kidnapped, murdered and mutilated the labor leader Rolando Olalia, chairman of the People’s Party that he had helped to establish.

In September 1988 the government of the Philippines, under pressure from some military factions, cancelled his passport.

For the above mentioned reasons Jose Maria Sison could not return to the Philippines and was forced to apply for asylum in the Netherlands in October 1988.

For more than 30 years already, including more than eight years of imprisonment (1977 to 1986) under conditions of maximum security and more than 21 years of exile (1986 to the present), Jose Maria Sison has not been in any position to be elected as Chairman of the Central Committee of the CPP and to perform the functions of leading the central organs and entirety of the CPP on a daily basis and of presiding over the plenary meetings of the CPP Central Committee, as required by various provisions of Article V of the CPP Constitution.

During his detention (5 years of which were in solitary confinement) Jose Maria Sison could play no active role in the leadership of the CPP.

On his release he was very actively involved in academic activities and in the establishment of a legal political party, the People's Party, and therefore could not take any active position within the CPP.

After his departure from the Philippines, Jose Maria Sison travelled for several years in different countries and continents of the world (Oceania, Asia, Europe and Latin America).

Since 1988 he has lived in exile in the Netherlands. Since he filed his application for political asylum in October 1988 and slowed down on university lecture tours, he has been preoccupied with research and writing, promoting Philippine studies, commenting on Philippine affairs, publishing books and articles, attending activities in the Filipino community, working and campaigning for his asylum and serving as consultant of the National Democratic Front of the Philippines (NDFP) in its peace negotiations with the Government of the Republic of the Philippines (GRP).

These various situations and activities in which he has been engaged since his release in 1986 are incompatible with the daily leadership of a clandestine party as the CPP.

Under section 4 of Article V of the Constitution of the Communist Party of the Philippines, the Chairman of the Central Committee must be in the Philippines on a

daily basis in order to be able to lead the meetings and work of the Political Bureau and Executive Committee of the Secretariat and other central organs. Under section 6 of the same Article, the Chairman of the Central Committee must be able to preside over the plenum of the Central Committee once every six months. (See Annex 2 of the application in the case T-47/03: Article V of the CPP Constitution; Annex 20: National Democratic Front of the Philippines, National Council, Memorandum, 27 October 2002)

Jose Maria Sison is more than 30 years removed from the CPP and the NPA. Since 1990 he has been acting merely as chief political consultant to the NDFP Negotiating Panel.

Based on the foregoing points, Prof. Jose Maria Sison who has been continuously away from the Philippines since 1986, more than 21 years ago, cannot be the head or the leader of the CPP, neither of the NPA.

4.1.3. The allegations of the Council misrepresenting Jose Maria Sison as an "advocate of violence" are in flagrant contradiction with his key role in the peace process

Due consideration and respect must be given to the fact that Professor Sison, instead of being an advocate of violence, has been the victim of state violence in particular of physical and psychological torture while he was a political prisoner from 1977 to 1986. Subsequently he was among the Filipino victims of human rights violations who won their litigation against the Marcos estate in the US judicial system from 1986 to the 1990s.

Since 1990, Jose Maria Sison has been the chief political consultant of the National Democratic Front of the Philippines in the peace negotiations with the Government of the Republic of the Philippines (GRP). He is as witness a signatory in all the major bilateral agreements since The Hague Joint Declaration of 1992. In its resolutions in 1997 and 1999, the European Parliament has supported the peace negotiations. The governments of The Netherlands, Belgium and Norway have facilitated these negotiations. (Annex 9 of the application in the case T-47/03 : "10 Years, 10 Agreements" (Pilgrims for Peace, Manila, October 2002). The Hague Joint Declaration is considered by the GRP and the NDFP and the Filipino people as a landmark foundation document that gave birth to the on-going peace negotiations. It continues to guide the bilateral talks on the basis of mutual recognition and respect for the principles and organizational integrity of both parties. It was the crucial participation of Prof. Sison during the historic meeting of the GRP and the NDFP in the Hague the Netherlands on August 31 –September 1, 1992 that enabled both parties to resolve the impasse and agree on a compromise formulation on the difficult issue of framework of the peace negotiations (Annex 1 of the intervention of the Negotiating panel of the NDFP in the case T-47/03 : pp. 22-23).

As a scholar and an analyst of the society, Professor Sison has defended the right of the Filipino people to stand up against tyranny (e. g. the Marcos dictatorship). Such a right is fully recognised in international law and by human rights instruments, for example in the preamble of the Universal Declaration of Human Rights of December 10, 1948.

4.1.4. Jose Maria Sison never gave any instructions related to the alleged "terrorist attacks" of the NPA

As developed here above, Jose Maria Sison is not the head or the leader of the NPA.

Furthermore, he draws the attention of the Council to the point of view of the National Democratic Front of the Philippines as developed in his intervention in the case T-47/03 arguing in law and in fact that the activities of the New People's Army (NPA) are to be considered as actions taken in the framework of an internal armed conflict as defined by international law and cannot be labelled as terrorism, as the Council does erroneously.

The said intervention of the Negotiating Panel of the NDFP in the case T-47/03 has to be considered as fully reproduced here.

4.2. The Council misinterprets and misrepresents the Dutch judicial decisions concerning Jose Maria Sison

4.2.1 The decisions of the Dutch State Council and the Legal Uniformity Chamber of the The Hague District Court (REK)

The Council engages in misrepresentation by making a totally erroneous interpretation of the content and the effects of the two cited Dutch decisions about Jose Maria Sison, stating that:

- *"The Legal Uniformity Chamber [Rechtseenheidskamer, REK] of the District Court in The Hague (Netherlands) confirmed on 11 September 1997 (reg. no. AWB 97/4707 VRWET) decision no. R02.93.2274 (RV 1995, 2) of the Administrative Law Division of the Council of State on 21 February 1995.*"

and that :

- *The Administrative Law Division of the Council of State came to the decision that the status of asylum seeker in the Netherlands was legitimately refused, because the proof was delivered that he gave leadership – or has tried to give – to the armed wing of the CPP, the NPA, which is responsible for a great number of terrorist attacks in the Philippines, and because it also turned out that he maintains contacts with terrorist organizations throughout the whole world."*

Both assertions of the Council are flagrantly false and in **total contradiction with the content of these decisions.**

4.2.1.1 The REK did not "confirm" the decision of the State Council, with an exception of a point in favour of Jose Maria Sison

First, the Rechtseenheidskamer van de Arrondissementsrechtbank in Den Haag (hereafter referred as to "the REK") could not "confirm" the decision of the State Council of 1995 because the decision of the REK of 1997 had a totally different object from the decision of the State Council of 1995.

The question in law on which the State Council decided in 1995 was whether or not the Dutch minister of Justice could apply to Jose Maria Sison the provision of Article 1 F of the Geneva Refugee Convention (the so-called exclusion clause). The State Council ruled against the position of the Dutch minister of justice on this question and recognised the refugee status of Jose Maria Sison under Article 1 A of the said Refugee Convention.

The REK of the District Court of the Hague decided in 1997 on a totally different legal question. The question here was whether the Dutch Minister of Justice could legally refuse to admit Jose Maria Sison as a recognised refugee in the Netherlands - in other words, could legally refuse to grant him a residence permit on considerations of general interest although he had been recognised as a refugee. The Council therefore in its letter erroneously states that the REK "confirmed" the decision of the State Council.

The only point on which the The Hague Court "confirmed" the decision of the State Council is precisely the point that is in favour of Jose Maria Sison. The Hague Court stated indeed *"On the basis of this decision [Raad van State 21 February 1995] it must be accepted as established in law, that the provision of Article 1F of the Refugee Convention cannot be used against the plaintiff, that the plaintiff has a well-grounded fear of persecution in the meaning of Article 1A of the Refugee Convention…"*

The decision of the REK of the District Court of The Hague invoked by the Council further states that Jose Maria Sison "*has a well-founded fear of persecution within the meaning of Article 1 A of that Convention* [1] *and Article 15 of the Alien Act and Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) [which] prevents the plaintiff from being removed, directly or indirectly, to his country of origin*".

[1] the Geneva Convention relating to the Status of Refugee of 28 July 1951 (Note of Jose Maria Sison).

4.2.1.2. The Dutch State Council and the The Hague District Court (REK) did not conclude that Jose Maria Sison was responsible for terrorist activities in the Philippines

The legal issue submitted to The Hague Court was in no way concerned with any alleged involvement of Jose Maria Sison in terrorism or in any other type of criminal action.

The decision of the District Court of the Hague explicitly states in paragraph II (7): "*The purpose of this action is to determine whether the disputed decision (of the Minister of Justice), insofar as it refuses the plaintiff admission as a refugee and the granting of the residency permit, can be upheld.*"

More precisely the point submitted to The Hague Court was whether the Minister had the discretionary power not to admit Prof. Sison – although recognised as a refugee by the decision of the State Council of 1995- and could refuse to grant him residence "*for important reasons arising from the pubic interest*".

The decision of the REK said that the Dutch Minister of Justice could refuse to admit Jose Maria Sison to the Netherlands as a refugee and to grant a residence permit on considerations of general interest. Undoubtedly, the concept of "general interest" is not equivalent to nor does it amount to "committing or facilitating an act of terrorism". In addition to this, we must emphasize that the Minister as quoted in the decision of the REK of The Hague District Court did not claim that Jose Maria Sison poses a risk to public security but referred only to an "*important interest of the State of Netherlands, namely the integrity and credibility of the Netherlands as sovereign state, notably with regard to its responsibilities towards other states*" (Annex 2 to Council's defence, p 24, paragraph 15).

The fundamental issue of whether or not Jose Maria Sison has committed or facilitated acts of terrorism or has been implicated in such acts has never been submitted to, much less passed upon by, any court or competent authority, including the Raad van State (Council of State) and The Hague District Court (REK).

The Raad van State in its 1995 decision recognized that Jose Maria Sison is a political refugee under Article 1A of the Refugee Convention of 1951, nullified the claims and arguments of the Dutch justice ministry that Jose Maria Sison should be excluded under Article 1F of the Refugee Convention, affirmed the protection of Article 3 of the ECHR for Jose Maria Sison and ruled that he must be admitted as a refugee and granted the permit to reside in the Netherlands if there is no other country to which he can transfer without violating Article 3 of ECHR.

The State Council found that the dossiers or materials from the Dutch secret service that were seen by the judges, but never submitted to two-sided scrutiny and debate, were *"not sufficient evidence for the fundamental judgment that Jose Maria Sison to that extent has given direction and carries responsibilities for such activities that it can be held that there are serious reasons to suppose that the appellant … has carried out those mentioned crimes"*.

As it was clearly shown in the case T-47/03, none of the two aforecited decisions were about the alleged involvement of Mr. Sison in any act of terrorism. The two decisions decided whether the Dutch Minister of Justice could:

- Exclude Jose Maria Sison from the protection he is entitled to receive as a refugee under art. 1(A) of the Geneva Convention and apply to him the exclusion clause of art. 1(F) applicable to persons that have committed war crimes, crimes against humanity or acts contrary to the aims of the United Nations.

- Refuse residence status to Jose Maria Sison on grounds of overriding public interests.

On the first question, the two courts identically and categorically concluded that art. 1(F) could not be applied to Prof. Sison and recognised him as a refugee under art. 1(A) of the Geneva Convention.

On the second question, the Rechtbank said that the Minister could take the decision to refuse residence status *"on considerations of overriding public interests"* as long as Jose Maria Sison is not deported to a country where he is put at risk of ill treatment in violation of Article 3 of ECHR and where his physical integrity might be in danger.

No factual finding, conclusion or ruling was taken by the State Council or by the REK to make Prof. Sison liable or culpable for any act of terrorism.

Thus, the Council's conclusion is diametrically opposed to the judicial decisions it refers to.

It is also necessary to point out emphatically that, according to the Minister of External Affairs of the Netherlands, Mr. De Hoop Scheffer, the Public Prosecutor had concluded that there is no basis even to start a criminal investigation against Jose Maria Sison (Annex 26 of the application for annulment of the case T-47/03).

4.2.1.3. The so-called contacts with terrorist organisations

In its letter, the Council asserts that Jose Maria Sison would have "*contacts with terrorist organisations all over the world*". It should be noted that in a very peripheral point in the decision of the REK of the District Court of The Hague, it referred to "indications of personal contacts between the appellant and representatives of terrorist organisations" (Annex 2 to Council's defence, p 23, paragraph 11). Such a vague and unfounded insinuation in a REK decision relating to the refusal to admit as a refugee and to grant a residence permit to Mr. Sison on considerations of general interest (and not about any criminal charge), cannot be regarded as "*serious and credible evidence or clues or a condemnation for acts of terrorism"*.

The REK had no reason and, in fact, did not overturn the conclusion of the Dutch State Council in its 1995 decision that the dossiers or materials from the Dutch secret service were *"not sufficient evidence for the fundamental judgment that Jose Maria Sison to that extent has given direction and carries responsibilities for such activities*

that it can be held that there are serious reasons to suppose that the appellant … has carried out those mentioned crimes".

Jose Maria Sison denies having or having had any personal contacts with any representative of terrorist organisations which could be considered in any way as participation in or facilitating an act of terrorism. Jose Maria Sison calls attention to the fact that he was never shown any evidence whatsoever regarding these alleged personal contacts and neither was he given any opportunity to refute them. The REK of the District Court of The Hague stated this observation on the basis of materials from intelligence and security services that Jose Maria Sison could not even examine and contest (Annex 2 to Council's defence, p 22, paragraph 6). He could not properly defend himself because he did not know what the court took into account in rendering such decision. Such a procedure contravenes Article 6 of the ECHR in the same way as the contested Council decision (ECHR, *Lüdi v Switzerland*, 15 June 1992; ECHR, *Barberà, Messegué, Jabardo v. Spain*, 6 December 1988, paragraph 89).

Granting *arguendo* that Jose Maria Sison could have met a member of an organisation considered as terrorist by international authorities, this does not *per se* prove that he would himself have participated in or facilitated an act of terrorism. Otherwise, all peace negotiators including many State leaders pursuing peace negotiations with such persons should be included on the list.

The decision of the REK of the District Court of The Hague does not provide the evidence that Jose Maria Sison has committed or facilitated an act of terrorism and there is, thus, no factual basis for the listing of Jose Maria Sison. Never has Jose Maria Sison been called to any investigation of any alleged act of terrorism or any other alleged criminal act whatsoever.

4.2.2 The decisions of the First Instance Court and the Appeal Court in The Hague

The Council has made a totally erroneous interpretation of the content and the effects of these two Dutch decisions about Jose Maria Sison, stating that:

"The court in The Hague has concluded in its pronouncement of 13 September 2007 (LJN:BB3484) that there are ample indications that Jose Maria Sison is involved with the Central Committee (CC) of the CPP and its armed wing, the NPA. It has also reached the conclusion that there are indications that Jose Maria Sison still plays a prominent role in the underground activities or CC, the CPP and the NPA".

and

"In appeal the Court of Justice in The Hague has concluded in its pronouncement of 3 October 2007 (LJN:BB4662) that the file contains many indications that Jose Maria Sison continues to fulfil, during its many years in exile, if not as chairman, a prominent role within the CPP."

4.2.2.1 Misuse and misrepresentation of the scope of said decisions.

Both decisions are related to a criminal investigation conducted in the Netherlands against Jose Maria Sison on (false) charges brought against him for inciting to murder in the Philippines.

The main point of both decisions (annexed to this letter) is that there are no indications of possible guilt (**geen enkele dusdanig concrete aanwijzing**) against Jose Maria Sison even to justify his pre-trial detention.

The Council completely ignores this aspect of the decisions.

The Appeal Court in The Hague stated as follows in its decision:

"The only (presumed) accountability of the suspect within the chain of the CPP, among which the NPA which is supposed to have committed the murders , is for establishing of his criminal responsibility for the above described facts/offenses is in abstracto not sufficient. For that it is necessary that a direct connection has to be established (and lawfully and convincingly) proven between the behaviours, actions and negligence of the suspect and that of the murder attacks committed in the Philippines that lawfully speaking can be taken as perpetrator (or offender) in the meaning of Article 47 of the Criminal Code

According to the judgment of the Court, however, the pieces of information available at present there is no concrete indication at all from which the direct criminal involvement of the suspect in the alleged behaviour can be drawn, that it would be proper to state that there is responsibility as an offender in the meaning of Article 47 of the Criminal Code*. Therefore the Court considers the application of temporary detention demanded by serious complaints against the suspect as not present."*

4.2.2.2 Decision of the The Hague Court dd. 13 september 2007 has been overruled

Moreover , the decision of the The Hague Appeal Court of 3 October 2007 nullifies and supersedes the previous decision of the The Hague Court dd. 13 September 2007 and takes an even more favourable stand towards Jose Maria Sison.

Any reference made by the Council to the decision of The Hague Court of 13 September 2007 is, therefore, irrelevant.

4.2.2.3 Charges already rejected as "politically motivated" by the Supreme Court of the Philippines in its ruling dd. 2 July 2007

The Council was previously informed by the applicant that the investigation conducted against him in the Netherlands was based on charges that had been dismissed by the Supreme Court of the Philippines in a ruling dd. 2 July 2007 (Annex 9 to the Application in T-341/07)

The application in case T-314/07 stated:

"On August 28, 2007, however the applicant was arrested by Dutch police. The investigation conducted against him is for his alleged role in three murders committed in the Philippines in 2003 and 2004. According to the Dutch public prosecutor the applicant is being charged with inciting to commit these murders.

…

Secondly, the applicant denies that he has anything to do with these killings and views them as false charges, which are part of the continuing effort by the Philippine, US and Dutch governments to malign him as a "terrorist" and a "criminal."

…

Thirdly, the alleged involvement of the applicant in these murders was one of the facts submitted to the Supreme Court of the Philippines in the framework of the omnibus charge brought against the applicant by the Philippine National Police. Given that these alleged facts were included in the scope of the omnibus charge – which covered a long period from 1968 to 2006 – and given that the Supreme Court of the Philippines' dismissal of the rebellion charge as politically motivated covers all accusations from that period, it is untenable that the same alleged facts are now the subject of Dutch criminal proceedings."

"In 2005, the Philippine authorities filed baseless charges of common crimes (such as murder, robbery, kidnapping and the like) against him in connection with incidents ascribed to the NPA in various parts of the Philippines. The purported facts alleged to support the charge of rebellion covered the entire period from the founding of the Communist Party of the Philippines on December 26, 1968 to the filing of the charge on April 21, 2006. On July 2, 2007, the Supreme Court of the Philippines issued a judgment nullifying the omnibus charge of rebellion and all the supposed evidence from 1968 to 2006, finding in favour of the applicant and his 50 other co-accused. The Supreme Court of the Philippines ordered the Regional Court of Makati to dismiss the two rebellion cases against the applicant because of "the obvious involvement of political considerations in the actuations of respondent Secretary of Justice and respondent prosecutors. …We cannot emphasize too strongly that prosecutors should not allow, and should avoid, giving the impression that their noble office is being used or prostituted, wittingly or unwittingly, for political ends, or other purposes alien to, or subversive of, the basic and fundamental objective of observing the interest of justice even-handedly … ""

4.2.2.4. Omission of any reference to the decision of the investigating magistrate 'Judge Commissioner) dd. 21 November 2007

The Council does not make any reference to the decision of the Judge Commissioner dd. 21 November 2007 which states:

"In the current case, a criminal pre-investigation was opened on 28 August 2007 which has not yet been closed. Article 237, first paragraph Sv [Law on Criminal Procedure] stipulates that the judge-commissioner ought to close the criminal pre-investigation if there is no ground for continuing it. According to the judgment of the

judge commissioner, there is a lack of reason for continuing a criminal pre-investigation, among others, if considering the pattern of questions in articles 348 and 350 Sv, continuing the prosecution is not to be considered justified.
The chamber of this court rejected on 13 September 2007 the detention of the suspect because of the lack of serious objections ["ernstige bezwaren", grave presumptions, incriminating evidence]. The Public Prosecutor's Office appealed against this decision at the Court of Appeals here. In its decision of 3 October 2007, the Court of Appeals also rejected the demand for detention of the suspect. The Court of Appeals – concisely and in a business-like way presented – decided that given the current status of the investigation there are no serious objections [incriminating evidence] and moreover there is the question whether the defence can fully exercise its rights of cross examination.
The judge-commissioner requested the prosecutor by letter of 19 October 2007 to give her standpoint on the existence or continued existence of grounds for the criminal preinvestigation considering the aforementioned decisions. The prosecutor – after having requested and received two extensions – verbally promised to come up with a substantive reaction at the latest by 16 November 2007. On 16 November 2007 the judge-commissioner did receive a reaction, but in it, the prosecutor does not take up the decisions of both chambers. There is therefore no substantive reaction. The information that the public prosecutor's office shall still take up the lack of serious objections if the judge-commissioner requests it, this cannot be considered other than a new attempt for postponement. It should have been perfectly clear to the prosecutor that this was precisely the reaction [taking up the lack of serious evidence] which the judge-commissioner asked for. This request after all flows implicitly from the letter [of the judge-commissioner] of 19 October 2007. Up to the highest instance [refers to Court of Appeals] it has been decided that from the current criminal dossier no serious evidence against the suspect can be drawn. The prosecutor has in no way provided information whether continuation of the criminal pre-investigation (vooronderzoek) would be able to lead to another judgment on this point. This means that the judge-commissioner cannot but conclude that further investigation will not lead to another conclusion, so that there is no ground for the continuation of the criminal pre-investigation. The circumstance that the judge-commissioner has already approved witnesses for the prosecution does not negate that. These witnesses have already made their presentations in the existing criminal dossier and their declarations have thus been taken into consideration in the judgment of the Court of Appeals.

Decision
The judge-commissioner closes the criminal pre-investigation.
Thus done at The Hague on 21 November 2007
By (Sgd.) Atty. C.M. Derijks, judge-commissioner"

Although the Public Prosecutor announced later his decision to continue the prosecution notwithstanding the decision of the Judge Commissioner, the Council cannot simply ignore the decision of the Judge Commissioner.

4.3. The legal requirements of the common position 2001/931 and of the Regulation 25801/2001 to include Jose Maria Sison on the list are not met

Art. 1(4) of common position 2001/931 and art. 2(3) of regulation 2580/2001 set the basic legal requirements that have to be met to allow the Council to include a person in the list.

These requirements are multiple. "*The list shall be drawn up*", says the text

a. *On the basis of precise information or material*
b. *That a decision has been taken by a competent authority in respect of the persons concerned*
c. *Concerns instigation of investigations or prosecution*
d. *For a terrorist act, an attempt to perpetrate, participate in or facilitate such an act*
e. *Based on serious and credible evidence or clues or condemnation for such deeds*

These are very strict conditions and the Council does not comply with any of them in its letter.

4.4.1. No precise information or material presented by the Council

As developed above, the factual allegations presented by the Council are merely erroneous and baseless allegations and thus do not comply with the requirements of "precise information or material".

4.4.2. The decisions of the State Council and the Legal Uniformity Chamber [Rechtseenheidskamer, REK] of the District Court in The Hague cited by the Council have nothing to do with *"investigations or prosecution for a terrorist act"*

The decisions of the State Council in 1995 and of the REK in 1997 are taken by "competent authority" but do not at all concern the "*instigation of investigations or prosecution for a terrorist act, an attempt to perpetrate, participate in or facilitate such an act."*

The allegations concerning contacts of Prof. Sison with terrorist organisations do not meet the legal conditions set out by the community law to include a person in the list. The text of article 1(4) of the Common position does not foresee that "contacts" with terrorist organisations are sufficient. The legal requirement is an investigation or a conviction for *"a terrorist act, an attempt to perpetrate, participate in or facilitate such an act."* Mere contacts are not mentioned as a legal basis for including someone in the list.

4.4.3 The decisions of the Appeal Court in The Hague and the Judge Commissioner do not contain or provide *"serious and credible evidence or clues or condemnation"* for involvement in *"terrorist acts"*.

The decisions taken by Dutch judicial bodies (first instance District Court, Appeal Court and Judge Commissioner) in the criminal investigation conducted against Jose Maria Sison in the Netherlands do not contain or provide *"serious and credible evidence or clues or condemnation"* for the allegation that Jose Maria Sison is involved in "*a terrorist act, an attempt to perpetrate, participate in or facilitate such an act"*.

On the contrary, all judicial bodies that examined such allegations brought against Jose Maria Sison came to the conclusion that there were no indications of guilt (which are of course precisely the contrary of "*serious and credible evidence or clues*") against Jose Maria Sison.

Moreover charges that have been dismissed in very strong wordings by the Supreme Court of the Philippines as "politically motivated" must not be considered as *"serious and credible"*.

Finally, the alleged acts that were the subject of the Dutch criminal proceedings are not "terrorist acts" in the sense of Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism.

4.4.4. Dutch and US executive decisions cannot offer a legal ground for the inclusion of Jose Maria Sison in the list

In its letter, the Council also refers to the decision of the government of the Netherlands published in the Staatscourant 13 august 2002, and to the US decision following the US Executive Order 13224.

Both these decisions cannot be considered as a "*decision taken by a competent authority in respect of the persons concerned*" in accordance with the Common Position 2001/931. These decisions were adopted by executive bodies and not by a "*judicial or equivalent*" authority, as required by the legal instrument and the case law. The Court of First Instance of the EC considers that: "*'Competent authority' is understood to mean a judicial authority, or, where judicial authorities have no jurisdiction in the relevant area, an equivalent competent authority in that area.*" (Case T 228/02, Organisation des Modjahedines du peuple d'Iran (OMPI) v. Council, Judgment of 12 December 2006).

The mere fact that the US decision can be reviewed by a judicial authority does not make it a "judicial decision". The fact that Jose Maria Sison did not yet challenge this decision in the US is precisely a consequence of the lack of financial means due to his listing and cannot be interpreted as consent to this decision.

As a conclusion of this point, it is submitted that we have demonstrated that none of the requirements of art. 1(4) of common position 2001/931 and art. 2(3) of regulation 2580/2001 are met in the present case.

5. By including Jose Maria Sison in the list without any factual or legal justification, the Council commits a patent misuse of powers

5.1. The freezing of Jose Maria Sison's bank account is totally irrelevant to combating terrorism.

The freezing of the joint bank account of Professor Sison and his wife, Julieta de Lima, and termination of Professor Sison's social benefits are totally irrelevant to the struggle against terrorism.

The Council does not care if the freezing of the assets of Jose Maria Sison would generate the desired effects in the fight against terrorism. Apart from the cancellation of his health insurance, the cancellation of the monthly social allowance granted to him by the Dutch authorities and the threat of expelling the applicant from the house he lives in, the only effect of the contested decision was the freezing of the joint bank account of him and his wife nr. 58.22.994 with the Postbank. No other bank accounts were frozen simply because Jose Maria Sison does not have any other bank account in the Netherlands, nor abroad. Had the Council cared to ascertain the source and amount of his assets and the manner by which he conducts his financial activities, the Council would have found out that what it froze were exclusively his social benefits received from the Dutch authorities (Annex 16 of the reply in the case T-47/03: Bank statements of the frozen joint account of the applicant and his wife from 3 January 2002 to 10 October 2002). The bank statements indeed show that Jose Maria Sison has no other income than this monthly allowance from the Dutch government. The expenses recorded by the bank statements showed that the frozen funds were used only for essential human needs. The Council cannot reasonably claim that the freezing of the applicant's bank account is necessary for the achievement of the aim of combating terrorist financing.

During the hearing of 30 May 2006 in the case T-47/03 before the Court of First Instance, the lawyer of the Netherlands, intervener in the case, admitted that no suspected financial transaction was ever observed concerning the bank account of Jose Maria Sison which was frozen in application of the Council's decision.

5.2. The real aim of the listing has nothing to do with the fight against terrorism

Finally, in the case of Professor Sison, we submit that it is patently obvious that his name is included by the Council in the list for reasons that have nothing to do with the fight against terrorism.

Several statements by officials of the GRP show clearly that Professor Sison was initially listed by the US and the European Union upon the request of the Government of the Republic of the Philippines. It is undeniable that Prof. Sison was put on the

national list of persons allegedly involved in or facilitating terrorist activity in the Netherlands in close co-operation with the US government. Although the peace negotiations have been conducted under the facilitation and protection of the governments of Norway, Belgium, and the Netherlands, through the contested decision, the latter two EU countries are unduly putting their weight in favour of the Government of the Republic of the Philippines to the detriment of the peace negotiations.

A clear illustration of this fact was given in January and February 2003, by the Foreign Affairs Secretary of the GRP, Mr. Blas OPLE, who said: "*Once there is a peace agreement, I will request the EU, the United States and other countries to delist (the rebels) as terrorists. If they sign, they will no longer be terrorists*". (Appendix 10 of the application for leave to intervene: "Reds must sign peace accord to get off terror list--Ople", Agence France-Presse, February 1, 2003 (http://www.inq7.net/brk/2003/feb/01/brkpol_12-1.htm; Annex 11 of the application for leave to intervene of the Negotiating panel of the NDFP in the case T-47/03: "Terror list may be removed if Reds accept peace", The Philippine Star, February 25, 2003).

Such declarations show that the main purpose of the listing of Jose Maria Sison as a terrorist is to put pressure on the NDFP in the peace negotiations. The Government of the Republic of the Philippines is attempting to actually force the NDFP to sign a capitulation agreement. This is the most compelling evidence that the contested decision was adopted with the main purpose of achieving an end other than stated. There is absolutely no doubt about the misuse of powers of the Council by adopting the contested decision and also the Regulation 2580/2001 EC.

The website of the Dutch foreign ministry is very clear in that perspective. It shows beyond any doubt that purely diplomatic reasons are at the basis of the listing: maintaining intense political and economical relations with the present corrupt and repressive regime in the Philippines and pleasing its protector in Washington.

Immediately after mentioning the intensive trade relations and the fact that the Netherlands are one of the major investors in the Philippines with more then 150 companies present, the Dutch Foreign Ministry writes:

"*The only burden for the Dutch-Philippine relations is comprised of the stay of the leadership of the Communist resistance in Utrecht. Peace talks between the Philippine government and the resistance leadership, which formerly were facilitated by the Netherlands, now take place in Norway. Only back-door talks are still held in the Netherlands. In this way, the Netherlands maintains a hands-off policy. The most prominent leader of the resistance, Jose Maria Sison, has been denied political asylum in the Netherlands. He has an appeal going on at the European Court for Human Rights. The Philippines has welcomed the measures taken by the Netherlands, among others, upon an American request, to freeze the assets of Mr. Sison, the Philippine Communist Party (CPP) and its armed wing, the New People's Army*". (See: pp. 7-8 of the country report on the Philippines, updated August 2005, under the heading: 4.1 "Betrekkingen met Nederland" Relations with the Netherlands, document lodged with the Court of First Instance in the case T-47/03 in the observations of the applicant to the report of the judge rapporteur).

What happened in fact is that the Minister of Justice of the Netherlands for obvious diplomatic reasons did not want Jose Maria Sison in the Netherlands and tried to get rid of him by invoking vague speculations of the secret services, kept secret and never submitted to any form of scrutiny and contest by Prof. Sison. Two courts in three decisions said that the Minister could not do so because he did not present *serious and credible evidence* for his allegations.

By including Jose Maria Sison in the list without any factual or legal justification, the Council commits a patent misuse of powers.

6. Responsibility and accountability of the Council and all the member States of the EU in the decision to list Jose Maria Sison

It should be recalled that the Council assumes responsibility for all acts it adopts, such as the inclusion of Jose Maria Sison in the list, on the bases of Article 288 EC.

By the present document and all those presented by Jose Maria Sison in the case T-47/03, it is clearly established that the decision to include him or to maintain him on such a list is illegal.

It should also be noted that, in addition to the community responsibility, all the Members States assume responsibility, by including or maintaining Jose Maria Sison on the list, because this decision violates binding international treaties protecting human rights, such as the ECHR (See, EctHR, Bosphurus Airways c. Ireland, 30 June 2005; Dick MARTY, United Nations Security Council and European Union blacklists, Council of Europe, Doc. 11454, 16 November 2007; and Resolution 1597 (2008) of the Parliamentary Assembly of the Council of Europe).

7. Request to send a copy of all the present document and of the proceedings of the case T-47/03 to all the members of the Council and of the Coreper

According to the Court of First Instance of the EC, Jose Maria Sison "must be placed in a position in which it can effectively make known its view on the information or material in the file." (See aforementioned case T-228/02, pt 126). It follows that all the officials who will participate in the decision-making process to include or retain him on the list must receive the present documents and all the documents submitted by Jose Maria Sison to the Council in the proceedings of the case T-47/03.

8. Request to be heard by the Council prior to his inclusion or retention in the list based on the Regulation 2580/2001

It should be noted that the general principles of community law require that Jose Maria Sison and his lawyers should be heard by the Council prior to any decision to include or retain him in the list. The Court of First instance stated that any decision to maintain a person on the list, if the funds are already frozen, which in the case with the bank account of Jose Maria Sison: "*must accordingly be preceded by the possibility of a further hearing*" (See aforementioned case T-228/02, OMPI, pt 131).

9. Purpose and limits of the present observations

It should be noted that the "motivation" presented by the Council in its letter does not comply at all with the legal requirements of article 253 EC and neither with the general principles of community law (among others the principles of presumption of innocence and the principle of fair trial).

Jose Maria Sison does not consider the possibility to lodge the present observations to the Council as a sufficient guarantee for fair proceedings and fulfilment of his fundamental right to defence, to know the case against him and to be heard.

Indeed, the Council has submitted its letter of 25 February 2008 as a result of the judgment of the CFI of 12 December 2006, which states that: "*the right to a fair hearing (…) requires, in principle, first, that the party concerned be informed by the Council of the specific information or material in the file which indicates that a decision meeting the definition given in Article 1(4) of Common Position 2001/931 has been taken in respect of it by a competent authority of a Member State, and also, where applicable, any new material (…)and, second, that it must be placed in a position in which it can effectively make known its view on the information or material in the file*".

This letter of the Council does not meet the standards and requirements set by said case-law (See pt 144 to 146 of the aforementioned judgement in the case T-228/02).

Conclusion

Jose Maria Sison requests the Council:

- Make the present document directly accessible to the public in electronic form and through the public register of the Council in accordance with articles 11 and 12 of the same regulation 1049/2001, maximum 8 days after its reception;
- Send a copy of the present document and of all the documents of the proceedings of the cases T-47/03 and T-341/07 to all the delegates of the Coreper and all the ministers of the member States of the EU who will participate in the decision-making process about his inclusion or retention in the list adopted on basis of article 2.3 of the Regulation 2580/2001;

- Declare itself incompetent to make any decision to include or retain Jose Maria Sison in a list related to terrorist activities, as a consequence of the lack of legal basis for any such inclusion or retention;
- Cease and desist from including or retaining Jose Maria Sison in a list adopted on the basis of Regulation 2580/2001.

Brussels, 24/03/2008
For Jose Maria Sison,

his counsel,

Jan FERMON